



August 8, 2022
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Delivered via regulations.gov

Re: Ensuring Responsible Development of Digital Assets; Request for Comment

On behalf of the Chamber of Digital Commerce (“the Chamber”), we respectfully submit our comments on the U.S. Treasury’s Request for Comment (“RFC”) pursuant to the Biden Administration’s March 9, 2022 Executive Order, “Ensuring Responsible Development of Digital Assets.”

The Chamber is the world’s first and largest blockchain trade association. Our mission is to promote the acceptance and use of digital assets and blockchain technology. 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 responsible, pro-growth environment for digital assets highlighting all of the opportunities this emerging industry will present to the United States. Our members include the industry’s leading innovators, operators, advisory firms, and investors in the blockchain ecosystem.

We appreciate the opportunity to engage with you and your staff on these critical issues. We hope to continue the conversation and find ways we can work with you to help advance financial inclusion, consumer protection, social equity, and other worthwhile policy goals through a balanced policy approach to digital assets.

Very truly yours,

A handwritten signature in black ink that reads "Perianne Boring".

Perianne Boring
Founder and CEO

A handwritten signature in black ink that reads "Cody Carbone".

Cody Carbone
Policy Director

(A) Adoption to Date and Mass Adoption

(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. In your responses, please address the following:

a. Who are the users, consumers, and investors that are adopting digital assets? What is the geographic composition and demographic profile of consumers and investors in digital assets?

Digital assets have become an integral part of the global financial system. The adoption of digital assets has grown rapidly since the emergence of bitcoin in 2009 and has led to nearly 60 million U.S. users and a +\$1 trillion market value.¹ That constituency of users includes Fortune 500 companies², brick and mortar retailers, and individuals ranging from college students to grandparents.

The growth of the asset class represents its potential to transform every industry by improving efficiency and reducing friction of asset exchange. According to the Federal Reserve Board, 12 percent of U.S. adults held or used cryptocurrencies in 2021,³ but some reports have said that number is as high as 21 percent.⁴

As the nascent industry has matured, it has also become ubiquitous with inclusivity and adoption across all demographics has been illustrative.

Digital asset users tend to be younger and more diverse. The largest ownership group of digital assets is adults ages 25 to 34, followed by those adults ages 35 to 44.⁵ The smallest, but fastest-growing, group is ages 65 and over.⁶ As institutional investment increases, volatility subsides, and education increases, we expect to see a growth in adoption across all age groups.

Nearly 25 percent of all Black⁷ and Hispanic⁸ Americans own cryptocurrency. Notably, 23 percent of Black investors cited excitement about cryptocurrency as the reason they started investing in general, and 11 percent indicated cryptocurrency was their first investment.⁹ Those surveyed cited lack of trust in the equities and financial institutions as one of the main reasons for investing in digital assets.¹⁰

¹ “The U.S. Crypto Consumer: Cryptocurrency Use in Online and in-Store Purchases,” Pymnts, April 18, 2022.

² Coinbase, a digital asset exchange platform, became the first “crypto” company to join the Fortune 500 list of biggest US Companies in 2021.

³ “Economic Well-Being of U.S. Households in 2021,” Federal Reserve Board, May 2022.

⁴ “One in five adults has invested in, traded or used cryptocurrency,” NBC News, March 31, 2022.

⁵ “34 Million US Adults Own Cryptocurrency,” Insider Intelligence, April 2022.

⁶ Ibid.

⁷ “2022 Black Investor Survey,” Ariel Investments and Charles Schwab, April 5, 2022.

⁸ “The State of Consumer Banking & Payments Analyst Report: How consumers are managing their financial relationships during the COVID-19 pandemic,” Morning Consult, April 1, 2022.

⁹ “2022 Black Investor Survey,” Ariel Investments and Charles Schwab, April, 5 2022.

¹⁰ Ibid.

Digital assets were created to help solve for that lack of trust. For many, traditional financial institutions represent a safe harbor for custody of one’s money. However, there are millions of Americans who have felt victimized or excluded by the traditional financial system and have turned to digital assets as a new opportunity to build generational wealth. For example, transactional cryptocurrency users, or those that use cryptocurrency for payments or remittances, are less likely to have a bank account.¹¹ In total, 13 percent of those who used cryptocurrency for transactions lack a bank account, compared with six percent of adults who did not use cryptocurrency. Similarly, 27 percent of transactional cryptocurrency users did not have a credit card, exceeding the 17 percent of non-users without a credit card. These numbers highlight the opportunity digital assets provide to the un-or-underbanked, and historically disadvantaged to access the traditional financial system. The promotion of financial equity and broader societal participation in lower cost payments, 24/7 financial services, and efficiency of use should be a net benefit for historically disadvantaged communities and lead to increased adoption.

With the continued proliferation of digital assets and increased retail-payment options, adoption rates are expected to increase annually among every demographic. It is expected that businesses and state governments will continue to accept digital assets as a payment medium in exchange for goods and services further increasing adoption. We expect participation rates to continue to increase year over year tracking the growth in utility of digital assets in American’s everyday lives.

b. What businesses are adopting digital assets and for what purposes?

Digital assets are not limited to one type of business or entity and use cases vary. In 2021, 11 percent of U.S. users stated that they used cryptocurrency as an investment in 2021, 2 percent used it to buy something or make a payment, and 1 percent used it to send money to friends or family.¹²

Traditional financial institutions such as banks, hedge funds, payment companies, insurers, and fund managers have begun to use digital assets for commercial opportunities. In separating digital assets from the underlying blockchain technology, use as a payment option is one of digital assets' largest growth areas.

In theory, digital assets could have remained a niche payment option indefinitely. Incorporating a new payment method requires time, resources, and in this case, a willingness to embrace novel challenges in a relatively new space. What has made so many companies adopt digital assets as payment? Based on a survey polling a sample of 2,000 senior executives at U.S. consumer businesses with annual revenues ranging from below \$10 million to \$500 million and above, merchants are embracing digital currency payments in the hope of gaining a competitive advantage in the market and in the belief that the use of digital assets will continue to expand.¹³ 85% of respondents anticipate that digital asset payments will be ubiquitous in their industry

¹¹ “Economic Well-Being of U.S. Households in 2021,” Federal Reserve Board, May 2022.

¹² Ibid.

¹³ “Digital Currency payments and merchant adoption survey,” Deloitte, July 2022.

within five years, and the same amount said they expect their suppliers to accept stablecoins and other cryptocurrencies in the future.¹⁴

For example, Visa, the second largest digital payment company by revenue in the world, now allows transaction settlements with the use of USDC, a fiat-backed stablecoin, on the Ethereum blockchain network. Enabling stablecoin settlement will encourage digital asset companies to evaluate new business models that do not require the need for traditional fiat in their treasury and settlement flows.¹⁵

Consumer businesses have a customer-first rationale for adopting digital assets. Those businesses expect to derive value from their digital asset adoption by improving customer experience, increasing their customer base, and owning the perception that their brand is cutting edge.¹⁶ Another example of recent business adoption of digital assets is through the use of non-fungible tokens (NFTs). Household names like Nike, Taco Bell, and Coca-Cola are using NFTs for business purposes today and are using the digital asset to grow their brands, user-communities, and drive charitable giving.¹⁷ For example, Coca-Cola launched an NFT auction in July 2021 for International Friendship Day. The auction included unique digital items and the \$575,000 in proceeds from the campaign benefitted Special Olympics International.¹⁸

These different use-cases for business highlight the diversity of digital assets and accessible nature for every kind of business and user.

c. What are the main use cases for digital assets for consumers, investors, and businesses?

Digital assets open access to traditional financial services for users around the world providing new efficiencies that will increase ubiquity of the digital economy. The main use cases underscore the benefits of the technology in providing faster, cheaper and more efficient transaction speeds with the option to directly control custody and use of funds without relying on a third party. A few examples of digital asset use cases include payments and cross-border transactions, utility tokens and data ownership, and NFTs.

Payments and Cross-Border Transactions

Today, digital assets are not widely used for payments. However, the expected growth of private stablecoins, like Circle's USDC, and central bank digital currencies (CBDCs) will likely see a rapid growth in consumer and merchant acceptance of digital assets as payment. There are currently 105 countries, representing over 95% of global GDP, that are exploring CBDCs.¹⁹ Among them, 50 are in the advanced phase (development, pilot, or launch) of CBDC

¹⁴ Ibid.

¹⁵ "Visa Becomes First Major Payments Network to Settle Transactions in USD Coin (USDC)," Visa, March 2021.

¹⁶ "Digital Currency payments and merchant adoption survey," Deloitte, July 2022.

¹⁷ Stanley, J. (2021, November 22). *Five of the biggest companies are already using nfts*. The Drum. Retrieved July 25, 2022, from <https://www.thedrum.com/opinion/2021/11/22/five-the-biggest-companies-already-using-nfts>

¹⁸ *Coca-Cola nfts auctioned for more than \$575K: Coca-Cola News*. The Coca-Cola Company. (n.d.). Retrieved July 25, 2022, from <https://www.coca-colacompany.com/news/coca-cola-nft-auction-fetches-more-than-575000>

¹⁹ "Central Bank Digital Currency Tracker," Atlantic Council, retrieved August 1, 2022, from <https://www.atlanticcouncil.org/cbdctracker/>

exploration.²⁰ To exemplify the rapid growth, in May of 2020, only 35 countries were considering a CBDC.²¹ However, it is important to note that a U.S. CBDC will likely take “years”²² to develop, and it would be prudent for the U.S. to promote the use of existing stablecoin solutions, like USDC, in order to compete with other global markets in the digital payments ‘space race.’

Stablecoins will become more widely used in the U.S. shortly following completion of a comprehensive regulatory framework that promotes safety, consumer confidence, and consumer choice. This framework should allow banks and non-bank entities to issue stablecoins and provide issuers with registration optionality through either a federal or state licensing regime²³ or both.

The technology has already gone mainstream. Recently, eCommerce magnate Shopify announced it would accept payment in over 20 cryptocurrencies to provide fast, international transactions, with low processing fees.²⁴ Furthermore, Worldpay from FIS ® announced recently that they would become the first global merchant acquirer to offer merchants the ability to receive settlement directly in stablecoin USDC.²⁵

Digital assets and stablecoins have the potential to help fight global poverty by making cross-border payments faster and more affordable. Today, a typical remittance fee can be as high as 10.9% per transaction,²⁶ and the World Bank estimates that “[g]lobally sending remittances costs an average of 6.38% of the amount sent.²⁷ In addition, international money transfers can take anywhere from one to five business days depending on the banks involved, the destination country, bank hours of operation, and currency conversions needed.²⁸ In contrast, payments providers operating in South America and Africa using bitcoin and other cryptocurrencies charge transaction commissions as low as 1%.²⁹ Since analysts expect that the remittance market will grow by \$200 billion to over \$900 billion by 2026, lower fees will ensure that more funds go directly to individuals and their families.³⁰ Domestically, the lack of a real-time, 24/7/365 payment system in the United States forms the basis for why Americans pay approximately \$26 billion in overdraft and high-cost check cashing fees each year.³¹

²⁰ “Central Bank Digital Currency Tracker,” Atlantic Council, accessed July 2022.

²¹ Ibid.

²² Ennis, Dan. “CBDC Will Take Years, Not Months, to Develop, Yellen Says.” *Banking Dive*, 8 Apr. 2022, <https://www.bankingdive.com/news/cbdc-will-take-years-not-months-to-develop-yellen-says/621829/>.

²³ State regulatory oversight has proven successful for private stablecoin issuers. Today, stablecoin issuers can obtain either a state money transmitter license or similar state-chartered trust pathway as we’ve seen in Wyoming and New York. Each pathway has proven successful and provided consumers with necessary protections.

²⁴ Shopify help center, “Cryptocurrency,” accessed 14 July 2022.

²⁵ “Worldpay from FIS ® Becomes First Global Merchant Acquirer to Offer Direct USDC Settlement, Driving Digital Currency Adoption to Businesses,” Circle, May 11, 2022.

²⁶ “Bitcoin gains traction as a vehicle for sending remittances home to Mexico,” Mexico News Daily, May 2021.

²⁷ “Remittance Prices Worldwide,” The World Bank, March 2021.

²⁸ Cecilia Hendrix, “How long do international money transfers take?,” Western Union, April 5, 2021.

²⁹ Andalusia Knoll Soloff, “The new wave of crypto users: migrant workers,” Rest of World, April 26, 2021.

³⁰ Polly Jean Harrison, “Global Remittance Market is Expected to Grow by \$200 Billion by 2026,” The FinTech Times, June 29, 2021.

³¹ Aaron Klein, “The fastest way to address income inequality? Implement a real-time payment system,” Brookings Institution, January 2, 2019.

Utility Tokens and Data Ownership

Digital assets provide solutions for many use cases beyond payments. While bitcoin is fundamentally a digital commodity that can be used as a payments instrument³² or store of value, research on similar digital assets around the globe shows that the dominant feature of digital assets is access to platform services.³³ Many digital assets are utility tokens, which are purchased to be used for a consumptive purpose, offering holders the ability to access a network's services or participate in a community. These "utility tokens" can form the foundation of systems that track real assets or offer privacy-protecting technology services (e.g., credit rating and cloud storage). They are distinctly different from digital assets that meet the Securities and Exchange Commission's (SEC) definition of a security, which are purchased as an investment.³⁴ Utility tokens have the potential to play an important role in granting consumers greater ownership of their own financial data.

Services built upon utility tokens and blockchain technology can give consumers more control over their data and reduce financial fraud.³⁵ For example, several companies, like IBM, are leveraging blockchain technology to allow users to verify their digital identities online while maintaining control over sensitive personal data in health care, the auto industry, financial services, and elsewhere.³⁶ These innovations provide competitive opportunities that align with the goals of President Biden's March 9 Executive Order.

Outside of the U.S., open digital token offerings (i.e., where a portion of the tokens developed are available to the public), have lowered the costs of blockchain-based technology projects to raise funds. Notably, in the U.K. and Singapore, regulators have warned of the consumer protection risks associated with such token offerings, but at the same time have emphasized that the regulatory framework clearly permits the sale of digital assets as part of the launch of an open blockchain project.³⁷ In the U.S., however, a regulatory crackdown on open digital token offerings has forced entrepreneurs to rely upon traditional fundraising channels like venture capital. Women and minorities face especially challenging circumstances in raising capital. Data shows that in the first half of 2021, only 2% and 1.2% of venture capital dollars went to firms

³² In the Matter of: Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan, CFTC Docket No. 15-29. 2015 WL 5535736, September 17, 2015.

³³ Robert Greene and David Lee Kou Chen, "Singapore's Open Digital Token Offering Embrace: Context & Consequences," The Journal of the British Blockchain Association, June 28, 2019.

³⁴ "Understanding Digital Tokens: Market Overviews and Guidelines for Policy Makers and Practitioners," Chamber of Digital Commerce, July 2018, 22.

³⁵ "How Blockchain Could Disrupt Banking," CBI Insights, February 11, 2021.

³⁶ IBM has developed a blockchain based platform that has been used by businesses, universities, and others to manage digital identities. "Blockchain for digital identity and credentials," IBM, last accessed November 3, 2021. Burst IQ has created a platform for personalized healthcare identities. Burst IQ, Company, accessed November 4, 2021. Ontology's decentralized identity application is being used in various leading consumer products including Mercedes-Benz vehicles. Ontology, "Over 1.5 Million Users Now Managing Their Digital Identity Using ONT ID, Ontology's Decentralized Identity Application," September 9, 2021.

³⁷ Robert Greene and David Lee Kou Chen, "Singapore's Open Digital Token Offering Embrace: Context & Consequences," The Journal of the British Blockchain Association, June 28, 2019.

founded by women and Black entrepreneurs, respectively.³⁸ Allowing for digital token offerings in the U.S. could help expand greater access to early-stage technology projects, and potentially levels the playing field for women and minority entrepreneurs. Data shows that minorities are adopting digital tokens at a higher rate than other demographics,³⁹ suggesting that minorities would be better served by a capital structure that utilizes digital assets.

NFTs

Another increasingly popular category of digital assets are NFTs, which can be considered a digital collectible. NFTs exemplify how digital assets can expand economic opportunity. Historically disadvantaged communities are increasingly selling NFTs on open blockchains⁴⁰, which has expanded economic opportunity. Just 1% of art auction spending over the last ten years related to works by Black artists, half of which is attributable to a single individual.⁴¹ However, between January 2020 and March 2021 alone, 58 Black artists sold a combined 513 NFTs for a combined value of over \$700,000.⁴² In addition, several organizations have formed to promote the work of Black artists in the digital space.⁴³ Similar efforts are being made to expand inclusivity in art through NFTs for women,⁴⁴ transgender youth,⁴⁵ and other traditionally marginalized groups. Regulatory clarity is critical – the SEC has not provided guidance as to whether, and why, NFTs could be considered securities has the potential to stifle innovation and prevent NFTs from continuing to empower economic equity.

As described above, the current use cases of digital assets are already helping create a more inclusive and dynamic economy. Over time, this technology has the potential to transform the infrastructure underpinning commerce. However, further growth in this area faces significant legal and regulatory headwinds. At a basic level, there is uncertainty about how digital assets fit within the traditional definitions of “security,” “commodity,” and “currency.” Apart from definitional issues, there is a lack of regulatory guidance about how financial intermediaries can interact with these assets while meeting obligations around custody, anti-money laundering (“AML”) and know your customer (“KYC”), tax, accounting and other existing regulatory requirements. With this disintermediating technology, regulatory uncertainty can also fall heavily on the end user. In particular, the lack of clarity around the tax treatment of digital assets creates a strong disincentive to participate in this new ecosystem.

d. What are the implications for equitable economic growth?

³⁸ Diane Wong, “Reflecting On Our Progress: One Year Since The Launch Of Diversity Spotlight,” Crunchbase, August 16, 2021.

³⁹ According to a recent Harris Poll survey, 13% of whites, 18% of African Americans, and 20% of Hispanics own cryptocurrencies. Akayla Gardner, “Black Americans Are Embracing Stocks and Bitcoin to Make Up for Stolen Time,” Bloomberg, April 13, 2021.

⁴⁰ There are several different types of blockchains. A public, open, or permission-less, blockchain network is one where anyone can participate without restrictions. Most types of cryptocurrencies run on a public blockchain that is governed by rules or consensus algorithms.

⁴¹ Charlotte Burns and Julia Halperin, For African American Artists, the Market Remains Woefully Unbalanced, Sotheby's.com, February 2019.

⁴² Cuy Sheffield, “Why I'm Collecting Black Crypto Art,” Medium, Dec. 21, 2020 (citing One/Off data).

⁴³ One/Off, About, accessed November 3, 2021. Black NFT Art, About, accessed November 3, 2021.

⁴⁴ Marris Adikwu, “How Women Are Carving Out a Space in the NFT Market,” Vogue, March 2021.

⁴⁵ Dan Avery, “Transgender teen's crypto art series fetches \$2.16 million at Christie's,” NBC News, July 2021.

Digital assets can promote a more inclusive financial system, but deployment of assets need to coincide with education and financial literacy. Financial education on digital assets enables consumers and investors to understand the marketplace and build financial well-being and resilience. The promotion of financial equity, inclusion and broader societal participation in lower cost payments, device-centric banking and trusted, always-on financial services can be a net benefit for historically marginalized communities. This must include a digital corollary to the Community Reinvestment Act (“CRA”), widening the net of participation to include community banks, minority depository institutions (“MDIs”) and credit unions in deposit taking, asset management and digital transformation efforts.⁴⁶

Additionally, there needs to be a concerted investment in the deployment of broadband technology. Digital assets and blockchain technology require internet access. In order to promote digital and financial equity across the country, there should be continued focus on updating broadband mapping and expanding broadband access to 100 percent of the country in the near future.

(2) Factors that would further facilitate mass adoption

Immediate factors that would further facilitate mass adoption include education, regulatory clarity, and innovative developments.

Education

One of the biggest barriers to entry into the digital asset marketplace for users is lack of understanding. A 2021 survey found that 24% of respondents did not understand how digital assets worked and another 20% did not access the market because they did not understand how to buy them.⁴⁷

Education on digital assets is critical to increase mass adoption and ensure safety and soundness in the market. The Chamber of Digital Commerce is pleased that the U.S. Treasury's Financial Literacy Education Commission (FLEC) launched an education effort on digital assets aimed at developing materials designed to inform the public how digital assets operate and differ from traditional assets.⁴⁸ We agree completely that “[f]inancial education on digital assets will empower Americans to take actions that contribute to their financial well-being and resilience in the short term and over the years to come.”⁴⁹ The Chamber and our members stand ready to collaborate on this topic and look forward to engaging with the FLEC on developing educational materials to help consumers make informed choices about digital assets.

Regulatory Clarity

⁴⁶ “Payment Stablecoin Policy Principles,” Circle Blog, July 18, 2022.

⁴⁷ Howarth, Josh. “How Many People Own Bitcoin? 95 Blockchain Statistics (2022).” *Exploding Topics*, Exploding Topics, 12 July 2022, <https://explodingtopics.com/blog/blockchain-stats>.

⁴⁸ “Treasury Launches Consumer Education Effort on Digital Assets,” U.S. Department of the Treasury, March 8, 2022.

⁴⁹ *Ibid.*

Today, measured policymaking is necessary to fulfill the promise of digital assets and create a financial system that is faster, cheaper, safer, and more inclusive. Regulating the digital asset space without inhibiting innovation will create the safety and soundness that will make digital assets ubiquitous with financial health and resiliency. Currently, the U.S. ranks 19th in terms of having an effective regulatory system for digital assets.⁵⁰ Regulators should consider these policy recommendations that will provide clarity for retail and institutional investors, consumers, merchants, and others:

- I. **Clarify how custody rules apply to digital assets.** The SEC, the Office of Comptroller of the Currency (“OCC”), and state regulators each have differing custodial requirements for digital assets. At the federal level, the SEC and OCC have taken helpful steps in the form of guidance from the OCC and limited no-action relief from the SEC.⁵¹ At the state level, Wyoming passed a bill allowing for banks to provide custodial services for digital assets.⁵² While such steps have been welcome, they have sometimes been curtailed by a revolving door of leaders and we hope that they portend more significant steps in the future. Providing continued clarity on how existing custody rules apply to digital assets, and allowing the traditional, regulated financial system to interact with digital assets, will provide a safer arena for consumers to navigate the digital asset ecosystem.
- II. **Leverage digital assets and blockchain technology to bolster AML/KYC compliance.** Money laundering transactions involving cryptocurrencies are only a fraction of the total value of assets laundered.⁵³ Moreover, the traceability feature of blockchain technology has proven to facilitate regulators in tracking down money launderers as well as economic sanctions violations.⁵⁴ Technological developments, such as zero-knowledge proofs⁵⁵, are facilitating innovation with the potential to significantly enhance KYC compliance. These developments could allow for the establishment of a formal “digital KYC utility” that would verify customer identities across market participants, rather than the current approach of requiring entities serving end-users to obtain and verify the name, date of birth, physical address, and telephone number before onboarding a client.⁵⁶ Although the technology still needs to evolve for expanded and continuous use, digital KYC utility could enhance compliance with AML/KYC regulations and permit firms to more efficiently identify potential indicia of illegal behaviors.⁵⁷ More broadly, policymakers should encourage the development of portable digital identities. Portable digital identities allow consumers to access one system for identity verification and utilize the power of the blockchain to transport that identity and access services across firms.⁵⁸ Not only will this drastically improve access to services for consumers, but it will also result in less opportunity for identity fraud.

⁵⁰ “Global Crypto Regulation Index,” Solidus Labs, July 26, 2022.

⁵¹ “Interpretive Letter #1170,” Office of the Comptroller of the Currency, July 22, 2020. See also 17 C.F.R. pt. 240.

⁵² Wyo. Stat. Ann. § 34-29-101 – § 34-29-105.

⁵³ Chainalysis’s “Crypto Crime Trends for 2022,” states that transactions involving illicit addresses represented just 0.15% of cryptocurrency transaction volume in 2021.

⁵⁴ Uberti, *supra* note 71.

⁵⁵ “What is a zero-knowledge proof and why is it useful?” November 16, 2017.

⁵⁶ Letter from Perianne Boring, President, to Kenneth Blanco, FinCEN Director, Chamber of Digital Commerce, November 26, 2019.

⁵⁷ *Ibid.*

⁵⁸ Husayn Kassi, “Portable Identity: giving us control of our digital lives,” *Forbes*, October 28, 2019.

- III. **Clarify tax guidance and accounting standards.** Over the past five years, the Internal Revenue Service (“IRS”) has significantly increased enforcement actions against taxpayers who transact in digital assets, despite the fact that it has not provided meaningful guidance around digital assets and tax rules since 2014. This disparity creates risk for taxpayers seeking to comply with the laws, wastes IRS audit resources, dampens commercial activity and economic recovery, and has stifled American innovation. In May 2021, the Chamber published a tax policy framework that could be utilized as a basis for legislation that identifies key areas where the IRS must issue more guidance for taxpayers on lending, information reporting, foreign bank account reporting, characterization of digital assets, and proof of stake protocols.⁵⁹ It also sent a letter to the IRS on the application of the Foreign Account Tax Compliance Act (“FATCA”) to digital assets.⁶⁰

In addition, the Chamber responded to the Financial Accounting Standards Board’s (FASB) Invitation to Comment on its Future Agenda consultation.⁶¹ As we state in that response, we believe that digital assets represent the next evolution in increasing efficiency of financial and non-financial transactions. Due to pervasive impact, exponential increase in market capitalization and adoption of digital assets, the accounting for digital assets is the most critical new financial reporting issue facing users and preparers of Generally Accepted Accounting Principles (GAAP) financial statements, and that setting clear accounting standards for companies that hold digital assets on balance sheets must be top priority for FASB. We were pleased to see FASB add standard setting for digital assets to their technical agenda in May 2022 and urge the Board to provide clear guidance and parity as they endeavor to bring fair market value accounting standards to digital assets.

- IV. **Promote cross-border regulatory coordination with other jurisdictions.** The U.S. government should lead on regulatory coordination for digital assets. As digital assets are borderless, the need for a consistent global regulatory framework that protects consumers is imperative. A global framework should provide for reciprocity on certain rules and regulations, when possible, to allow digital asset providers to offer services in more areas. This effort would lead to greater access of the digital asset ecosystem and its services, such as investment, banking, and payments, to underserved communities across the globe. We were pleased to see the Biden administration, led by Treasury, release their “*Framework for International Engagement on Digital Assets*” in June, and we look forward to a more robust dialogue between international bodies and industry to discuss smart, consistent regulation.

Innovation

The needed regulation mentioned above needs to support responsible innovation in the U.S. that encourages companies to operate in our borders while protecting consumers and investors from

⁵⁹ “Principles and Framework for Appropriate Digital Asset Tax Policy in the United States,” Chamber of Digital Commerce, May 14, 2021.

⁶⁰ Letter from Amy Davine Kim, Chief Policy Officer, to IRS Assistant Secretary Mazur, Commissioner Rettig, and Acting Chief Counsel Paul Letter from Amy Davine Kim, Chief Policy Officer, to the IRS, Chamber of Digital Commerce, May 14, 2021.

⁶¹ Letter from Perianne Boring, Founder and President, to Financial Accounting Standards Board, Chamber of Digital Commerce, November 26, 2019.

frauds, scams, and thefts [discussed in more detail below]. If we move forward with smart regulatory guardrails, then innovation in digital asset products, technologies, and use-cases will naturally lead to greater adoption.

For example, Bitcoin is typically not used as a payments system today, in part because it has scalability limitations. The Bitcoin network processes between three and seven transactions per second (TPS),^{62,63} while Visa currently processes nearly 1,700 TPS.⁶⁴ The *Lightning Network* was created to reduce Bitcoin blockchain congestion and lower Bitcoin-mining fees, leading to greater scalability and use of Bitcoin as a payment tool.

The *Lightning Network* has already proven effective in improving adoption of Bitcoin in its short lifespan, doubling in user size in 2021⁶⁵, and highlighting how innovation in technology can increase adoption. Twitter now allows tipping using the *Lightning Network* and El Salvador enables Bitcoin payments among its citizens using the Chivo Wallet, which features *Lightning Network* functionality.⁶⁶

(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).

Many of the opportunities related to digital assets for consumers, investors, and businesses were mentioned above. In summary, opportunities include a more equitable, accessible, faster, and cheaper financial system that provides freedom and resiliency to all parties. However, there are several other important opportunities not stated above that we think are critical to the success and adoption of digital assets.

Smart Contracts

Smart contracts are computer code that, upon the occurrence of a specified condition or conditions, is capable of running automatically according to prespecified functions. The code can be stored and processed on a distributed ledger and would write any resulting change into the distributed ledger.⁶⁷

Smart contracts will help to realize the many possibilities of distributed ledger technology (DLT). Certainty of outcome, automation of performance, and efficiencies in the streamlining of processes are reasons enough for smart contracts to be fundamental to the uptake of DLT. Their potential is now being actively considered and developed in sectors. In financial services, for

⁶² "Top 10 Cryptocurrencies with a High Transaction Speed in 2022," Analytics Insight, April, 21, 2022.

⁶³ Other cryptocurrencies have far surpassed Bitcoin's TPS. For example, Ava Lab's Avalanche processes 5,000 TPS and Ripple's XRP processes 1,500 transactions within four seconds. Competition has increased innovation.

⁶⁴ "Visa acceptance for retailers," Visa, accessed July 20, 2022.

⁶⁵ Divakaruni, Anantha, and Peter Zimmerman. 2022. "The Lightning Network: Turning Bitcoin into Money." Working Paper No. 22-19. Federal Reserve Bank of Cleveland. <https://doi.org/10.26509/frbc-wp-202219>.

⁶⁶ Ibid.

⁶⁷ "Smart Contracts: Is the Law Ready?," Chamber of Digital Commerce, September 2018.

example, smart contracts are being used in areas such as securities clearing and settlement, collateral management, derivatives contracts, securities asset servicing, international money transfers, and syndicated lending. For many sectors it is the ability of smart contracts to be transformative in relation to existing business processes that is compelling. For others it is the potential of smart contracts to reduce execution risk by making transfer of the relevant asset or instrument in question near to inevitable by virtue of automatic performance.

Cross-Border Payments

According to the World Bank, remittances to low- and middle-income countries reached \$540 billion in 2020.⁶⁸ Consequently, these remittances coincide with slow settlement times, unfavorable or unjust exchange rates, and onerous commissions and fees often levied by the issuing bank, the beneficiary bank, and a correspondent or intermediary bank in between.

Blockchain technology and digital assets make international payments and remittances near instantaneous and cost effective. Congressman Ritchie Torres (D-NY) stated in an op-ed that cryptocurrencies give “the lowest-income Americans, especially immigrants, more freedom to transfer their own money and send remittances to their loved ones abroad without the burden of long delays and high fees. The ability to move the dollar at the speed of the blockchain can be a game-changer if we, the policymakers and regulators, allow it to be.”⁶⁹

However, at this point digital assets are estimated to make up less than 1% of the volume of global cross-border remittances. Long-term success of transforming international payments through digital assets will likely depend on increased utility, improved educational resources, and less volatility following price-discovery of the nascent asset class.

One other area that digital assets can improve international payments can be seen firsthand with the war in the Ukraine. When the financial infrastructure was shut down, many in the Ukraine, including the government, turned to cryptocurrency for their financial well-being. Additionally, the government was ahead of the curve and put many of its files and infrastructure plans on blockchain, enabling them to easily access this information.⁷⁰ This is a current example of how digital assets can enhance capabilities to humanitarian efforts in armed conflict and disaster zones.

Sustainability

Digital asset mining is evolving energy policy in the U.S. and creating opportunities for a more sustainable energy transition. Digital asset mining has the ability to rapidly advance U.S. transition to renewable energies like solar, wind, and nuclear. Digital asset mining, through the Proof-of-Work consensus protocol can finance renewable infrastructure build outs and investment, while simultaneously adding capacity to the U.S. electric grid. Today, the global

⁶⁸ “Defying Predictions, Remittance Flows Remain Strong During COVID-19 Crisis,” The World Bank, 12 May 2021.

⁶⁹ Ritchie Torres, “A Liberal Case for Cryptocurrency,” New York Daily News, March 17, 2022.

⁷⁰ Unchained YouTube/Podcast: “How Ukraine is Leveraging Crypto in its fight against Russia,” March 4, 2022.

mining industry's sustainable electricity mix is 66.8% and growing.⁷¹ Additionally, to combat misconceptions, global Bitcoin mining consumes only 0.15% of the world's energy production.⁷²

(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.

The Chamber is committed to digital asset market integrity, which is defined as the preservation of fair and orderly markets which are appropriately defended against manipulation and abuse, such that public confidence and investor protection within those markets is maintained.⁷³ Today, technology providers have built anti-market abuse trade surveillance software that is proven to detect manipulation in other asset classes and have applied it to digital assets. Many leading crypto exchanges have pro-actively adopted this trade surveillance technology to protect their customers and to add transparency to the digital asset markets.

Additionally, in an effort to preserve and increase market integrity, the Chamber is a founding member of the Crypto Market Integrity Coalition (CMIC).⁷⁴ Today, CMIC has over 30 of the industry's largest entities participating in its efforts to preserve market integrity and combat manipulation schemes.

CMIC is designed to cultivate a fair digital asset marketplace to combat market abuse and manipulation and promote public and regulatory confidence in the new asset class.⁷⁵ CMIC is creating best practices and educational tools to prevent market manipulation schemes. These tools and best practices are targeted at audiences of all levels, from Mom and Pop-investors to regulators.⁷⁶ Several manipulation schemes that CMIC is working to combat include:

- **Wash Trading**, entering into arrangements for the sale or purchase of an instrument, where there is no change in beneficial interests or market risk or where beneficial interest or market risk is transferred between parties who are acting in concert or collusion.
- **Spoofing**, where traders place orders with no intent to execute (non-bona fide orders) with the purpose of providing a false level of supply or demand for a given asset.
- **Layering**, where traders place multiple non-bona fide orders on one side of the order book with the intent of moving the market price of the asset. Upon favorable market movement, the trader then executes an order on the other side of the book and cancels non-bona fide orders.
- **Pump and Dump schemes**, where perpetrators engage in coordinated buying and/ or receive tokens in exchange for promoting them, creating hype and excessive optimism (pump), and later sell the tokens (dump) before the market adjusts the price back downward and mainstream investors lose their money.

⁷¹ "Q2 2022 Report," Bitcoin Mining Council, July 19, 2022.

⁷² Ibid.

⁷³ Global Digital Finance, "Code of Conduct Part X: Principles of Market Integrity," accessed July 24, 2022.

⁷⁴ Crypto Market Integrity Coalition, accessed at <https://www.cryptomarketintegrity.com>.

⁷⁵ Ibid.

⁷⁶ Ibid.

- **Front-running orders**, where trading platform operators may use insider information to take advantage of attractive buy and sell orders before customers have an opportunity to do so.

Jurisdictional and legal conditions

The utilization of digital assets for cross-border payments and facilitating global transactions opens immense opportunities for the future of global finance. However, it also creates vulnerabilities for money laundering, sanctions evasion, and transacting with high-risk jurisdictions. As such, adhering to jurisdictional and legal compliance as well as leveraging effective KYC/AML and cybersecurity tools are of utmost importance. Technological developments such as location intelligence, geofencing, and location spoofing detection help ensure digital asset companies remain jurisdictionally and legally compliant, making it possible for digital asset companies to operate globally. Moreover, regulatory guidance, such as Treasury’s Office of Foreign Asset Control’s (OFAC) “Sanctions Compliance Guidance for the Virtual Currency Industry⁷⁷” which recommends geolocation and VPN detection tools as best practice for sanctions evasion, strengthen regulatory clarity for sanctions compliance and provide actionable steps for the digital asset industry.

(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.

As with any new innovative technology, digital assets may pose opportunities and risks that are not well understood. However, a rational and balanced approach to policymaking and regulation can help ensure that the benefits of a new technology come to fruition while maintaining existing protections for consumers. Examples of successfully applying this approach include the development of the Internet, Voice Over Internet Protocol (“VOIP”), and other revolutionary technologies. Today, measured policymaking is necessary to fulfill the promise of digital assets to create a financial system that is faster, cheaper, safer, and more inclusive. Regulating this innovative space will require addressing many of the same problems found in traditional finance, including consumer protection, fraud, money laundering and other financial crime, and overall financial stability.

Moreover, it is a common misconception that digital assets, such as cryptocurrency, are completely anonymous and untraceable. In fact, the transparency provided by many cryptocurrencies' public ledgers is much greater than that of other traditional forms of value transfer. Cryptocurrencies like bitcoin operate on public, immutable ledgers known as blockchains. Anyone with an Internet connection can look up the entire history of transactions on these blockchains. The ledger shows a string of numbers and letters that transact with another string of numbers and letters. Blockchain analytic firms, like Chainalysis, map these numbers and letters – or cryptocurrency addresses – to their real-world entities. These entities are already

⁷⁷ US Department of the Treasury’s Office of Foreign Assets Control, Sanctions Compliance Guidance for the Virtual Currency Industry, available at https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf.

working with regulatory agencies to incorporate on-chain data alongside off-chain data from other sources in order to allow for better market surveillance. This will better enable agencies to identify market manipulation and malicious activity on the blockchain, including front and back running, rug pulls, and initial coin offering (ICO) scams, among other things.

The amount of transparency that exists in the market enables an understanding of the systemic risks that can be used to provide appropriate oversight of this space. There is a great deal of data and information that are readily available for analysis. Agencies can identify where there may be information gaps and implement additional reporting requirements or additional data sources to gain a more complete picture.

As we have already seen, bad actors are becoming more sophisticated in the digital asset sector and there is an opportunity for a robust partnership between industry and government to minimize vulnerabilities, risk, and damage. Government entities at every level are currently working with blockchain analytic firms to aid efforts in identifying bad actors through analysis of digital asset transactions on a publicly viewable blockchain. These efforts are projected to lead to a 30% drop in successful thefts of digital assets and ransomware payments by 2024.⁷⁸ Public-private partnerships are critical to promoting safety of digital assets. Some suggestions for increased partnership include:

- Enhance U.S. Treasury efforts to sanction malicious digital asset exchanges that facilitate ransomware crime, while providing greater regulatory clarity to industry good actors.
- Encourage private insurance companies to work with digital asset exchanges to ensure customer accounts are protected when theft or hacks occur.
- Implement and foster information sharing on attacks across government sectors, international bodies, and industry.
- Establish tax credits to incentivize businesses to use cybersecurity and compliance tools.

Below we discuss some of the specific risks stated in the Request for Comment and offer recommendations for mitigation.

Frauds, Scams, Thefts

The digital asset industry is committed to rooting out all illicit activity like frauds, scams, and thefts.⁷⁹ Prosecution of bad actors in the digital asset space is of utmost importance and laws are in place to protect consumers at the state and federal level. Regardless of the legal category (security versus commodity versus neither) of a particular digital asset, state attorneys general (“AG”) have jurisdiction to enforce their states’ consumer protection and anti-fraud statutes as those laws relate to the purchase and sale of assets. Additionally, the Federal Trade Commission

⁷⁸ Lavelle, J., 2022. *Gartner Says 20% of Large Enterprises Will Use Digital Currencies by 2024*. [online] Gartner. Available at:

<<https://www.gartner.com/en/newsroom/press-releases/2021-12-16-gartner-says-20-percent-of-large-enterprises-will-use-digital-currencies-by-2024>> [Accessed 7 August 2022].

⁷⁹ In an effort to drive a more modern and inclusive approach to financial crimes compliance and the oversight and growth attendant to the virtual asset sector, digital asset compliance company FinClusive has developed and promotes a rulebook of innovative best practices that extends traditional banking compliance and payments guidance to emerging fintech and VASP processes.

(“FTC”) is charged with protecting consumers from unfair or deceptive acts and practices (“UDAAP”) that affect commerce. The FTC has authority to conduct investigations, issue subpoenas, and file enforcement actions in administrative tribunals or in federal court. If securities laws do not apply, it is likely that the FTC would have jurisdiction to bring anti-fraud claims against bad actors.⁸⁰

Furthermore, the Department of Justice (“DOJ”) announced in February that it had established the National Cryptocurrency Enforcement Team (“NCET”) aimed at rooting out criminal misuse of digital assets.⁸¹ NCET is tasked with supporting and training federal, state, local, and international law enforcement to build capacity to aggressively investigate and prosecute crimes involving digital assets. These efforts have already proven successful in making the market safer for all.⁸²

Disclosures

Like other asset classes, transparent disclosures are important for the longevity of digital assets. The Chamber is supportive of a disclosure regime that provides essential information without unduly burdening reporting entities. Disclosures should provide necessary information to inform consumers and investors about the soundness of the disclosing entity. Additionally, regulators should consider pathways to disclosure compliance for emerging companies that will allow those companies to comply while maintaining vitality.

The recently introduced **Responsible Financial Innovation Act**⁸³ by Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) would require several disclosures that would ultimately increase investor and consumer protection. For example, the proposed legislation would require a provider of a digital asset service, which is defined broadly⁸⁴, to provide notice to and obtain acknowledgment from customers regarding material source code changes, whether digital assets are segregated or pooled, what happens in bankruptcy, the procedure for returning digital assets upon customer request, any applicable fees, and the dispute resolution process. This will, in many cases, take the form of a “term of service” and is an important step to making sure investors are informed and protecting their assets.

Losses of Private Keys

⁸⁰ See, for example, Complaint for Permanent Injunction and Other Equitable Relief at 1-2, *FTC v. BF Labs, Inc.*, No. 4:14-cv-0815 (W.D. Mo. Sept. 15, 2014). For more information on this case, see Darren J. Sandler, “Citrus Groves in the Cloud: Is Cryptocurrency Cloud Mining a Security?,” 34 *Santa Clara High Technology Law Journal* 250, 267-268 (Jan. 2018).

⁸¹ “Justice Department Announces First Director of National Cryptocurrency Enforcement Team,” U.S. Department of Justice Press Release 22-140, February 17, 2022.

⁸² *Ibid.*

⁸³ Text - S.4356 - 117th Congress (2021-2022): Lummis-Gillibrand Responsible Financial Innovation Act, S.4356, 117th Cong. (2022), <http://www.congress.gov/>.

⁸⁴ The Responsible Financial Innovation Act defines digital asset service as: A) a digital asset intermediary; B) a financial institution; C) any other person conducting digital asset activities pursuant to a Federal or State charter, license, registration, or other similar authorization; and D) any person who is required by law to hold a license, registration, or other similar authorization.

Private keys provide an invaluable benefit to allow users to self-custody their digital assets and take ownership of their financial assets without the costs associated with a government or third-party intermediary. However, if consumers self-custody their digital assets, losing your private keys is a serious risk. In fact, it was reported in 2021 that nearly 20 percent of bitcoin at has been lost or stranded in wallets where users had lost their private keys.⁸⁵ The industry must educate on the risks associated with losing private keys. If users are uncomfortable with the risks associated with self-custodying their assets, they can keep their funds with a digital asset wallet custodian. The U.S. government should not impede the ability of individuals to self-custody digital assets due to risks associated with loss of private keys.

Insolvency of wallets, custodians, or other intermediaries

As recent events have led to insolvency for some digital asset companies, customers need to be made aware of company bankruptcy protocols before deciding to invest their funds. Additionally, there should be regulatory pathways for digital asset consumers to be protected during bankruptcy similar to traditional brokerage firms. Similar to the SEC’s “Customer Protection Rule,”⁸⁶ digital asset custodians should be required to keep client assets in separate accounts from the brokerage’s assets in order to prevent confusion.

The disclosure of whether consumer digital assets are co-mingled or segregated from exchange’s business accounts will be extremely important if companies go insolvent. Consumer funds should always be protected and if the funds are not being segregated, especially in the absence of Securities Investors Protection Corporation (SIPC) insurance, then investors may use that information to decide whether to take their digital assets off the exchange and put it in a self-hosted wallet.

(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?

Yes, digital assets can play a role in increasing Americans’ access to safe, affordable, and reliable financial services, and have already done so to date. However, we believe that there needs to be more of an industry and government focus on digital asset education. Individuals that do not know how to transact with digital assets or use digital wallets may fall behind if there is more

⁸⁵“Tens of billions worth of Bitcoin have been locked by people who forgot their key,” New York Times, 13 January 2021.

⁸⁶ The Customer Protection Rule seeks to avoid, in the event of a broker-dealer failure, a delay in returning customer securities or worse, a shortfall in which customers are not made whole, by requiring broker-dealers to safeguard both the cash and securities of their customers. Its requirements work to achieve this objective by “eliminat[ing] the use by broker-dealers of customer funds and securities to finance firm overhead and such firm activities as trading and underwriting through the separation of customer related activities from other broker-dealer operations.” Rule 15c3-3 Adopting Release, Exch. Rel. No. 9775, 1972 WL 125434, at *1 (Sept. 14, 1972)

widespread adoption and this may create comparable problems with the traditional financial ecosystem and result in even greater economic wealth polarization.

The Chamber of Digital Commerce strongly supports initiatives that expand access to the wider financial system for more Americans. While much needs to be learned about the specific resources that would benefit this population, this lack of access often results from being undocumented or otherwise not being in a socio-economic position to utilize tools such as smartphones with high-speed Internet access, which would be equal hindrances to use of digital assets. They also still face the challenge of obtaining appropriate identity documentation to satisfy current Know-Your-Customer requirements. Financial inclusion has the potential to be a powerful policy benefit for adoption of digital assets, but we encourage the Biden administration to delve more deeply into how digital assets, in addition to decentralized identity solutions, would specifically benefit those who make up the majority of the unbanked population in the U.S., while considering existing, more traditional financial products that may be underutilized and why. (See also the comments above re: stablecoins and financial inclusion).