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October 18, 2021

The Honorable Janet Yellen  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Gary Gensler  
Chair  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

The Honorable Jerome Powell  
Chair  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

The Honorable Rostin Behnam  
Acting Chairman  
Commodity Futures Trading Commission  
1155 21st Street, NW  
Washington, DC 20581

**Re: Regulatory Framework to Address the Growth and Promise of Stablecoin Payments Systems**

Dear President's Working Group Members:

The Chamber of Digital Commerce (the "Chamber") and its members appreciate the efforts of the President's Working Group on Financial Markets ("the Working Group") to determine the appropriate U.S. regulatory framework for stablecoins.<sup>1</sup> As the world's first and largest blockchain trade association, we are writing to you to help inform those efforts by recommending a regulatory approach that addresses potential risks while allowing for continued innovation.

Established in 2014, the Chamber's 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. We represent the world's leading innovators, operators, and investors in

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<sup>1</sup> ["Readout of the Meeting of the President's Working Group on Financial Markets to Discuss Stablecoins,"](#) U.S. Department of Treasury, July 19, 2021.

the blockchain ecosystem, including leading edge startups, software companies, financial institutions, and investment firms. More than a dozen of our members are involved in stablecoin projects.

In our 2020 report, *Understanding Digital Tokens: Market Overviews and Guidelines for Policymakers and Practitioners*, we defined stablecoins as: “A [digital] token for which the value is pegged to an external value, such as fiat currency, cryptocurrency, or other financial asset, or an algorithm, designed to limit price volatility.”<sup>2</sup> We further defined a digital token as “computer code maintained on a blockchain-based ledger that [is] secured using cryptography, with each token typically representing a specific value or amount on the ledger.”<sup>3</sup> The scope of this letter is limited to stablecoins that are pegged to the U.S. dollar, focused on the U.S. retail market, and subject to U.S. financial regulations.<sup>4</sup>

Digital tokens promise to bring tremendous improvements to our financial system by enabling frictionless, instantaneous transferability of value. Stablecoins, a type of digital payments instrument, bridge the gap between the innovations of digital tokens and the functionality of legacy payment systems. Stablecoins promise faster, lower-cost payments, as well as the opportunity for greater financial inclusion. In particular, the proliferation of stablecoins built upon open blockchains could bring about immeasurable uses and applications across the economy due to the programmable nature of these payments’ instruments.<sup>5</sup> Thus, as policymakers contemplate the proper regulatory treatment of stablecoins, they should seek a balanced approach that appropriately mitigates risk without stifling innovation.

With this directive in mind, we would like to emphasize the following points:

- Fiat currency-pegged stablecoins, like other forms of retail-focused digital payments instruments, can underpin efficient payments systems that facilitate wider financial inclusion by reducing the costs of basic financial services, adding transparency to the financial system, and overcoming the lack of trust felt by communities underserved by the existing financial system.

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<sup>2</sup> “[Understanding Digital Tokens: Market Overviews and Guidelines for Policy Makers and Practitioners](#)” (second edition), Chamber of Digital Commerce, January 2020, 22.

<sup>3</sup> *Ibid.*, 12.

<sup>4</sup> This focus is similar to the scope that the Working Group articulated in its December 2020 report, although unlike that statement, this letter also focuses on stablecoin payments systems that are not “significant.” “[Statement on Key Regulatory and Supervisory Issues Relevant to Certain Stablecoins](#),” President’s Working Group on Financial Markets, December 2020, 1.

<sup>5</sup> For example, smart contracts could ensure that payments will be received upon the delivery of goods or services. See Eswar Prasad, “[Five myths about cryptocurrency](#),” *Brookings Institution*, May 4, 2021 (explaining that “digital tokens representing money . . . could ease electronic transactions that involve transfers of assets and payments, often without trusted third parties such as real estate settlement attorneys”). See also Jeremy Allaire (@jerallaire) referring to stablecoins as “dollar[s] on the internet” with use cases ranging from start-up financing, international logistics, and worldwide payroll, [Twitter](#), September 27, 2021.

- U.S.-headquartered stablecoin payments systems, or payments systems built upon stablecoins, are already well-regulated at the state and federal level.<sup>6</sup> Stablecoins themselves should be regulated similarly to other retail-focused digital payments instruments, as opposed to being regulated as securities under federal securities regulation. It is important that regulators avoid imposing an overly rigid regulatory regime that stifles innovation.
- No stablecoin payments system currently poses a systemic risk to the U.S. financial system. If regulators determine that certain large stablecoin payments systems pose unique risks or require additional oversight, it is important for U.S. regulatory responses to be tailored and tiered so that the potential benefits from emerging stablecoin innovations can flourish.
- To protect consumers and reduce costs, we encourage the streamlining of state-level regulatory frameworks for stablecoins and the issuance of special-purpose charters by federal banking regulators for stablecoin companies<sup>7</sup> seeking to operate nationally.

We elaborate on these points below.

## **1. Innovative uses of stablecoins promise to transform today’s payments systems**

Stablecoins provide a less costly and faster means of payment, addressing some of the most pressing problems inherent in current payments systems. While the benefits of faster, cheaper, and more reliable payments will result in innovations in many sectors of the economy, these benefits could be most impactful to those on the lowest rungs of the economic ladder. Stablecoin payments systems are creating innovation around how we send and receive payments similar to how the Internet disrupted how information is shared.

### ***a) Stablecoins as a payment method provide instant, real-time transferability***

The U.S. still relies on the Automated Clearing House (ACH) for 66.1% of the value of non-cash payments.<sup>8</sup> And despite recent initiatives to improve retail payments speed, these efforts are not projected to meaningfully impact reliance upon ACH for years to come, meaning that ACH payments will still take anywhere from a few hours to several days to clear.<sup>9</sup> International money transfers can take anywhere from one to five days depending on the banks involved, the destination country, bank hours of operation, and currency conversions required.<sup>10</sup> Certain large incumbent payments systems have, in many ways, become outdated in light of the

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<sup>6</sup> Notably, in situations where a U.S. dollar-pegged, cryptocurrency-backed stablecoin is generated through users interacting with open-source software, there is not an intermediary in the creation of the underlying stablecoin. However, regulated intermediaries may be involved in the distribution (e.g., through centralized exchanges) and use (e.g., through regulated businesses, such as lending) of these types of stablecoins.

<sup>7</sup> Such a company could include, for example, a company that facilitates the generation of stablecoins backed by reserves for which it serves as the custodian.

<sup>8</sup> “[The 2019 Federal Reserve Payments Study](#),” The Federal Reserve, last modified January 2020.

<sup>9</sup> Aaron Klein and George Selgin, “[We shouldn’t have to wait for FedNow to have faster payments](#),” *Brookings*, March 3, 2020.

<sup>10</sup> Cecilia Hendrix, “[How long do international money transfers take?](#),” *Western Union*, April 2021.

technologically-advanced society we live in today.<sup>11</sup> Stablecoin payments systems, on the other hand, can settle transactions nearly instantaneously due to the use of blockchain technology, which does not rely solely on intermediaries.

Not only are payment processing times faster with stablecoins, but the time available for processing is not restricted by the operating hours of banks and other intermediaries – as is the case for certain legacy payment systems. As Securities and Exchange Commission (SEC) Chair Gary Gensler has stated, “[u]nlike other trading markets, where investors go through an intermediary, people can trade on crypto trading platforms without a broker — 24 hours a day, 7 days a week, from around the globe.”<sup>12</sup> Just as cryptocurrencies can be traded globally 24 hours a day, 7 days a week, stablecoin-based transactions can be paid and settled regardless of the time of day or the location of transacting parties – so peer-to-peer payments and remittances can be made in near real time.<sup>13</sup> On the other hand, the latest time in the day that a payment can be submitted for processing through the ACH is 4:45 pm ET.<sup>14</sup>

### ***b) Stablecoins as a payment method result in lower fees***

Traditional payments infrastructure is rife with fees given its over reliance on intermediaries. These fees are disproportionately borne by low-income Americans.<sup>15</sup> A Brookings Institution study estimates that eliminating just 10% of bank overdraft, payday loans, and check cashing services would save American working families \$3.4 billion annually.<sup>16</sup> The proliferation of U.S. dollar-pegged stablecoins can help bring about these savings.

The time delay inherent in the current system is ultimately borne by consumers in the form of fees for services that seek to circumvent the timing problem such as check cashers and payday lenders, services that cost American consumers approximately \$1.6 billion and \$4.5 billion in annual fees, respectively.<sup>17</sup> The lack of real-time payments is also a driver of overdraft fees, which cost American consumers approximately \$12.4 billion annually.<sup>18</sup>

Stablecoin payments systems also have the promise to provide a far more cost-effective means for processing cross-border payments. The average remittance fee for cross-border transactions is

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<sup>11</sup> [“Payment System Improvement – Public Consultation Paper,”](#) Federal Reserve Financial Services, September 2013, 4. “Legacy payment systems provide a solid foundation for payment services; however, some of these systems (check and ACH) rely on paper-based and/or batched processes, which are not universally fast or efficient from an end-user perspective by today’s standards.”

<sup>12</sup> [Letter from Chair Gary Gensler to Sen. Elizabeth Warren,](#) August 5, 2021.

<sup>13</sup> See, e.g., Charles Cascarilla, [“Presentation at CFTC TAC Panel II: Stablecoins,”](#) Paxos, February 26, 2020 (explaining that two key characteristics of Paxos Standard, a stablecoin built on Ethereum, are that it is “available 24/7” and “accessible globally”).

<sup>14</sup> [“Expanding Same Day ACH,”](#) NACHA, accessed October 6, 2021.

<sup>15</sup> Aaron Klein, [“Real-time payments can help combat income inequality,”](#) Brookings Institution, March 2019. See also Aaron Klein, [“The fastest way to address income inequality? Implement a real time payment system,”](#) Brookings Institution, January 2019.

<sup>16</sup> [Letter from Aaron Klein, Brookings Institution, to Secretary Misback, Board of Governors of the Federal Reserve System,](#) “Potential Federal Reserve Actions to Support Interbank Settlement of Faster Payments Docket No. OP-1625,” December 2018.

<sup>17</sup> [“The FinHealth Spend Report 2021,”](#) Financial Health Network, 2021, 23.

<sup>18</sup> Ibid.

6.5% of the amount sent, over double the World Bank’s Sustainable Development Goal of 3%.<sup>19</sup> Stablecoin-backed cross-border payments, on the other hand, typically cost between 0.5% to 1% of the transmission amount.<sup>20</sup>

Stablecoin payments systems may also serve as a lower-cost alternative to prepaid cards and credit cards. Prepaid cards are commonly used by those without access to a traditional bank account.<sup>21</sup> Prepaid card issuers charge as many as 14 different types of fees, including balance inquiry fees, paper statement fees, and reloading fees.<sup>22</sup> Interchange fees charged to merchants for prepaid cards averaged 1.39% of transaction value in 2019, compared to 0.75% for other debit cards,<sup>23</sup> while credit card merchant fees can range from 1.5% to 3.5%.<sup>24</sup> These fees are ultimately borne by consumers in the form of higher costs. Stablecoin payments systems, on the other hand, provide enormous savings to end users by allowing them to store funds in digital token wallets without any fees other than comparatively tiny transaction fees.

### *c) Stablecoins as a payment method improve financial equity and inclusion*

Stablecoin payment systems provide an opportunity to service the unbanked (those without an account at a financial institution) and underbanked (those who have an account but appear to access services insufficient to meet their financial needs).<sup>25</sup> Globally, about 1.7 billion people are unbanked.<sup>26</sup> In the U.S. approximately 46 million people, representing 18% of the adult population, are either unbanked or underbanked.<sup>27</sup> The underbanked tend to be less educated, less wealthy, and more diverse than the fully banked.<sup>28</sup>

Data illustrates that minorities are adopting digital tokens at a higher rate than other demographics.<sup>29</sup> Stablecoin payments systems could provide a way for underbanked and unbanked minorities to access basic financial services without a traditional banking relationship. Indeed, decentralized finance platforms are already utilizing stablecoins to offer basic financial services to anyone with a smartphone.<sup>30</sup> These solutions allow for stablecoins to be used to fund

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<sup>19</sup> Kristo Kaarmann, “[Ending remittance hidden fees: the international community calls for action](#),” World Bank, May 2021.

<sup>20</sup> “[Crypto-backed Cross-border Payment – A non-exhaustive study of BitPay, Uphold, Wirex, Coinify, Wyre, Coinpayments, Terra, Celo, and Paxful](#),” *Blockchain4all*, January 2020.

<sup>21</sup> Peter Bennett, “[Among the Unbanked, Prepaid Cards are More Popular than Cat Videos](#),” Bank Tracker, August 20, 2021 (citing statistic that the unbanked make up only seven percent of the adult population but 23 percent of prepaid card users).

<sup>22</sup> “[What types of fees do prepaid cards typically charge?](#),” CFPB, last modified April 1, 2019.

<sup>23</sup> “[Reports and Data Collections, Interchange Fee Revenue](#),” Board of Governors of the Federal Reserve System, accessed October 9, 2021.

<sup>24</sup> Holly Johnson, “[Average credit card processing fees in 2020](#),” *Bankrate*, September 22, 2020.

<sup>25</sup> “[Economic Well-Being of U.S. Households in 2020](#),” Board of Governors of the Federal Reserve System, May 2021, 45.

<sup>26</sup> “[The Unbanked](#),” The World Bank, 2017.

<sup>27</sup> “[Economic Well-Being of U.S. Households in 2020](#),” Board of Governors of the Federal Reserve System, May 2021, 45.

<sup>28</sup> *Ibid.*

<sup>29</sup> Akayla Gardner, “[Black Americans Are Embracing Stocks and Bitcoin to Make Up for Stolen Time](#),” *Bloomberg*, April 13, 2021 (according to a recent Harris Poll survey, 13% of whites, 18% of African Americans, and 20% of Hispanics own cryptocurrencies).

<sup>30</sup> “[Celo launches \\$100m fund to support DeFi adoption](#),” *Finextra*, August 30, 2021.

and make payments from open-source digital token wallets that do not require a banking relationship to download. These wallets can in turn be used for peer-to-peer transactions (like Venmo) and for direct remittances, with very low fees, as mentioned above.

Stablecoins may also provide the unbanked and underbanked an affordable way to make purchases on e-commerce platforms. These platforms often provide access to more cost-effective goods and services, but typically cannot be used without a debit or credit card. The proliferation of stablecoins could provide the underbanked the option of not relying upon costly alternatives to conduct online shopping.<sup>31</sup> Already, an underbanked or unbanked person can fund and make payments with low-fee payments card products using stablecoins.<sup>32</sup> Thanks to stablecoins and other digital token innovations, the future of finance is more inclusive than ever before.

#### ***d) Stablecoin networks are built to be reliable***

Critics claim that, despite the benefits of stablecoins, widespread adoption of these payments instruments is impractical because the systems upon which they are built are not reliable. As with any technology, the open blockchains upon which most retail-focused stablecoins are currently built can be susceptible to bugs and issues.<sup>33</sup> But these issues should be evaluated and measured against the major glitches and security failures that incumbent payments systems have experienced in recent years.<sup>34</sup> In 2018, one of the major credit card networks suffered an outage, which left users in the United Kingdom and Europe without services for more than 10 hours, causing more than 5.2 million transactions to fail during this time.<sup>35</sup> In February, a large payments service provider suffered an outage which left businesses across the U.S. unable to accept payments.<sup>36</sup> Although not a panacea to preventing outages, the decentralized nature of open blockchains – where peer-to-peer networks validate and record transactions – have proven extraordinarily secure and resilient because there is no single point of failure.<sup>37</sup> Accordingly, it is important for policymakers to create a regulatory environment that allows for continued experimentation with payments arrangements built upon these peer-to-peer networks.

## **2. Stablecoin payments systems headquartered in the U.S. are subject to extensive regulation at the state and federal levels**

U.S. dollar-pegged stablecoin payments systems headquartered in the U.S. are subject to extensive regulation. As explained below, applicable regulatory frameworks can involve money transmission laws and state-level trust company charters on the federal level, and FinCEN, CFPB, and CFTC regulations on the federal level. Before attempting to develop a new regulatory

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<sup>31</sup> Marco Di Maggio and Nicholas Platiadis, "[Is Stablecoin the Next Big Thing in E-Commerce?](#)," *Harvard Business Review*, last modified May 21, 2020.

<sup>32</sup> See e.g., "[BitPay Launches Worldwide Stablecoin Payments](#)," *BusinessWire*, December 10, 2019.

<sup>33</sup> Neha Narula, "[The Technology Underlying Stablecoins](#)," *Neha's Writings*, September 23, 2021.

<sup>34</sup> Ann Saphir, "[Fedwire resumes operations after hourslong disruption](#)," *Reuters*, February 24, 2021. See also Alan Katz and Wenxin Fan, "[A Baccarat Binge Helped Launder the World's Biggest Cyberheist](#)," *Bloomberg*, August 3, 2017.

<sup>35</sup> "[Visa says 5.2m payments failed during 10 hour outage](#)," *Finextra*, June 19, 2018.

<sup>36</sup> Natasha Dailey and Kate Taylor, "[Customers are reporting credit-card payment crashes at restaurants and stores across the US, including Chick-fil-A and Ikea](#)," *Business Insider*, February 26, 2021.

<sup>37</sup> Curtis Miles, "[Blockchain security: What keeps your transaction data safe?](#)" *IBM*, December 12, 2017.

regime, policymakers should first establish through a transparent and open process what gaps, if any, exist under the current approach. We believe that for U.S. dollar-pegged stablecoin payments systems headquartered in the U.S., there are no major gaps in the existing regulatory regime, but there are opportunities to streamline and improve regulatory approaches.

U.S. dollar-pegged stablecoin payments systems focused on the U.S. market but with no U.S. headquarters are also generally subject to U.S. regulations.<sup>38</sup> In our view, one important way for the U.S. to respond to the growth of stablecoin payments systems primarily based outside the U.S. is to ensure that the U.S. regulatory environment allows for U.S. headquartered, transparently structured U.S. dollar-pegged stablecoin payments systems to safely and efficiently flourish and grow.

Additionally, international cooperation is crucial to mitigating financial risks and preventing regulatory arbitrage. The U.S. should continue to work through the Financial Stability Board and other international standard-setting bodies, as well as align and coordinate, when possible, with other major market jurisdictions, to ensure regulatory coordination that mitigates risk while allowing innovation to occur. For example, in 2019, the Financial Conduct Authority (FCA) in the United Kingdom published its *Guidance on Cryptoassets*<sup>39</sup> which clarified with respect to stablecoins that where cryptoassets may meet the definition of electronic money – that is (1) electronically stored monetary value that represents a claim on the issuer, (2) issued on receipt of funds for the purpose of making payment transactions, and fall within the scope of Electronic Money Regulations (EMRs), (3) not excluded by regulation 3 of the EMRs accepted by a person other than the issuer, and (4) not excluded by regulation 3 of the EMRs – the cryptoasset would be considered an e-Money token and regulated under the existing EMRs.<sup>40</sup>

#### *a) State regulatory regimes*

Stablecoin payments systems focused on the U.S. retail market are often regulated under state-level money-transmitter licensing regimes – the same regime applicable to other retail-focused digital payment platforms.<sup>41</sup> State money transmitter laws vary from state to state<sup>42</sup> and are aimed at a range of policy goals including protecting consumers, maintaining public confidence in payment businesses, protecting against default of payment instruments, preventing money laundering, and eliminating financial fraud.<sup>43</sup> In many states, these laws allow consumer funds to

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<sup>38</sup> A recent example of U.S. regulation extending to foreign-based stablecoin entities is the New York Attorney General’s enforcement action against Tether, which resulted in a \$18.5 million penalty. “[Attorney General James Ends Virtual Currency Trading Platform Bitfinex’s Illegal Activities in New York](#),” New York State Office of the Attorney General, February 2021.

<sup>39</sup> “[Guidance on Cryptoassets](#),” Financial Conduct Authority, July 2019.

<sup>40</sup> “[The Electronic Money Regulations](#),” United Kingdom Legislation, 2011.

<sup>41</sup> Notably, in situations where users interacting with open-source software can generate a U.S. dollar-pegged, cryptocurrency-backed stablecoin, it may be the case that no entity related to the creation of the software that permits the generation of that stablecoin needs to register as a state money transmitter or money services business. However, companies offering financial services using that type of stablecoin would need to adhere to relevant regulatory requirements.

<sup>42</sup> Importantly, states have undertaken significant efforts to coordinate their regulatory regimes. “[Model Money Transmission Modernization Act](#),” Conference of State Bank Supervisors, September 2021.

<sup>43</sup> Carol R. Goforth, “[The Case for Preempting State Money Transmission Laws for Crypto-Based Businesses](#),” *Arkansas Law Review* 73, no. 2 (2020): 316.

be invested in commercial debt and municipal securities.<sup>44</sup> Some state regulations require that the market value of these permissible investments not fall below the aggregate amount of outstanding payment instruments or significantly below the net carrying value of these instruments.<sup>45</sup>

While most states simply apply the same regime created for other payment services to virtual currencies, other states such as Louisiana and New York have crafted special licensing regimes for virtual currency-focused money transmission businesses.<sup>46</sup> New York’s Virtual Currency regulation, “BitLicense,” contains a host of compliance policies, including capital requirements, consumer protection and asset custody standards, bookkeeping policies, anti-money laundering requirements, and cybersecurity programs.<sup>47</sup>

Alternatively, virtual currency companies can register as trust companies or special purpose depository institutions in certain states, which may provide an exemption from or reciprocity with other states’ money transmission laws. Virtual currency companies may become limited purpose trust companies under the New York Banking Law, which includes rules regarding minimum capital and capital composition.<sup>48</sup> Similarly, Nevada’s Department of Business and Industry allows virtual currency businesses to register as a trust.<sup>49</sup>

Similar to a trust, Wyoming offers a “special purpose depository institution” charter to institutions that conduct activity incidental to the business of banking.<sup>50</sup> Such entities are not allowed to make loans with customer deposits and must maintain “unencumbered level 1 high-quality liquid assets” equal to or greater than depository liabilities.<sup>51</sup>

Finally, state Attorney Generals may apply state unfair or deceptive acts or practices laws or other state laws to bring actions against activities they deem to be deceptive or unfair.<sup>52</sup>

### ***b) Federal regulatory regimes***

A host of federal agencies may also possess and exercise regulatory authority over stablecoin payments systems focused on the U.S. retail market. As a general matter, entities performing functions integral to stablecoin payments systems are required to register with FinCEN and follow FinCEN regulations as a money servicing business.<sup>53</sup> FinCEN guidance requires entities

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<sup>44</sup> *E.g.*, Code of Virginia § 6.2-1919.

<sup>45</sup> AZ Rev Stat § 6-1212.

<sup>46</sup> 23 NYCRR Part 200; 6 La. Rev. Stat. 21, §1381 – 1394.

<sup>47</sup> 23 NYCRR Part 200.

<sup>48</sup> “[Banks and Trusts](#),” New York State, accessed October 6, 2021.

<sup>49</sup> “[Nevada Financial Institutions Division statement on regulation of cryptocurrency in Nevada](#),” State of Nevada, Department of Business & Industry, August 19, 2019.

<sup>50</sup> “[Special Purpose Depository Institutions](#),” Wyoming Division of Banking, accessed October 6, 2021.

<sup>51</sup> *Ibid.*

<sup>52</sup> “[Attorney General James Ends Virtual Currency Trading Platform Bitfinex’s Illegal Activities in New York](#),” New York State Office of the Attorney General, accessed October 6, 2021.

<sup>53</sup> 18 USC § 20, including in the definition of financial institution “any person who engages as a business in the transmission of funds.” *See also* Bank Secrecy Act Regulations, Definitions and Other Regulations Relating to Money Services Businesses, 76 FR 43585, 43596 (July 2011). This expanded the definition of “money transmission services” to include “the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by



performing functions integral to these stablecoin payments systems to comply with anti-money laundering (AML) and sanctions requirements.<sup>54</sup> This is consistent with the Financial Action Task Force's standards.<sup>55</sup>

Additionally, stablecoins that are considered commodities or derivatives are subject to the Commodity Futures Trading Commission's (CFTC) anti-fraud and anti-manipulation authority.<sup>56</sup> The Consumer Financial Protection Bureau (CFPB) also has jurisdiction over stablecoin payments systems under its payment instruments authority, which includes, for example, the authority to enforce against "unfair, deceptive, or abusive acts or practices."<sup>57</sup> Also, while not mandatory, the OCC has permitted entities performing functions integral to stablecoin payments systems to apply to be chartered as national trust banks if they meet certain requirements.<sup>58</sup>

The breadth of the existing regulatory framework described above demonstrates that, far from being akin to the "Wild West,"<sup>59</sup> entities operating in the stablecoin space today are subject to regulatory requirements and oversight from multiple angles.

### 3. Principles of any future regulatory action

The Chamber believes that the following principles should guide regulators' decision-making on stablecoin policy: a) be technology neutral, b) regulate proportionate to the risk, c) ensure U.S. global leadership in the blockchain space, d) recognize stablecoins as a type of digital payments instrument, not an investment product, e) ensure compliance with AML and countering the financing of terrorism requirements, and f) craft flexible, principles-based rules.

#### a) *Be technology neutral*

Consistent with the "same business, same risk, same rules" principle,<sup>60</sup> stablecoins should be regulated like other retail-focused digital payments systems in the U.S. and should not be subject to a new regulatory regime simply because new technology is being deployed. New regulatory treatment for stablecoins should only be invoked to the extent necessary to mitigate unique risks

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any means." Notably, in situations where a U.S. dollar-pegged, cryptocurrency-backed stablecoin is generated through users interacting with open software, there appears to be no need for any entity related to the generation of that stablecoin register with FinCEN. "[Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies](#)," FinCEN, May 9, 2019, 23-24, 27.

<sup>54</sup> "[Application Of FinCEN's Regulations To Persons Administering, Exchanging, Or Using Virtual Currencies](#)," FinCEN, March 18, 2013.

<sup>55</sup> "[FATF Report to the G20 Finance Ministers and Central Bank Governors on So-called Stablecoins](#)," Financial Action Task Force, June 2020, 11.

<sup>56</sup> "[Understand the Risks of Virtual Currency Trading](#)," CFTC, accessed October 6, 2021. This advisory states that "the CFTC maintains general anti-fraud and manipulation enforcement authority over virtual currency cash markets as a commodity in interstate commerce."

<sup>57</sup> "[Unfair, Deceptive, or Abusive Acts or Practices \(UDAAPs\) examination procedures](#)," CFPB, October 1, 2012.

<sup>58</sup> "[OCC Conditionally Approves Chartering of Paxos National Trust](#)," OCC, April 23, 2021.

<sup>59</sup> Tom Newmyer, "[SEC's Gensler likens stablecoins to 'poker chips' amid call for tougher crypto regulation](#)," *The Washington Post*, September 21, 2021. Quoting Chair Gensler as stating, "we've got a lot of casinos here in the Wild West, and the poker chip is these stablecoins."

<sup>60</sup> "[Statement on Key Regulatory and Supervisory Issues Relevant to Certain Stablecoins](#)," President's Working Group on Financial Markets, December 2020, 1. *See also* "[Regulation, Supervision, and Oversight of 'Global Stablecoin' Arrangements](#)," Financial Stability Board, October 2020, 31.

that are not currently addressed by the regulatory regime or to account for stablecoins' ability to reduce risk or provide new benefits. If the technology reduces risk, then the regulatory approach should adjust in recognition of this risk reduction. If the technology provides new benefits, the approach should likewise adjust to avoid eliminating the new benefits.

***b) Regulate proportionate to the risk***

We believe that stablecoin regulation should be tailored to reflect the different risk profiles of varying types of stablecoin payments systems. Accordingly, it would be appropriate for federal regulators to consider additional safeguards only when stablecoin payments systems are adopted at significant scale nationwide. In our view, no stablecoin payments system has reached this threshold, and stablecoin activities broadly are likewise not at significant scale to merit a separate, compulsory regulatory regime.

To begin with, leading U.S.-headquartered stablecoin payments systems – unlike banks – are not leveraged. Instead, the reserves of these stablecoin payments systems are held almost entirely in cash or cash equivalents. And, notably, the only sizable U.S. dollar-pegged, cryptocurrency-backed stablecoin is over collateralized.<sup>61</sup> The reserves of these stablecoin payments systems arguably have a much lower risk profile than permissible investments of other state-regulated money services businesses.<sup>62</sup>

Moreover, the overall value of stablecoin payments systems is quite small relative to areas of the financial sector that pose higher risk. For example, the market capitalization of all stablecoins globally is approximately \$132 billion,<sup>63</sup> while the total asset value of U.S. money market funds – which are distinctly different than stablecoins for reasons explored below and have been flagged for financial stability concerns<sup>64</sup> – is over \$5 trillion.<sup>65</sup>

The financial size of most stablecoin payments systems is in fact most similar in size to corporate rewards programs, such as airline miles or Starbucks gift cards. As of Q3 2021, Starbucks had over \$1.6 billion in customer prepaid balances, which is the equivalent of the sixth largest stablecoin in circulation.<sup>66</sup> And while the outstanding dollar value of the largest stablecoin in circulation eclipses those of all others, even its outstanding value of approximately \$69 billion<sup>67</sup> equals only 3% of deposits at J.P Morgan.<sup>68</sup> While the daily volume of transactions involving that stablecoin is approximately \$65 billion, accounting for over 87% of total daily stablecoin transaction volume,<sup>69</sup> even this figure represents a tiny fraction of the payments processed by payments settlement and clearing entities designated as “systemically important” by the

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<sup>61</sup> “[The Crypto Ecosystem and Financial Stability Challenges](#),” International Monetary Fund, 2021, 41, 43, 48.

<sup>62</sup> *Supra* note 46 and accompanying text.

<sup>63</sup> “[Stablecoins by Market Capitalization](#),” *CoinGecko*, accessed October 16, 2021.

<sup>64</sup> “[Policy Proposals to Enhance Money Market Fund Resilience, Consultation Report](#),” Financial Stability Board, June 2021.

<sup>65</sup> “[Division of Investment Management, Money Market Fund Statistics](#),” Securities and Exchange Commission, September 20, 2021.

<sup>66</sup> “[Starbucks Reports Record Q3 Fiscal 2021 Results](#),” *Starbucks*, July 27, 2021.

<sup>67</sup> “[Stablecoins by Market Capitalization](#),” *CoinGecko*, accessed October 16, 2021.

<sup>68</sup> “[2020 Annual Report](#),” JP Morgan Chase & Co., 2020.

<sup>69</sup> “[Stablecoins by Market Capitalization](#),” *CoinGecko*, accessed October 16, 2021.

Financial Stability Oversight Council (FSOC)<sup>70</sup>, such as the Clearing House Interbank Payments System which clears \$2 trillion in payments daily.<sup>71</sup> Notably, the FSOC does not consider any retail-focused digital payments business systemically important.<sup>72</sup>

Ultimately, if regulators determine that certain stablecoin payments systems require federal regulation due to concerns over systemic risk, such regulation should only apply to individual stablecoin payments systems that are significant enough to generate systemic risk. The Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions recently identified several systemic risk factors for stablecoin payments systems that we believe are helpful, including number of users, value and volume of transactions, type of user, type of transaction, and interconnectedness with the financial system.<sup>73</sup> Currently, however, we do not believe any stablecoin payments system or activity meets the threshold of systemic importance using these criteria.

Critics will claim that the rapid growth stablecoins have experienced over the past year justifies their designation as systemically important by the FSOC. Indeed, the market value of stablecoins has grown from approximately \$37 billion at the beginning of 2021 to \$132 billion by October 2021- a \$95 billion increase in value.<sup>74</sup> However, comparatively, junk bond issuance in the U.S. grew \$142 billion in value from 2019 to 2020,<sup>75</sup> a nearly 50 percent higher level of growth. Clearly, the growth of stablecoins is significantly less than the level of growth of leveraged, historically crisis-prone sectors of the U.S. economy like the high-yield bond market.

### *c) Ensure U.S. global leadership in the blockchain space*

As new blockchain technology is developed around the world, the regulatory environment for digital tokens in any given country will dramatically impact that country's competitiveness in the global environment. For the U.S. to retain its position as the leader for innovation in both finance and technology, policymakers must ensure government policies foster rather than limit innovation. A regulatory scheme for stablecoins that is hastily enacted with insufficient consideration of potential unintended consequences poses a risk of driving digital token-related investment out of the U.S. and into competing economies. It is critical that any regulatory changes be made with caution and full knowledge of the potential economic consequences.

China's recent crackdown on digital token activities highlights the fundamental differences between the U.S. market-based economy and China's controlled economy and provides an opportunity for the U.S. to fill the gap.<sup>76</sup> Specifically, it is important for the U.S. to allow for U.S. dollar denominated stablecoins built on open blockchains to thrive both at home and

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<sup>70</sup> ["Nonbank Financial Company Designations,"](#) U.S. Department of the Treasury, accessed October 6, 2021.

<sup>71</sup> ["Our History,"](#) *The Clearing House*, accessed October 6, 2021.

<sup>72</sup> ["Nonbank Financial Company Designations,"](#) U.S. Department of the Treasury, accessed October 6, 2021.

See also ["Application of the Principles for Financial Market Infrastructures to stablecoin arrangements,"](#) BIS, October 2021, 11.

<sup>73</sup> Ibid.

<sup>74</sup> ["Stablecoins by Market Capitalization,"](#) *CoinGecko*, accessed October 16, 2021.

<sup>75</sup> Jeff Cox, ["The junk bond market is on fire this year as yields hit a record low,"](#) *CNBC*, July 14, 2021.

<sup>76</sup> Alun John, Samuel Shen, and Tom Wilson, ["China's top regulators ban crypto trading and mining, sending bitcoin tumbling,"](#) *Reuters*, September 2021.

abroad. Doing so will allow the U.S. to counterbalance China’s central bank digital currency ambitions, which among other things, risk undermining financial privacy globally. While we acknowledge the concern that building a dominant U.S. retail payments rail or U.S. wholesale payments infrastructure on currently existing open blockchains may create risk,<sup>77</sup> we do not believe such risks outweigh the benefit of action given the small size of existing stablecoin payments systems.

***d) Recognize stablecoins as a type of retail-focused digital payments instrument, not as an investment product***

As evidenced in Section 1, stablecoins are a type of retail-focused digital payments instrument and should be regulated as such. Accordingly, the appropriate regulator for most stablecoin payments systems subject to U.S. jurisdiction is not the Securities and Exchange Commission (SEC), but a regulator that is accustomed to dealing with payment instruments.

Indeed, most stablecoins do not fall into categories traditionally regulated by the SEC. The Supreme Court has stated that for an investment contract to meet the definition of a security, there must be an expectation of profit.<sup>78</sup> Stablecoins are inherently designed not to increase in value. Stablecoins functioning as a payment method by design do not carry an expectation of profit, and therefore should not be regulated as a security.<sup>79</sup> As the Conference of State Bank Supervisors has stated, “There are too many use cases for stablecoins to be universally considered securities.”<sup>80</sup> Furthermore, current SEC guidance has listed features of stablecoins among the list of factors that make a digital asset less likely to be a security.<sup>81</sup>

Similarly, as mentioned above, no significant U.S.-headquartered stablecoin payments system resembles a money market fund. These arrangements are built upon digital payments instruments that offer users no interest, while money market fund shares are interest-bearing. Money market funds are used as a passive investment, whereas most stablecoins are not designed to increase in value and are used for digital payments. Further, investors in money market funds purchase shares while stablecoin purchasers buy the asset directly.

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<sup>77</sup> Neha Narula, “[The Technology Underlying Stablecoins](#),” Neha’s Writings, September 23, 2021.

<sup>78</sup> *SEC v. Howey Co.*, 328 U.S. 293, 299 (1946). See also “[Framework for ‘Investment Contract,’ Analysis of Digital Assets](#),” Securities and Exchange Commission, accessed October 6, 2021.

<sup>79</sup> Additionally, when determining whether a “note” is a security for the purposes of U.S. federal securities laws, the Supreme Court has set forth a test which considers “whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary.” *Reves v. Ernst & Young*, 494 U.S. 56, 67 (1990).

<sup>80</sup> [Letter from Conference of Bank Supervisors to Sen. Pat Toomey](#), September 7, 2021. “Many stablecoins likely fit within the definition of stored value... [w]hen stablecoins performs this activity, they likely should be considered money transmission.”

<sup>81</sup> “[Framework for ‘Investment Contract,’ Analysis of Digital Assets](#),” Securities and Exchange Commission, accessed October 6, 2021 (citing features less likely to be a security as “...the design of the digital asset provides that its value will remain constant or even degrade over time, and therefore, a reasonable purchaser would not be expected to hold the digital asset for extended periods as an investment” and “any economic benefit that may be derive from appreciation in the value of the digital asset is incidental to obtaining the right to use it for its intended functionality”).

In the interest of creating more regulatory certainty, the SEC should clarify that most stablecoin payments systems subject to U.S. financial regulations are neither securities nor money-market funds.<sup>82</sup> As it stands, instead of providing clear rules and binding interpretations, the SEC appears to be implementing regulation through enforcement.<sup>83</sup> This leaves market participants confused as to which digital assets might be deemed to be securities. This approach could drive innovation offshore to countries such as Canada, Singapore, and the United Kingdom, where regulators have more clearly stated that many digital tokens are *not* securities.<sup>84</sup>

***e) Ensure compliance with AML, sanctions, and countering the financing of terrorism requirements***

We believe that concerns over the role stablecoins could play in facilitating illicit activity are vastly overblown. Compliance with AML, sanctions, and countering the financing of terrorism obligations is of utmost importance to our members. As discussed in Section 2b, stablecoin transactions and entities involved in the distribution of stablecoins are subject to AML regulatory requirements.<sup>85</sup> The Chamber and its members will continue to work with regulators on implementing AML and sanctions best practices, including leveraging blockchain technology and innovative tools such as modern location intelligence and effective geo-blocking to advance AML and sanctions compliance. Importantly, stablecoins built on open blockchains are particularly advantageous from the perspective of identifying and mitigating financial crime. The public, traceable nature of these blockchains provides law enforcement with a significant tool for investigating and stopping illicit transactions.<sup>86</sup>

***f) Craft flexible, principles-based rules***

The structure of stablecoin payments systems will continue to adapt and grow, and regulatory frameworks must be able to adapt and grow with it. Therefore, we recommend that the states and the federal government implement regulations that adopt principles-based rather than rules-based guidelines. Regulations should also allow the U.S. private sector to retain its place as the leader in cryptocurrency innovation and development, with the room to develop without being hindered

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<sup>82</sup> [Letter from Conference of Bank Supervisors to Sen. Pat Toomey](#), September 7, 2021. “Clear guidelines should be in place differentiating between a security and a medium of exchange, removing the ambiguity currently facing consumers and the industry.”

<sup>83</sup> Senate Committee on Banking, Housing, and Urban Affairs, [Oversight of the U.S. Securities and Exchange Commission: Hearing before the Senate Banking Committee](#), 117<sup>th</sup> Cong., 2021. Chair Gensler responding to Sen. Toomey’s question on whether the SEC will provide regulatory clarity on what digital assets, specifically stablecoins, meet the definition of a security: “The Supreme Court has weighed in a number of times... I think there’s been a fair amount of clarity over the years.”

<sup>84</sup> Chanyaporn Chanjaroen and Haslinda Amin, [“Singapore Will Help Crypto Firms Set Up Local Bank Accounts,” Bloomberg](#), October 9, 2018. In 2018, the head of the Monetary Authority of Singapore stated that “We’ve seen quite a lot of [initial coin offering] activity that is not security related.” See also [“Guidance on Cryptoassets,”](#) Financial Conduct Authority, July 2019. See also [“Understanding Digital Tokens: Market Overviews and Guidelines for Policymakers and Practitioners”](#) (second edition), Chamber of Digital Commerce, January 2020, 183-196.

<sup>85</sup> [“FATF Report to the G20 Finance Ministers and Central Bank Governors on So-called Stablecoins,”](#) Financial Action Task Force, June 2020, 11.

<sup>86</sup> For example, the U.S. Treasury’s Office of Foreign Assets Control (OFAC) used public blockchain tracing to identify and sanction a nested cryptocurrency exchange that was facilitating a substantial portion of cryptocurrency ransomware activity. See [“OFAC takes first action against cryptocurrency exchange and issues updated ransomware advisory,”](#) TRM, September 21, 2021.

by excessive regulation. Regulations should be developed with a forward-thinking mindset, with government working with industry to contemplate future advances in technology.

#### **4. Opportunities to simplify and strengthen stablecoin regulation**

Instead of building an entirely new federal regulatory regime for stablecoins, regulators should consider enhancements to the current regime, which involve time-tested state and federal frameworks. At the same time, an option at the federal level should be available for companies that wish to gain the nationwide legal certainty that comes with a federal-level special purpose charter from a national banking regulator.

##### ***a) Build off existing state regulatory approaches***

As discussed in Section 2a, states regulate payment systems through money transmission licensing laws. These could be improved through the adoption of uniform standards across all 50 states that simplify and align regulatory obligations for U.S.-headquartered, U.S. dollar-pegged stablecoin payments systems.

Additionally, more states should follow the lead of those states that have adopted laws that allow stablecoin companies to qualify for state-level special purpose charters. These regulatory frameworks could feature:

- A 1:1 reserve ratio whereby the amount of dollars in reserve must equal or exceed the number of stablecoins outstanding.
- Regulatory oversight over the establishment and maintenance of stablecoin reserves.
- Segregation of reserves from corporate assets held in a bankruptcy remote vehicle.

A growing number of states are already implementing frameworks incorporating one or more of these features.<sup>87</sup>

State regulators and legislatures could also define stablecoins as non-securities under state law and stay involved in the federal regulatory process to ensure that the SEC does not inappropriately classify stablecoins that are a type of digital payments instrument as securities. Working groups could be established to ensure that state regulators coordinate oversight efforts with federal regulators.

In the absence of a federal-level special purpose charter for stablecoin companies, the U.S. Department of the Treasury (Treasury) could be granted the authority to advance the interests of state-level stablecoin regulators in the international regulatory fora. For example, in the U.S.'s insurance regulatory paradigm, which is led by state regulatory regimes, Treasury plays a similar role through the Federal Insurance Office.

##### ***b) Allow entities the option of a federal charter***

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<sup>87</sup> [“Special Purpose Depository Institutions,”](#) Wyoming Division of Banking, accessed October 6, 2021.

The federal government should allow stablecoin companies that wish to obtain a federal-level special purpose charter to do so.<sup>88</sup> A federal-level special purpose charter option could be especially beneficial to larger stablecoin companies seeking a national-level regulatory framework across the U.S. and could enable them access to existing financial infrastructure already available to companies that provide similar financial services. However, given the minimal risk that stablecoins currently pose to the financial system, we believe that it would be inappropriate to require existing U.S.-headquartered stablecoin companies to obtain such a charter at this time.

We also believe that the Federal Reserve System (Federal Reserve) should grant well-regulated stablecoin companies access to Federal Reserve payments infrastructure and that it should explore providing properly regulated and capitalized stablecoin companies with the ability to back stablecoins with central bank reserves. A stablecoin company could also be allowed to operate as a full-reserve bank under the supervision of the Federal Reserve. Overall, we believe that as stablecoin companies built upon open blockchains become integrated with the U.S. financial system, it will be important for stakeholders to pay close attention to any major operational risks related to underlying networks that could emerge.<sup>89</sup>

### *c) Simplify the tax treatment of stablecoin transactions*

The Internal Revenue Service (IRS) has not addressed the tax treatment of stablecoins individually, with the result that the general guidance applicable to digital assets applies. Under this guidance, taxpayers must calculate and remit tax on the gains (or losses) on every transaction in stablecoins.<sup>90</sup> Given that the value of stablecoins often fluctuate within a narrow band, we believe it is important for the IRS to provide clarity regarding the tax treatment of small differences between a stablecoin's value at the time of purchase and its value at the time of sale. Collecting this miniscule amount of revenue is arguably not worth the administrative burden placed on taxpayers and the IRS.

## **5. Conclusion**

Blockchain technology is changing the global financial system to create a more technologically advanced and inclusive financial future, and stablecoins are a tool driving this change. Regulators have a unique opportunity to establish the U.S. as the leader in stablecoin innovation by adopting a regulatory regime that is principles-based, flexible, and tailored to the minimal risk that stablecoins present to the financial system. To do so, we recommend that existing federal- and state- level regulatory regimes remain in place, allowing for stablecoin payments systems to be regulated in the same way that other retail-focused digital payment businesses are regulated.

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<sup>88</sup> The OCC has already shown their willingness to do so by granting preliminary conditional approval for some virtual currency businesses. [Letter from Stephen Lybarger, OCC, to Daniel Burstein, General Counsel and CCO of Paxos](#), April 23, 2021. *See also* [Letter from Stephen Lybarger, OCC, to Nathan McCauley, President & Director, Anchorage Trust Company](#), January 13, 2021. *See also* [Letter from Stephen Lybarger, OCC, to Greg Gilman, Founder & Executive Chair, Audaces Fortuna Inc.](#), February 4, 2021.

<sup>89</sup> Timothy Massad, "[Regulating stablecoins isn't just about avoiding systemic risk](#)," *Brookings Institution*, October 5, 2021.

<sup>90</sup> *See* IRS Notice 2014-21, 2014-16 I.R.B. 938.


At the same time, we believe opportunities exist to improve the U.S. regulatory approach towards stablecoins. Specifically, we recommend that:

- Federal agencies provide clarity that most stablecoins are a type of retail-focused digital payments instrument, not an investment product.
- The tax treatment of stablecoin transactions be simplified due to their stable-value nature.
- State governments and federal agencies work to expand upon the best practices of states that have enacted laws allowing well-designed stablecoin payments system businesses to qualify for state-level special purpose charters.
- Federal regulators create a federal-level special purpose charter for stablecoin companies that meet certain regulatory requirements, and policymakers consider providing properly regulated entities with the ability to back stablecoins with U.S. central bank reserves.

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We appreciate the opportunity to share our views on stablecoins given our members' experiences in this dynamic, growing industry.

Very truly yours,



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