The Clearing House

February 11, 2022

Via Electronic Submission

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Patrick J. Toomey
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Re: Statement for the Record – Senate Banking Committee Hearing, "Examining the President's Working Group on Financial Markets Report on Stablecoins"

Chairman Brown, Ranking Member Toomey & Distinguished Members of the Committee:

The Clearing House Association, L.L.C. ("The Clearing House")[1] appreciates the Senate Banking Committee's efforts to examine the opportunities and risks presented by stablecoins and stablecoin arrangements, and welcomes the opportunity to submit this statement for the record for the hearing: "Examining the President's Working Group on Financial Markets Report on Stablecoins" (the "Hearing").[2] This statement focuses on the explosive growth of stablecoins, the significant and diverse risks presented by stablecoins/stablecoin arrangements, and the inadequacy of state money transmitter licensing regimes as a regulatory framework for addressing those risks.

Growth of Stablecoins/Stablecoin Arrangements

Stablecoin issuers and arrangements have proliferated in the eight years since the first stablecoin was issued,[3] and Stablecoins are growing at a remarkable pace. According to the

[1] The Clearing House Association, L.L.C., the country's oldest banking trade association, is a nonpartisan organization that provides informed advocacy and thought leadership on critical payments-related issues. Its sister company, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the U.S., clearing and settling more than $2 trillion each day. *See* The Clearing House's web page at www.theclearinghouse.org.
[2] *See* U.S. Senate Committee on Banking, Housing, and Urban Affairs, "Hearings" page, listing the hearing "Examining the President's Working Group on Financial Markets Report on Stablecoins" for Feb. 15, 2022.
[3] Tether, the first "blockchain-enabled platform to facilitate the digital use of traditional currencies [as] a familiar, stable accounting unit," was launched in 2014. *See* Tether, "What is Tether?" (available at: https://tether.to/faqs/).

November report on stablecoins issued by the President's Working Group on Financial Markets, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, as of October 2021, "[t]he market capitalization of stablecoins issued by the largest stablecoin issuers exceeded $127 billion" – a "nearly 500 percent increase over the preceding twelve months";[4] and according to research conducted in connection with a House Financial Services Committee hearing on stablecoins held last week, "[a]s of February 3, 2022, stablecoins reached an estimated $174 billion in market capitalization."[5] Private estimates show a similar, if not more rapid, rate of increase – suggesting as much as a 600 percent increase from 2020 to 2021;[6] and the rate of growth is even faster when looking at specific stablecoins.[7] One of the most popular stablecoins, Binance USD, has experienced a 1000% increase in the past year.[8]

With respect to specific stablecoins, just three of them – Tether, USD Coin, and Binance USD – collectively represent more than a $143 billion in market capitalization. As of the end of January 2022, Tether's market capitalization was estimated to be approximately $78.2 billion, USD Coin (the stablecoin offered by Circle) was estimated to have a market capitalization of $49.8 billion, and Binance USD was estimated to have a market capitalization of $15.3 billion.[9] Additionally, stablecoin arrangements under development from firms with global footprints, such

[4] President's Working Group on Financial Markets, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, "Report on STABLECOINS" (Nov. 2021), p. 7 (available at: https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf).

[5] Majority Committee Memorandum, "Digital Assets and the Future of Finance: The President's Working Group on Financial Markets' Report on Stablecoins" (Feb. 3, 2022), p. 2 (available at: https://financialservices.house.gov/uploadedfiles/hhrg-117-ba00-20220208-sd002.pdf). Information on the full hearing is available at: https://financialservices.house.gov/events/eventsingle.aspx?EventID=409026. *See also* Senate Banking Committee, "Stablecoins: How Do They Work, How Are They Used, and What Are Their Risks?" Full Committee Hearing (Dec. 14, 2021) (available at: https://www.banking.senate.gov/hearings/stablecoins-how-do-they-work-how-are-they-used-and-what-are-their-risks).

[6] *See* Timothy G. Massad, "Regulating stablecoins isn't just about avoiding systemic risk," Brookings (Oct. 5, 2021) (available at: https://www.brookings.edu/research/regulating-stablecoins-isnt-just-about-avoiding-systemic-risk/) (estimating that as of August 2021 market capitalization of stablecoins was approximately $120 billion); *and* Andrew Ross Sorkin, et al., "Here Come the Crypto Rules," The New York Times (Sept. 24, 2021) (available at: https://www.nytimes.com/2021/09/24/business/dealbook/stablecoin-crypto-regulation.html) (estimating that as of mid-September 2021 dollar-tied stablecoins in circulation had a value of $125 billion) (a September 2021 market capitalization of stablecoins between $120 and $125 billion represents a 600% increase from 2020 (*see* "Report on STABLECOINS," *supra* note 4, at p. 7, footnote 20 (noting that the Stablecoin supply in October 2020 was approximately $21.5 billion))).

[7] *See, for example,* CoinMarketCap, "Binance USD," at one year Market Cap (available at: https://coinmarketcap.com/currencies/binance-usd/) (showing a 1000% increase in market capitalization for Binance USD) (Jan. 31, 2022); and "USD Coin," at one year Market Cap (available at: https://coinmarketcap.com/currencies/usd-coin/) (showing a more-than 800% increase in market capitalization for USD Coin).

[8] CoinMarketCap, "Binance USD," at one year Market Cap (available at: https://coinmarketcap.com/currencies/binance-usd/) (showing a 1000% increase in market capitalization for Binance USD) (Jan. 31, 2022).

[9] *See* CoinMarketCap at Tether, USD Coin, and Binance USD, respectively (available at: https://coinmarketcap.com/currencies/tether/; https://coinmarketcap.com/currencies/usd-coin/; and https://coinmarketcap.com/currencies/binance-usd/, respectively) (Jan. 31, 2022).

as global technology companies, or social media platforms, have the potential for immense scale and significant, if not systemic, importance immediately upon release into the marketplace.[10]

Risks Presented by Stablecoins

The emergence of stablecoin issuers and explosive growth of stablecoin arrangements pose a bevy of significant risks. These risks are not merely theoretical.[11] For example, stablecoin issuers have abruptly decided to shut down operations;[12] stablecoin arrangements have suffered massive, sudden shocks due to internal and external manipulation and attack, including cyber-attack;[13] stablecoin issuers have been found to have made material misrepresentations about backing/reserve status;[14] and stablecoin arrangements have suffered from developmental

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[10] *See* Sergio Goschenko, "Facebook's Novi Launches Pilot Program in Guatemala and US Using Pax Dollar, Bitcoin.com (Oct. 20, 2021) (available at: https://news.bitcoin.com/facebooks-novi-launches-pilot-program-in-guatemala-and-us-using-pax-dollar/) (noting that Facebook's digital wallet Novi will be initiating a pilot program using the Pax Dollar, with Coinbase serving as a custodian, and that although Diem is not being used as a transactional asset for the pilot the intention is for Diem to be used by Novi in the future); *and* Bank for International Settlements, "Stablecoins: risks, potential and regulation," BIS Working Paper No 905 (Nov. 2020) (available at: https://www.bis.org/publ/work905.pdf), pp. 9-13 (discussing the potential significance of a global technology company issuing a stablecoin); *but see* Peter Rudegeair and Liz Hoffman, "Facebook's Cryptocurrency Venture to Wind Down, Sell Assets: Diem Association is selling its technology to crypto-focused bank Silvergate for $400 million," The Wall Street Journal (Jan. 27, 2021) (reporting that Facebook (now Meta Platforms Inc.) has a deal in place to sell assets associated with its planned stablecoin, Diem).

[11] The G20, for example, has undertaken a study of the risks to the international monetary system presented by stablecoins. *See* G20, "Assessing the impact of stablecoins on the international monetary system: G20 and IMF to study the impact of Facebook's Libra project," G20 Insights (Dec. 10, 2020) (available at: https://www.g20-insights.org/policy_briefs/assessing-the-impact-of-stablecoins-on-the-international-monetary-system-g20-and-imf-to-study-the-impac-of-facebooks-libra-project/).

[12] *See, for example*, "Cryptocurrency project Basis to shut down and return funding to investors," Reuters (Dec. 13, 2018) (noting that a project to launch a stablecoin called "Basis" was shutting down after soliciting over $133 million in investments); *and* Tomio Geron and Yuliya Chernova, "'Stablecoin' Project Basis Is Shutting Down After Raising $135 Million," The Wall Street Journal (Dec. 13, 2018) (available at: https://www.wsj.com/articles/stablecoin-project-basis-is-shutting-down-after-raising-135-million-11544730772).

[13] *See* Emily Nicolle, "Crypto.com suspends withdrawals after 'unauthorized activity'," Los Angeles Times (Jan. 17, 2022) (available at: https://www.latimes.com/business/story/2022-01-17/crypto-com-suspends-withdrawals-unauthorized-activity) (noting that cryptocurrency and stablecoin wallet provider crypto.com stopped all deposits and withdrawals while investigating "unauthorized activity" and that Coinbase, Binance, and Kraken all experienced outages in 2021); Arjun Kharpal and Ryan Browne, "Hackers return nearly half of the $600 million they stole in one of the biggest crypto heists," CNBC (Aug. 11, 2021) (noting that $33 million of Tether was part of a successful hacking of Poly Network, a platform that connects different blockchains together); *and* Yael Bizouati-Kennedy, "Stablecoin SafeDollar Crashes to $0 Following Cyberattack," GOBankingRates.com (June 29, 2021) (available at: https://www.yahoo.com/now/stablecoin-safedollar-crashes-0-following-122357249.html). *See also* U.S. Securities and Exchange Commission, "Investor Alert: Bitcoin and Other Virtual Currency Investments" (May 7, 2014) (available at: https://www.sec.gov/oiea/investor-alerts-bulletins/investoralertsia_bitcoin.html) (noting the risk that crypto currency exchanges may stop operating or permanently shut down due to fraud, technical glitches, hackers or malware).

[14] *See* "In the Matter of Investigation by Letitia James, Attorney General of the State of New York, of iFinex Inc., BFXNA Inc., BFXWW Inc., Tether Holdings Limited, Tether Operations Limited, Tether Limited, Tether International Limited," settlement agreement (Feb. 18, 2021), pp. 3-13 (available at: https://ag.ny.gov/sites/default/files/2021.02.17_-_settlement_agreement_-_execution_version.b-t_signed-c2_oag_signed.pdf) (finding that material misrepresentations had been made about the backing of Tether). *See also*

difficulties and design challenges.[15] Additionally, the absence of comprehensive and consistent supervision and examination of stablecoin issuers and arrangements means that matters routinely addressed in the supervision and examination processes of regulated financial institutions – matters such as capital and liquidity, operational risk, third party risk management, data security, data privacy, and anti-money-laundering and sanctions compliance – may be left unaddressed, resulting in stablecoin end-users being exposed to the resulting risks.[16] The protection of consumers and the financial system from the risks associated with stablecoins is too important to leave to a patchwork of state money transmitter laws that may or may not even apply depending on the vagaries of state statutes and individual state interpretations, discussed *infra*. Finally, stablecoins/stablecoin arrangements present a host of anti-money laundering and countering the financing of terrorism risks ("AML/CFT"). The growth and reach of stablecoins, the degree to which stablecoin arrangements permit anonymity, the usability of stablecoins, the exchangeability of stablecoins for fiat currency, and other characteristics of stablecoins all present AML/CFT risks that this Committee has previously identified, and which must be addressed.[17] The Clearing House is currently evaluating ways in which the U.S. Department of the Treasury, including the Office of Foreign Asset Control and the Financial Crimes Enforcement Network ("FinCEN"), might act to address anti-money laundering, terrorist financing and proliferation risks associated with stablecoins, such as through the adoption of certain recommendations of the Financial Action Task Force on Virtual Assets and Virtual Asset

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Zeke Faux, "Anyone Seen Tether's Billions?" Bloomberg (Oct. 7, 2021) (available at: https://www.bloomberg.com/news/features/2021-10-07/crypto-mystery-where-s-the-69-billion-backing-the-stablecoin-tether) (examining Tether's backing, as well key officers of Tether).

[15] *See* Nivesh Rustgi, "Algorithmic Stablecoin Crashes 50% as Devs Scramble for a Fix," Crypto Briefing (Apr. 7, 2021) (available at: https://cryptobriefing.com/algorithmic-stablecoin-crashes-50-devs-scramble-fix/) (noting that the algorithmic stablecoin FEI suffered price instability due to a protocol mishap, forcing holders to choose between a reduced value holding (a "lower peg value") and accepting a penalty of 50% for exchanging their FEI). *See also* Dr. Ryan Clements, "Built to Fail: The Inherent Fragility of Algorithmic Stablecoins," 11 Wake Forest L. Rev. Online 113 (Oct. 25, 2021) (available at: http://www.wakeforestlawreview.com/2021/10/built-to-fail-the-inherent-fragility-of-algorithmic-stablecoins/) (noting that algorithmic stablecoins have inherent design flaws that make them unstable).

[16] Tellingly, although some proponents of stablecoins suggest that state money transmitter licensing regimes are sufficient to address the risks presented by stablecoins, they were not sufficient to protect consumers from any of the actual risks that are detailed above.

[17] Majority Committee Memorandum, "Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States" (Dec. 8, 2021), at pp. 3-4 (noting money laundering, terrorist financing, sanctions evasion, illicit finance, kleptocracy, and other risks of digital assets (including stablecoins) and related service providers); *and* President's Working Group on Financial Markets, "Statement on Key Regulatory and Supervisory Issuers Relevant to Certain Stablecoins" (Dec. 23, 2020) (available at: https://home.treasury.gov/system/files/136/PWG-Stablecoin-Statement-12-23-2020-CLEAN.pdf) (noting AML/CFT risks associated with stablecoins, stablecoin issuers, and stablecoin arrangements). *See also* "OCC's Hsu: Stablecoins Can Boost Innovation If Regulated Like Banks," Pymnts.com (Jan. 15, 2022) (available at: https://www-pymnts-com.cdn.ampproject.org/c/s/www.pymnts.com/cryptocurrency/2022/occ-hsu-stablecoins-can-boost-innovation-if-regulated-like-banks/amp/) (quoting Acting Comptroller of the Currency Michael Hsu on "the lack of standards and controls in the crypto space," as risks associated with stablecoins); *and* Senate Banking Committee, "Stablecoins: How Do They Work, How Are They Used, and What Are Their Risks?" Full Committee Hearing (Dec. 14, 2021) (available at: https://www.banking.senate.gov/hearings/stablecoins-how-do-they-work-how-are-they-used-and-what-are-their-risks).

Service Providers that are not already part of the AML/CFT framework.[18] The Clearing House anticipates submitting comments on this issue by February 14 in response to FinCEN's request for information on ways to streamline and modernize the AML/CFT regime in the United States.[19]

The PWG's, FDIC's & OCC's Report on Stablecoins

The November 1st "Report on STABLECOINS" (the "Report") issued by the PWG, FDIC, and OCC constitutes an important step toward identifying and addressing emerging risks related to stablecoins.[20] As the Report recognizes, key stablecoin-related risks include: (i) market integrity risks; (ii) investor protection risks; (iii) illicit finance concerns/money laundering risks; and (iv) prudential risks related to stablecoins used for payments purposes, which can be further classified by: (1) loss of value: risks to users and stablecoin runs; (2) payment system risk; and (3) risks of scale: systemic risk and concentration of economic power.[21] However, stablecoin-related risks are not limited to those identified in the Report. For example, spillover from runs on stablecoin could easily impact the insured banking system or U.S. payment systems.[22] In many instances, stablecoin issuers offer accounts that look like financial institutions' transaction accounts, and accept central bank money or commercial bank money in exchange for stablecoins. Depositors of insured financial institutions may not understand the difference between those systems that store value in, or enable transactions in, insured commercial bank money, versus systems utilizing uninsured stablecoins. Likewise, end-users of stablecoins often do not appreciate that stablecoin issuers and arrangements, depending on the vagaries of state application of money transmitter licensing regimes, discussed *infra*, may not be subject to any form of meaningful regulation and supervision.

The Clearing House encourages the Committee to view stablecoin-related risks not merely as a concern for markets and users, but as a challenge for administrative agencies and governmental actors, and a concern for the continued safe and sound operation of the U.S. financial system.

[18] *See* Financial Action Task Force, "Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers" (Oct. 20, 2021) (available at: https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets-2021.html).

[19] Financial Crimes Enforcement Network, "Review of Bank Secrecy Act Regulations and Guidance," 86 Fed. Reg. 71,201 (Dec. 15, 2021).

[20] *See* "Report on STABLECOINS," *supra* note 4.

[21] *Id.* at pp. 12-15.

[22] Although the Report addresses run risks, the likelihood of spillover and contagion is generally not addressed (*but see* "Report on STABLECOINS," note 4, pp. 12 & 14 (observing that there could be "implications" for the financial system of stablecoin runs and that "[t]he perception of the safety of insured depository institutions relative to stablecoins could also shift during times of stress, with large and sudden inflows or outflows of deposits possible")). (The Report addresses stablecoin run risk in detail (*see* pp. 12 & 15).)

State Money Transmitter Licensing Laws

Although some have suggested that state money transmitter licensing regimes provide an adequate regulatory and supervisory framework for stablecoin arrangements,[23] and while The Clearing House acknowledges that some state money transmitter laws may provide some regulatory and supervisory frameworks for stablecoin arrangements, there are significant gaps in such laws, particularly when applied to the unique issues presented by stablecoin arrangements.[24] State money transmitter licensing schemes, which largely pre-date the development of stablecoins, are often not fit for purpose, and may not even cover stablecoin arrangements at all.[25] While some states have addressed this issue by enacting specific regulations targeting digital currencies,[26] the vast majority of states have yet to do so, leaving the potential for significant coverage gaps across the U.S.

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[23] Judith Rinearson, "What the President's Working Group got wrong about stablecoins," American Banker BankThink (Nov. 19, 2021) (available at: https://www.americanbanker.com/opinion/what-the-presidents-working-group-got-wrong-about-stablecoins).

[24] Unique issues presented by stablecoin arrangements include: (a) the potential use of settlement assets that are not liabilities of the money transmitter (i.e., are assets of the issuer) and might carry additional financial risk; (b) the interdependencies between multiple stablecoin arrangement functions; (c) the degree of decentralization of operations and / or governance; and (d) a potentially large-scale deployment of emerging technologies such as distributed ledger technology. *See* Committee on Payments and Market Infrastructure & Board of the International Organization of Securities Commissions, "Application of the Principles for Financial Market Infrastructures to stablecoin arrangements," Consultative Report, pp. 4, 7, 9-10 & 19 (Oct. 2021) (available at: https://www.bis.org/cpmi/publ/d198.pdf) (noting these issues). *See also* David Mills *et al.*, "Distributed ledger technology in payments, clearing, and settlement," Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series, pp. 9 & 13 (Dec. 2016) (available at: https://www.federalreserve.gov/econres/feds/distributed-ledger-technology-in-payments-clearing-and-settlement.htm) (noting that distributed ledger technology can be utilized in a variety of ways, including as a protocol for asset transfer).

[25] *See* Rinearson, Cohen & McLaughlin, "Trouble in Paradise: Florida Court Rules That Selling Bitcoin is Money Transmission," K&L Gates U.S. FinTech Alert (Feb. 13, 2019) (available at: https://www.klgates.com/Trouble-in-Paradise-Florida-Court-Rules-that-Selling-Bitcoin-is-Money-Transmission-02-13-2019) (noting that some states have "amended their money transmitter statutes to include *or exclude virtual currencies explicitly*"); California Department of Financial Protection & Innovation, "Re: _____-Opinion Request" letter (Oct. 4, 2019) (available at: https://dfpi.ca.gov/2019/10/14/virtual-currency-2-10-4-2019/); *and* Pennsylvania Department of Banking, "Money Transmitter Act Guidance for Virtual Currency Businesses" (2017/2018) (available at: https://www.dobs.pa.gov/Businesses/Non-Bank%20Licensees/Money%20Transmitters/Pages/default.aspx) (posted by the department as of Dec. 29, 2021, and noting that because virtual currency is not "currency or legal tender" it is not covered by Pennsylvania's Money Transmitter Act). *See also* Montana Department of Administration, "Money Services Businesses" notice (available at: https://banking.mt.gov/moneytransmitters) (posted by the department as Dec. 29, 2021, and noting that money services businesses do not need to be licensed with the Montana Division of Banking and there is no legislation in Montana providing for the licensing and supervision of money services businesses).

[26] Some states, like New York, Wyoming, and Rhode Island, have addressed the issue by enacting specific regulations targeting digital currencies, but the vast majority of states have yet to do so, leaving significant coverage gaps across the U.S. *See, for example,* New York State Department of Financial Services, "Virtual Currency Businesses" (available at: https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses) (providing information on New York State's BitLicense).

Reliance on state money transmitter laws to provide a regulatory framework for stablecoins would, in most cases, leave consumer protection up to the vagaries of individual state interpretations of their licensing schemes. For example, in a letter issued in October of 2019, the State of California Department of Business Oversight noted that the operation of a payment network platform that allows consumers to use digital assets to pay for goods and services was not required to be licensed and supervised under California's state money transmitter law.[27] Similarly, the Pennsylvania Department of Banking has noted that, "[to] date, bitcoin and other virtual currencies have not been designated by federal law as legal tender" and therefore, "are not 'money,' and their transmittal is not subject to the licensing requirements of [Pennsylvania's Money Transmitter Act]."[28] Delaware also ties its licensure requirement to "the transmission or payment of money." (5 Del. C. 1953, §§ 2301 - 2319.) While the Office of the State Bank Commissioner and state courts of Delaware do not appear to have opined on application of Delaware's Sale of Checks and Transmission of Money code to cryptocurrencies or stablecoins, if the Delaware code is interpreted the same as in Pennsylvania, the code would not apply. Finally, some states, like Massachusetts and Montana, do not have a licensing scheme that regulates domestic money transmitters and consumers in those states would be left completely unprotected from the risks associated with stablecoins.[29]

The protection of consumers and the financial system from the risks associated with stablecoins is too important to leave to a patchwork of state money transmitter laws that may or may not even apply depending on the vagaries of state statutes and individual state interpretations. Even if state money transmitter laws apply to stablecoins, they are likely inadequate in numerous ways. For example, state money transmitter laws lack supervision at the holding company level, which is important given that the stablecoin arrangements that could scale the fastest would likely be associated with an already existing fintech platform.[30] Many

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[27] California Department of Financial Protection & Innovation, "Re: _____-Opinion Request" letter (Oct. 4, 2019) (available at: https://dfpi.ca.gov/2019/10/14/virtual-currency-2-10-4-2019/); *and* Rinearson, Cohen & McLaughlin, "Trouble in Paradise: Florida Court Rules That Selling Bitcoin is Money Transmission," K&L Gates U.S. FinTech Alert (Feb. 13, 2019) (available at: https://www.klgates.com/Trouble-in-Paradise-Florida-Court-Rules-that-Selling-Bitcoin-is-Money-Transmission-02-13-2019) (noting that some states have "amended their money transmitter statutes to include *or exclude virtual currencies explicitly*.") Note that stablecoins are a subset of virtual currency.

[28] Pennsylvania Department of Banking, "The Quarter" newsletter, Vol. 6, No. 1, at "Bitcoin Update," p. 11 (Oct. 2014) (available at: https://www.dobs.pa.gov/Documents/Newsletter/Newsletter%20Volume%206/Quarter21vol6FINAL.pdf). *See also* Pennsylvania Department of Banking, "Money Transmitter Act Guidance for Virtual Currency Businesses" (2017/2018) (available at: https://www.dobs.pa.gov/Businesses/Non-Bank%20Licensees/Money%20Transmitters/Pages/default.aspx) (posted by the department as of Dec. 29, 2021, and noting that because virtual currency is not "currency or legal tender" it is not covered by Pennsylvania's Money Transmitter Act).

[29] *See, e.g.*, MGL, CH. 167F, § 4, which applies only to the "selling, issuing or registering checks or money orders." *See also*, Montana Department of Administration, "Money Services Businesses" notice (available at: https://banking.mt.gov/moneytransmitters) (posted by the department as Dec. 29, 2021, and noting that money services businesses do not need to be licensed with the Montana Division of Banking and there is no legislation in Montana providing for the licensing and supervision of money services businesses).

[30] *See* "Report on STABLECOINS," note 4, pp. 2 & 14 (noting that the potential for an individual stablecoin to scale rapidly raises distinct policy concerns); *see also* "Facebook pilots Novi, but without Diem," Finextra (Oct. 19, 2021) (available at: https://www.finextra.com/newsarticle/39054/facebook-pilots-novi-but-without-diem); *and* Chaim

state money transmitter laws and regulations promulgated under them do not impose third-party and vendor risk management requirements.[31] This is particularly significant given that functionality across a stablecoin arrangement may be fractionalized among various distinct legal entities and therefore the licensee under state money transmitter regimes may not be the entity actually engaged in stablecoin issuance or redemption.[32] Some state money transmitter laws fail to impose portfolio restrictions or restrictions on the use of customer funds and may not contain capital or liquidity requirements, important factors given that the value of stablecoins must be backed by highly liquid assets in order to protect consumer investments.[33] Finally, state money transmitter laws do not provide access to lender of last resort facilities. This is important to preserve financial stability in the event that the assets underlying a stablecoin arrangement become devalued in times of stress.[34] For these reasons, The Clearing House encourages the Committee to not view state money transmitter licensing regimes as an adequate regulatory and supervisory framework for stablecoin arrangements, or as an alternative to a federal prudential framework.

Concluding Comments

The Clearing House appreciates the important work that the Committee is doing to examine the opportunities and risks presented by stablecoins and stablecoin arrangements, and we hope that the Committee will take the points made in this statement into consideration. The rapid growth of stablecoin arrangements, their use as a payments vehicle, the transfer and issuance functions associated with them, inadequate capital and reserve requirements, and the lack of a

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Gartenberg, "Facebook's digital wallet final launches … without Diem cryptocurrency," The Verge (Oct. 19, 2021) (available at: https://www.theverge.com/2021/10/19/22734487/facebook-novi-digital-wallet-pilot-program-payments-diem-cryptocurrency) (noting that Facebook has launched a stablecoin-based pilot using the Novi wallet and USDC stablecoin, and that Facebook has larger ambitions, including providing remittance transfer services, and integrating the Diem stablecoin into Novi-based applications). Many state money transmitter laws, however, provide only for supervision and examination of the licensee. (*See, e.g.*, Ala. Code § 8-7-1 *et seq.*; Colo. Rev. Stat. § 11-110-101 *et seq.*; 5 Del. Code § 2301 *et seq.*; Miss. Code Ann. §75-15-1 *et seq.*; Mo. Rev. Stat. §361.700 *et seq.* (providing for evaluation and examination / supervision of the applicant / licensee only).)

[31] *See, e.g.*, Colo. Rev. Stat. § 11-110-101 *et seq.*; Miss. Code Ann. § 75-15-1 *et seq.*; Mo. Rev. Stat. § 361.700 *et seq.*; (lacking robust third-party-risk/vendor management requirements, and putting critical, interdependent functionality outside of the regulatory perimeter by expressly providing only for the examination of licensees).

[32] *See* "Report on STABLECOINS," note 4, pp. 13 & 17 (noting that the supporting infrastructure in a stablecoin arrangements may be beyond the control of any one organization and there may be no clear entity to regulate, and that issuance may be separate from critical functionality). State money transmitter laws, however, may only capture the entity performing the transfer function as the licensee and therefore may lack direct authority over other entities that are performing critical functionality, including actual issuance of the stablecoin. (*See, e.g.*, Colo. Rev. Stat. § 11-110-101 *et seq.*; Miss. Code Ann. § 75-15-1 *et seq.*; Mo. Rev. Stat. § 361.700 *et seq.*; (expressly providing only for the examination of licensees).)

[33] *See, e.g.*, Ga. Code Ann. § 7-1-680 *et. seq.* (imposing no portfolio restrictions around the use of customer funds); *and* Wi. Code § 217.01 *et seq.*; and Mo. Stat. § 361.700 *et seq.* (providing no ring-fencing of permissible investments within a statutory trust). *And see* "Report on STABLECOINS," note 4, pp. 4, 6, 12, 16 & footnote 21 (noting that there are no standards regarding the composition of stablecoin reserve assets, publicly available information about issuers' reserve assets is inconsistent, and that reserve assets held varies).

[34] *See* "Report on STABLECOINS," note 4, p. 16 (noting the importance of providing access to the federal safety net.)

comprehensive federal prudential framework all present risks that warrant further attention from Congress in determining what an appropriate regulatory framework for stablecoins should look like.

Thank you for the opportunity to provide a statement for the record. If you have any questions, please do not hesitate to contact the undersigned by phone at (646) 709-3026 or by email at Robert.Hunter@theclearinghouse.org.

Respectfully submitted,

/s/
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The Clearing House Association L.L.C.