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1401 Constitution Avenue, N.W.  
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RE: Notice and Request for Comment – Docket ITA – 2022-0003 – “Developing a Framework on Competitiveness of Digital Asset Technologies”

Dear Mr. Tran,

The Clearing House Association, L.L.C. (“TCH” or “The Clearing House”)<sup>1</sup> appreciates efforts by the International Trade Administration (“ITA”) to solicit stakeholder input on the establishment of a framework for enhancing U.S. economic competitiveness in, and leveraging of, digital asset technologies, and submits these comments in response to the various questions posed by the ITA in its request for comment.<sup>2</sup> The Clearing House believes that for U.S. firms, including banks, to realize the full potential of digital assets domestically and abroad, a number of important issues relating to digital assets and the current digital assets ecosystem must be addressed. Many of these issues are reflected in the questions posed by the ITA in its Request for Comment (“RFC”).

In particular, The Clearing House believes that with respect to privately-issued digital assets and private token-based money that is not issued by anyone (*e.g.*, stablecoins and cryptocurrency):

- Banks, which are subject to comprehensive supervision and regulation frameworks that help ensure their digital-asset-related activities are conducted safely and soundly, should be no less able to engage in digital-asset-related activities than nonbanks.
- Federal regulatory clarity is imperative, particularly where digital assets will serve as a means of payment or will be held in custody by financial institutions.
- A comprehensive federal prudential framework applying standards to digital assets that are equivalent to those that apply to depository financial institutions when engaged in functionally similar activities is essential.
  - U.S. banks have a long history of successfully addressing the needs of the economy and accommodating changes in consumer preference, and stand ready to drive U.S. leadership in the global digital asset marketplace.

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<sup>1</sup> 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 the 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](http://www.theclearinghouse.org).

<sup>2</sup> Department of Commerce, International Trade Administration, “Developing a Framework on Competitiveness of Digital Asset Technologies,” 87 Fed. Reg. 30,450 (May 19, 2022).

And that with respect to a U.S. central bank digital currency (“CBDC”):

- The risks associated with the possible issuance of a CBDC in the U.S. outweigh its potential benefits.
- The policy goals that have been articulated in support of a CBDC would best be addressed through less risky, more efficient, and more economical alternatives that are either readily available in the market today or are under development through public and private initiatives.

## I. Overview

The following overview identifies challenges and risks (A) posed by privately-issued digital assets and private token-based money that is not issued by anyone (*e.g.*, cryptocurrency and stablecoins); and (B) posed by a potential U.S. CBDC. The Clearing House believes that both present unique challenges and risks.

### A. The Rapid Growth of Cryptocurrency and Stablecoins, and the Risks They Present

In the past five years, the market capitalization for all cryptocurrencies has increased from about \$300 billion in June of 2018 to around \$2 trillion today,<sup>3</sup> a remarkable rate of growth. As a U.S. Senate policy committee recently observed, “[c]ryptocurrency has gone from obscure fad to a much more mainstream form of investment and finance.”<sup>4</sup> And according to the Congressional Research Service, “as of March 2020, there were more than 5,100 different cryptocurrencies worth about \$231 billion.”<sup>5</sup> The value of cryptocurrencies has continued to increase although published reports indicate that recent turmoil in those markets has reduced the market cap for digital assets by as much as two-thirds. According to the International Monetary Fund, “the market value of crypto assets surpassed \$2 trillion as of September 2021—a ten-fold increase since early 2020”;<sup>6</sup> and according to the November report on stablecoins issued by the President’s Working Group on Financial Markets (“PWG”), the Federal Deposit Insurance Corporation (“FDIC”), and the Office of the Comptroller of the Currency (“OCC”), 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.”<sup>7</sup> Research conducted in connection with a House Financial Services Committee hearing on stablecoins held just months after the PWG

<sup>3</sup> See CoinMarketCap, “Global Cryptocurrency Charts[,] Total Cryptocurrency Market Cap”; and Speech by Acting Comptroller of the Currency Michael J. Hsu to the Institute of International Economic Law (Apr. 8, 2022) (providing market size estimates and estimating the overall size of the cryptocurrency market at “around \$2 trillion”).

<sup>4</sup> Senate Republican Policy Committee, “Cryptocurrency Goes Mainstream” (Apr. 7, 2022).

<sup>5</sup> Congressional Research Service, “Cryptocurrency: The Economics of Money and Selected Policy Issues,” at “summary” (Apr. 9, 2020).

<sup>6</sup> Dimitris Drakopoulos, Fabio Natalucci and Evan Papageorgiou, “Crypto Boom Poses New Challenges to Financial Stability,” International Monetary Fund Blog (Oct. 1, 2021).

<sup>7</sup> 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.

report was released found that “[a]s of February 3, 2022, stablecoins reached an estimated \$174 billion in market capitalization.”<sup>8</sup>

Private estimates show a similar, if not more rapid, rate of increase – suggesting as much as a 600 percent increase in the stablecoin market segment from 2020 to 2021.<sup>9</sup> And the rate of growth is even faster when looking at specific cryptocurrency and stablecoins.<sup>10</sup> Just two cryptocurrencies, Bitcoin and Ethereum, represent a total market capitalization of more than \$537 billion; and three stablecoins – Tether, USD Coin, and Binance USD – collectively represent more than \$141.3 billion in market capitalization as of June 17.<sup>11</sup>

Alarming, this growth has occurred in an ecosystem without comprehensive and consistent supervision and examination of cryptocurrency and stablecoin issuers and arrangements. As a result, matters routinely addressed in the supervision and examination processes of regulated financial institutions – matters such as capital and liquidity, reserve maintenance and management, operational risk, third party risk management, data security, data privacy, and anti-money-laundering and sanctions compliance – are often left unaddressed, resulting in the market and end-users being exposed to the resulting risks.<sup>12</sup> These risks are not merely theoretical.<sup>13</sup> For example, issuers have abruptly decided to shut down operations/failed, and crypto-asset service providers have frozen accounts/cut off customers’ access to their digital assets;<sup>14</sup> arrangements have suffered massive, sudden shocks due to internal and external manipulation and attack, including cyberattack;<sup>15</sup> issuers have been found to have

<sup>8</sup> 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. *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).

<sup>9</sup> *See* Timothy G. Massad, “Regulating stablecoins isn’t just about avoiding systemic risk,” Brookings (Oct. 5, 2021); *and* Andrew Ross Sorkin, et al., “Here Come the Crypto Rules,” *The New York Times* (Sept. 24, 2021) (providing estimates that equate to an approximate 600% increase from 2020 to 2021).

<sup>10</sup> *See, e.g.*, CoinMarketCap, “Bitcoin,” at Market Cap (ALL) (showing a greater-than-2500% increase in market capitalization for Bitcoin from 2017 to 2022) (Jan. 31, 2022); CoinMarketCap, “Binance USD,” at Market Cap (1Y) (showing a 1000% increase in market capitalization for Binance USD in the past year) (Jan. 31, 2022); *and* “USD Coin,” at Market Cap (1Y) (showing a more-than-800% increase in market capitalization for USD Coin in the past year).

<sup>11</sup> As of June 17, 2022. *See* CoinMarketCap.com, providing market capitalization figures, and major cryptoassets by percentage of total market capitalization.

<sup>12</sup> Although some proponents of stablecoins suggest that state money transmitter licensing regimes are sufficient to address the risks presented by stablecoins, state money transmitter licensing regimes largely pre-date the development of stablecoins, are often not fit for purpose, and may not even cover stablecoin arrangements at all.

<sup>13</sup> 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).

<sup>14</sup> *See, e.g.*, “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); Tomio Geron and Yuliya Chernova, “‘Stablecoin’ Project Basis Is Shutting Down After Raising \$135 Million,” *The Wall Street Journal* (Dec. 13, 2018); Vicky Ge Huang, “Big Crypto Lender Celsius Freezes All Account Withdrawals,” *The Wall Street Journal* (June 13, 2022); *and* Wilson, Lang & Howcroft, “Crypto contagion fears spread after Celsius Network freezes withdrawals,” Reuters (June 14, 2022).

<sup>15</sup> *See* Emily Nicolle, “Crypto.com suspends withdrawals after ‘unauthorized activity,’” *Los Angeles Times* (Jan. 17, 2022) (noting that cryptocurrency and stablecoin wallet provider crypto.com stopped all deposits and withdrawals

made material misrepresentations about backing/reserve status;<sup>16</sup> arrangements have suffered from developmental difficulties and design challenges;<sup>17</sup> misuse has presented significant anti-money laundering and terrorist financing (“AML/CFT”) concerns;<sup>18</sup> and run and contagion concerns have arisen.<sup>19</sup>

The protection of digital asset users, including businesses and consumers, and the financial system from the risks associated with cryptocurrency and stablecoins is far 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

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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). See also U.S. Securities and Exchange Commission, “Investor Alert: Bitcoin and Other Virtual Currency Investments” (May 7, 2014) (noting the risk that crypto currency exchanges may stop operating or permanently shut down due to fraud, technical glitches, hackers or malware).

<sup>16</sup> 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 (finding that material misrepresentations had been made about the backing of Tether). See also Zeke Faux, “Anyone Seen Tether’s Billions?” Bloomberg (Oct. 7, 2021) (examining Tether’s backing, as well key officers of Tether).

<sup>17</sup> See Nivesh Rustgi, “Algorithmic Stablecoin Crashes 50% as Devs Scramble for a Fix,” Crypto Briefing (Apr. 7, 2021) (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) (noting that algorithmic stablecoins have inherent design flaws that make them unstable); and Muyao Shen, “How \$60 Billion in TerraCoins Went Up in Algorithmic Smoke,” Bloomberg (May 21, 2022) (detailing the extreme instability of the algorithmic stablecoin TerraUSD and its sister token Luna).

<sup>18</sup> See Timothy B. Lee, “Janet Yellen Will Consider Limiting the Use of Cryptocurrency,” WIRED (Jan. 22, 2021) (noting that Secretary Yellen has suggested the government should “examine ways in which [it] can curtail the [ ] use [of certain digital currencies] and make sure that [money laundering] doesn’t occur through those channels”); and Harry Robertson, “Janet Yellen says ‘misuse’ of cryptocurrencies like bitcoin is a growing problem, as regulators increase scrutiny after surge in interest,” Business Insider (Feb. 11, 2021) (quoting Janet Yellen as saying that “misuse” of cryptocurrencies is a “growing problem”).

<sup>19</sup> See Bloomberg, “The Next Stablecoin Collapse Could Be a Lot Worse” (June 1, 2022) (warning of potential run and contagion risks and their repercussions in financial markets); and Speech by Acting Comptroller of the Currency Michael J. Hsu, *supra* note 3 (making note of contagion risk as it relates to stablecoins).

statutes and individual state interpretations,<sup>20</sup> and to developing state regulatory schemes.<sup>21</sup> To address these risks, including the key stablecoin-related risks identified in the PWG’s “Report on STABLECOINS,”<sup>22</sup> a comprehensive federal prudential framework applying standards that are equivalent to those that apply to depository financial institutions when engaged in functionally similar activities is essential. In addition, banks, which are subject to comprehensive supervision and regulatory frameworks that help ensure their digital-asset-related activities are conducted safely and soundly, require additional clarity from federal regulators to ensure continued, safe, sound, and responsible engagement in digital-asset-related activities.<sup>23</sup>

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<sup>20</sup> 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. 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) (noting that some states have “amended their money transmitter statutes to include or *exclude virtual currencies explicitly*”) (italics added for emphasis); California Department of Financial Protection & Innovation, “Re: \_\_\_\_\_-Opinion Request” letter (Oct. 4, 2019) (stating that the Department had not concluded whether cryptocurrency is money and falls under California’s banking or money transmission laws); and Pennsylvania Department of Banking, “Money Transmitter Act Guidance for Virtual Currency Businesses” (2017/2018) (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).

<sup>21</sup> See, e.g., New York State Department of Financial Services, “Virtual Currency Guidance” (June 8, 2022) (constituting guidance to bit license holders and NY chartered limited purpose trust companies that issue U.S. dollar-backed stablecoins, and providing requirements that relate to (i) redeemability, (ii) assets backing stablecoin(s), and (iii) attestations about the backing assets).

<sup>22</sup> Including: (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. (See “Report on STABLECOINS,” *supra* note 7, pp. 1-3 & 15-17.)

<sup>23</sup> Although federal financial regulators have given some attention to the digital-asset-related activities of banks, and generally recognized the importance of coordinated clarity on the topic, the agencies have not publicly adopted uniform views or supported an approach that would permit banks to engage in all digital-asset-related payments and financial activities that non-banks engage in, subject to fundamental safety and soundness requirements. In fact, prudential regulators have only addressed a handful of crypto- and digital-asset-related activities. See OCC Interpretive Letter #1170 (July 2020) (permitting banks to engage in cryptocurrency custody services); OCC Interpretive Letter #1172 (Oct. 2020) (permitting banks to hold stablecoin reserves); OCC Interpretive Letter # 1174 (Jan. 2021) (permitting banks to use independent node verification networks and stablecoins for payment activities); OCC Interpretive Letter # 1179 (Nov. 2021) (clarifying that the digital-asset-related activities addressed in letters 1170, 1172 and 1174 are legally permissible provided a bank can demonstrate to its supervisory office that it has controls in place to conduct the activity in a safe and sound manner); Federal Reserve, FDIC, OCC, “Joint Agency Statement [on crypto-asset policy sprint]” (Nov. 23, 2021) (recognizing the importance of federal banking agencies providing coordinated and timely clarity about crypto-assets and safety and soundness, consumer protection, and compliance with applicable laws and regulations, including anti-money laundering and illicit finance statutes and rules); “Report on STABLECOINS,” *supra* note 7; and FDIC FIL-16-2022 (Apr. 2022) (informing FDIC-supervised institutions of the need to notify the FDIC if currency engaged in, or of the intent to engage in, any activities involving or related to crypto or digital assets).

## B. Central Bank Digital Currency

Recently, the U.S. government has shown an interest in the potential development of a U.S. CBDC. In January, the Board of Governors of the Federal Reserve System (“Fed”) released its paper, “Money and Payments: The U.S. Dollar in the Age of Digital Transformation,” as the “first step” in the consultative process the Fed is pursuing to explore whether a U.S. central bank digital currency (“CBDC”) would be beneficial.<sup>24</sup> And in March the White House issued its Executive Order on “Ensuring Responsible Development of Digital Assets,” dictating policy and actions on CBDC that includes analysis of the potential implications of a U.S. CBDC on a number of areas, continued research of CBDC, and an assessment of the legislative changes necessary for the U.S. to issue a CBDC.<sup>25</sup>

After careful consideration,<sup>26</sup> The Clearing House believes that the serious risks to the banking system that a CBDC would pose – risks that cannot be adequately controlled, regardless of proposed mitigants (*e.g.*, intermediation, holding limits, etc.) – are not justified in light of the fact that every policy goal thus far articulated in support of a CBDC can be addressed through less risky, more efficient, and more economical alternatives that are either readily available in the market today, or are under development by the private sector (*see* Appendix A).<sup>27</sup> Additionally, a U.S. CBDC is unlikely to be an effective tool for the purposes for which it has been advanced (*e.g.*, financial inclusion and to preserve the status of the U.S. dollar as a global reserve currency). It is for these reasons that trade organizations representing every type of bank in the U.S., including small, minority, community depository institutions and credit unions, recently wrote to Congress in opposition to a CBDC, citing the lack of compelling use cases for a CBDC and the significant risks a U.S. CBDC poses.<sup>28</sup>

The case for a U.S. CBDC is far from compelling when one considers: (1) the long history in the U.S. of privately-issued money (and the proven ability of regulatory frameworks to address issues associated with private money);<sup>29</sup> (2) that the dollar is largely digital today and commercial bank money

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<sup>24</sup> Board of Governors of the Federal Reserve System, “Money and Payments: The U.S. Dollar in the Age of Digital Transformation” (Jan. 14, 2022).

<sup>25</sup> White House, “Executive Order on Ensuring Responsible Development of Digital Assets,” at “Sec. 4. Policy and Actions Related to a United States Central Bank Digital Currency” (Mar. 9, 2022).

<sup>26</sup> *See* The Clearing House, “On the Road to a U.S. Central Bank Digital Currency — Challenges and Opportunities” (July 2021) ([link](#)) (highlighting significant implication of certain design and implementation choices associated with a U.S. CBDC and making specific recommendations about CBDC).

<sup>27</sup> *See* Letter from Robert C. Hunter, Director of Legislative & Regulatory Affairs and Deputy General Counsel, The Clearing House, to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System (May 20, 2022) ([link](#)) (providing comments to the Fed in response to its consultative paper on CBDC).

<sup>28</sup> Letter from the American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Credit Union National Association, National Association of Federally-Insured Credit Unions, National Bankers Association, and The Clearing House to The Honorable Maxine Waters and Patrick McHenry, House Financial Services Committee (May 25, 2022) ([link](#)).

<sup>29</sup> *See* Bruce Champ, “Private Money in our Past, Present, and Future,” Federal Reserve Bank of Cleveland (Jan. 1, 2007 (providing a historical overview of private money and money issued by specific community groups); “On the Road to a U.S. Central Bank Digital Currency — Challenges and Opportunities,” *supra* note 26, p. 7; and Gary B. Gorton and Jeffery Zhang, “Taming Wildcat Stablecoins,” University of Chicago Law Review, Vol. 90, forthcoming (Mar. 3, 2022).



successfully serves as a low-risk settlement asset;<sup>30</sup> (3) that the status of the U.S. dollar as a global reserve currency has to do with a number of factors, such as respect for the rule of law, stable government, well-regulated and efficient markets, sound U.S. economic policies, etc.,<sup>31</sup> not the form it takes (commercial bank money is already in digital form);<sup>32</sup> and (4) that payment systems in the U.S. are diverse, highly competitive, and provide consumers and businesses with an extraordinary degree of choice at low cost.<sup>33</sup> It is even more difficult to make a case for the development of a U.S. CBDC when one factors in the significant private and public sector efforts that are already under way to improve cross-border payments, facilitate person-to-person payments, expand operating hours (the operating hours of CHIPS and Fedwire are not presently 24x7x365, but they could be), and reduce frictions in payments – all of which will continue irrespective of U.S. or foreign CBDC. In short, there is no obvious benefit from a U.S. CBDC.

Were a CBDC to nevertheless be introduced in the U.S., it would not likely impact the holding of privately-issued digital currency,<sup>34</sup> but would pose serious risks to the banking system and the economy that cannot be adequately controlled.<sup>35</sup> In particular, a CBDC would: (a) cannibalize bank deposits, as commercial bank money is converted into CBDC; (b) negatively impact lending and the cost of credit; (c) have a potentially destabilizing effect on foreign financial systems where individuals and businesses may prefer the relative safety and security of a U.S. central bank obligation to an obligation of their home central banks; (d) potentially expose the Fed to increased political pressures over time, particularly if it is

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<sup>30</sup> As of June 15, the Fed reported \$2,527,237,000,000 Federal Reserve notes outstanding. (See Federal Reserve, “7. Collateral Held against Federal Reserve Notes: Federal Reserve Agents’ Accounts” (as of Jun. 15, 2022).) In comparison, the total assets of commercial banks in the U.S. amounted to \$22,640,528,600,000. (See St. Louis Fed, “Total Assets, All Commercial Banks,” FRED Economic Data (as of Jun. 8, 2022).) Thus, much of what we think of today as money is commercial bank money that is digital in form.

<sup>31</sup> See Carol Bertaut, Bastian von Beschwitz & Stephanie Curcuru, “The International Role of the U.S. Dollar,” FEDS Note (Oct. 6, 2021) (concluding, among other things, that while “[a] shifting payments landscape could [ ] pose a challenge to the U.S. dollar’s [international] dominance ... it is unlikely that technology alone [(including the introduction and growth of official digital currencies)] could alter the landscape enough to completely offset the long-standing reasons the dollar has been dominant.”)

<sup>32</sup> See European Central Bank, “The international role of the euro, June 2021,” at Box 8 (running model simulations on the impact of a digital euro on the international role of the euro and concluding that a digital euro “would not necessarily be a game changer for the international role of the euro, which will continue to depend to a large extent on fundamental forces, such as stable economic fundamentals, size, and deep and liquid financial markets”).

<sup>33</sup> Congressional Research Service, “Central Bank Digital Currencies: Policy Issues,” pp. 15-18 & 24-25 (Feb. 7, 2022).

<sup>34</sup> There is no evidence that a CBDC would displace the availability or use of cryptocurrencies and stablecoins or impede their growth trajectory. Rather, there is evidence that \$2 trillion worth of cryptocurrency is held for purposes other than transactional purposes, with approximately \$180 billion in stablecoins supporting the larger cryptocurrency market by, for example, serving as a payment instrument. If true, and the vast majority of cryptocurrency is held for investment purposes, then such holding would not likely be affected by the introduction of a U.S. CBDC that did not pay interest. (See Speech by Acting Comptroller of the Currency Michael J. Hsu, *supra* note 3 (comparing the relationship between stablecoins and cryptocurrency to the relationship between the economy and total capital in the banking system, and observing that stablecoins are used to facilitate trading and lending involving cryptocurrency).)

<sup>35</sup> See “On the Road to a U.S. Central Bank Digital Currency — Challenges and Opportunities,” *supra* note 26; and Letter from Robert C. Hunter, *supra* note 27.

in a position of making interest rate changes to CBDC or determines holding limits; and (e) is likely increase cyber and operational risk related to the money supply, but, at a minimum, concentrate risk in a way that does not occur today with paper currency.<sup>36</sup> All of this is true regardless of whether a CBDC is “disintermediated” or “intermediated,” whether a CBDC pays interest, whether there are CBDC holding limits, or other approaches to risk mitigation are taken.<sup>37</sup>

Under a “non-intermediated,” or “disintermediated,” model, the central bank would offer accounts directly to business and individuals. Not a new idea (direct relationship between consumers and the Fed have been proposed since the 1980s), offering CBDC directly to consumers and businesses would nonetheless radically alter the mission and structure of the Fed/federal government and constitute an unprecedented role for the government, generally, in the lives of U.S. citizens and the public at large.<sup>38</sup> Under an “intermediated” model, the central bank would distribute CBDC through depository financial institutions, or possibly some other type of regulated entity/entities. While an intermediated model addresses some of the risks of CBDC by placing know-your-customer (“KYC”), anti-money-laundering (“AML”), and countering-the-financing-of-terrorism (“CFT”) screening and compliance obligations on the private sector, it is unclear that the private sector will want to take on the associated risks without a clear business case for doing so.

In terms of risk mitigants, a number of approaches have been proposed to limit the impact of a CBDC on the financial sector,<sup>39</sup> with the Fed itself suggesting that reduction in the aggregate amount of deposits at banks could be ameliorated by the CBDC either not paying interest or being subject to holding limits.<sup>40</sup> These mitigants are unlikely to be fully effective, or may result in downstream challenges for the Fed. For example, the non-payment of interest does not guarantee that cannibalization of commercial bank deposits will be adequately controlled. While a non-interest-bearing CBDC could be less attractive than a commercial bank deposit bearing interest, that would only hold true in high interest rate environments and in circumstances where the depositor was unconcerned about the risk of financial stability and capital preservation. In times of stress, depositors would undoubtedly choose the comparative safety of

<sup>36</sup> Letter from Robert C. Hunter, *supra* note 27, pp. 3-10.

<sup>37</sup> Risk mitigants that have been proposed in order to limit the impact of a CBDC on the financial sector are unlikely to be fully effective, or may result in downstream challenges for the Fed. For example, neither an approach of not paying interest, or the imposition of holding limits, is likely to be an effective solution. (See, e.g., Bank of Canada, et al., “Central bank digital currencies: foundational principles and core features” (2020), pp. 8 & 12 (noting the importance of mitigating risks and means of designing CBDC instruments in ways that seek to manage risks); and Bank of Canada, et al., “Central bank digital currencies: financial stability implications” (Sept. 2021), pp. 5 & 14 (proposing holding limits, transaction limits, and other safeguards to moderate CBDC usage and take-up).)

<sup>38</sup> See “Kahn, Rivadeneyra, and Wong, “Should the central bank issue e-money?” at pp. 10-11 (first circulated in Oct. 2017) (presented at the Federal Reserve Bank of Atlanta in 2017) (noting that “the idea of universal central bank accounts dates back to the ‘deposited currency’ scheme proposed [ ] [ ] [in] 1985”).

<sup>39</sup> See, e.g., Bank of Canada, et al., “Central bank digital currencies: foundational principles and core features” (2020), pp. 8 & 12 (noting the importance of mitigating risks and means of designing CBDC instruments in ways that seek to manage risks); and Bank of Canada, et al., “Central bank digital currencies: financial stability implications” (Sept. 2021), pp. 5 & 14 (proposing holding limits, transaction limits, and other safeguards to moderate CBDC usage and take-up).

<sup>40</sup> “Money and Payments: The U.S. Dollar in the Age of Digital Transformation,” *supra* note 24, p. 17.



a CBDC over commercial bank money even though it was not interest-bearing.<sup>41</sup> Essentially, a central bank liability carries with it guaranteed, immediate liquidity. A claim for deposit insurance does not, and is subject to insurance caps.<sup>42</sup> As a further example, holding limits are also likely to be ineffective because calibrating holding limits will be difficult, if not impossible, and holding limits will, however they are set, frustrate certain purposes for which CBDC has been advanced. Illustrative of this tension, evidence suggests, on one hand, that holding limits would need to be extremely low to prevent significant harm to small and community banks,<sup>43</sup> but, on the other hand, CBDC subject to holding limits likely cannot compete effectively with private sector cryptocurrencies to which no such holding limits apply, and cannot help preserve the role of the U.S. dollar in international trade and finance, as doing so would require large dollar transactions that would be impossible with holding limits.

Finally, historical lessons from direct competition between the federal government and the banking activities of the private sector demonstrate that unanticipated consequences can and do result. For example, lessons from the Postal Savings Program demonstrate that a government financial product designed to facilitate financial inclusion through offerings based on convenience and needs factors was susceptible to design alterations that intensified direct competition with the private sector. In the case of the Postal Savings Program, lagging demand for the savings product in areas where banking services were believed to be lacking or absent resulted in the government instituting higher-than-market interest rates to compete with the private sector.<sup>44</sup> Although the Fed has suggested that non-payment of interest could be important to a CBDC not cannibalizing bank deposits,<sup>45</sup> the inclusion of programmable features, such as allowing for interest to be paid, may be irresistible for policymakers or politicians in the future. Even if a CBDC is designed with no features that can potentially be manipulated, because of the effect a CBDC is likely to have on deposits and lending, the Fed may be pressured to address any shortfalls in credit markets. If the Fed was forced to take on a role as a supplier of credit to the public, it

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<sup>41</sup> See Fernandez-Villaverde, et al., “Central Bank Digital Currency: Central Banking for All?” Federal Reserve Bank of Philadelphia Working Paper 20-19, p. 27 (June 2020) (noting that the stability of a central bank during a crisis could cause depositors to “internalize” the security feature and could “attract[ ] all deposits away from the commercial banking sector” as the central bank becomes a “deposit monopolist.”)

<sup>42</sup> At present, the standard deposit insurance coverage limit is \$250,000 per depositor, per FDIC-insured bank. (See Federal Deposit Insurance Corporation, FAQs, “Can I have more than \$250,000 of deposit insurance coverage at one FDIC-insured bank?” (Dec. 8, 2021).)

<sup>43</sup> Statistical data on the size of bank deposits shows that the median value of transactional accounts in 2019 was quite low – \$5,300; and at least one community banker has publicly noted that seventy percent of the deposit accounts at his institution contain \$2,500 or less. (See Federal Reserve Bulletin, “Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances,” Vol. 106, No. 5 (Sept. 2020) (noting that the conditional median value of transaction accounts in 2019 was \$5,300, but that the mean value was about \$42,000, suggesting that high-value accounts skew the mean); and Interview of James Reuter, CEO and President of FirstBank in Lakewood, CO, by Rob Blackwell (noting that 70% of FirstBank’s consumer accounts had a balance below \$2,500 at one point in a one-year period).)

<sup>44</sup> See Patricia Hagan Kuwayama, “Postal Banking in the United States and Japan: A Comparative Analysis,” Columbia University Monetary and Economic Studies (May 2000), pp. 76-91 (noting that “geographic availability of depository services provided to areas not served by private banks ... [did] not prov[e] to be [a] major source of demand for postal savings” and that during a period of times from the mid-1930s to the 1950s, the Postal Savings Program offered interest rates that exceeded the rates offered by many private institutions to try to attract consumers, although the program ultimately fell out of favor and declined).

<sup>45</sup> “Money and Payments: The U.S. Dollar in the Age of Digital Transformation,” *supra* note 24, p. 17.

would represent a fundamentally new role for the Fed, with potentially significant ramifications, such as for the Fed to be subject to political pressure.

## II. Responses to Specific Questions Posed in the RFC

With respect to certain of the ITA’s questions relating to the competitiveness of U.S. digital assets businesses, the ways in which digital assets are being used in the provision of financial services, and technological developments associated with digital assets, The Clearing House provides the following comments:<sup>46</sup>

- **Question 2: What obstacles do U.S. digital asset businesses face when competing globally? How have these obstacles changed over the past five years and are any anticipated to disappear? Are there clearly foreseeable new obstacles that they will face in the future? What steps could the government take to remove, minimize, or forestall any obstacles?**

U.S. businesses, including banks, that are engaged in digital asset activities often compete with firms, both domestically and globally, that are governed by drastically different legal and regulatory frameworks, and with a significant degree of uncertainty. Disparate underlying regulatory frameworks and unclear regulatory requirements represent obstacles to competition that the federal government can directly address. In particular, The Clearing House believes that digital assets used for payments, and the transfer and issuance functions associated with them, should be brought within the regulatory perimeter on a national level, with standards that are equivalent to those that apply to depository financial institutions when engaged in functionally similar activities.

Further, obstacles faced by banks – including requirements for approval/non-objection before engaging in/continuing to engage in digital-asset-related activities, and guidance that applies more stringent capital requirements to crypto-assets custodied by banks than other assets for which banks provide custody services – should be addressed to ensure that essential banking, payment, transfer, and issuance functions can be performed within the highly regulated and supervised banking sector. Specifically, banks face significant supervisory headwinds from the OCC and other agency guidance that requires prior supervisory approval/non-objection before banks can engage in, or continue to engage in, digital-asset related activities – something non-banks do not face.<sup>47</sup> Additionally, recently-issued SEC staff accounting bulletin 121 (“SAB”), which was issued without prior notice, without the solicitation of comments and apparently without interagency coordination, renders it virtually impossible for banks to engage in certain key crypto-asset-related activities.<sup>48</sup> Addressing obstacles, such as these, that disadvantage banks from engaging in digital asset-related activities at a time when conducting these

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<sup>46</sup> The Clearing House is commenting on many, but not all, of the ITA’s questions.

<sup>47</sup> See OCC Interpretive Letter # 1179 and FDIC FIL-16-2022, *supra* note 23 (requiring prior notice and non-objection to regulators of ongoing or new digital-asset-related activities, even activities banks are expressly permitted to engage in).

<sup>48</sup> See SEC, “Staff Accounting Bulletin No. 121,” 87 Fed. Reg. 21,015 (Apr. 11, 2022) (providing that entities should record a liability and corresponding asset on their balance sheets for crypto-assets safeguarded for their platform users, with both the liability and asset measured at the fair value of the crypto-assets, which is a significant departure from the existing accounting treatment of safeguarded assets held in a custody account).

activities in the safe, sound banking perimeter would be most advantageous to the market and could protect consumers from many of the risks that are prevalent in the market today, is vital. Investors and customers will be worse off without the participation of regulated banking organizations in this market, as customers and the market would benefit from the entry of highly regulated banks with sophisticated risk managements capabilities into the cryptocustody market. Consistent with the “whole of government” approach articulated in the Executive Order, the relevant agencies should evaluate the comprehensive legal, regulatory and supervisory frameworks applicable to banking organizations that addresses the risks identified by the SEC and determine that banks should be excluded from the accounting treatment in the SAB, thereby enabling them to provide custody services for cryptoassets.<sup>49</sup>

Finally, rules and guidance promulgated under a federal framework must be consistent, clear and provide U.S. businesses engaged in digital asset activities with the certainty necessary to compete in the U.S. and global marketplaces.<sup>50</sup>

- **Question 3: How does the current U.S. regulatory landscape affect U.S. digital asset businesses’ global competitiveness? Are there future regulatory shifts that could support greater global competitiveness of U.S. digital asset businesses? How does the U.S. regulatory landscape for digital assets compare to that in finance or other comparable sectors?**

The absence of uniform federal rules regulating U.S. businesses’ digital asset activities means that U.S. businesses engaged in the same or similar digital asset activities can be regulated in very different ways. For example, today, most stablecoin arrangements offered by nonbanks are not regulated or are only loosely regulated through an uneven patchwork of state money transmitter licensing laws, which are not fit for purpose.<sup>51</sup> As a result, risks presented by these digital assets, including risks to consumers and business that hold digital assets, go unaddressed.<sup>52</sup> Developing a comprehensive, federal prudential framework applying common standards to digital asset issuance, transfer, and handling that are equivalent to those that apply to depository financial institutions when engaged in functionally similar digital-asset activities addresses these risks, enables U.S. businesses to compete on a level, and risk-balanced, playing field, and supports greater global competitiveness of U.S. digital asset businesses subject to such a framework. In large part, the global competitiveness today of U.S. financial institutions and the dollar is due to the underlying reliability and predictability U.S. laws and regulations.<sup>53</sup>

<sup>49</sup> See Bank Policy Institute, “BPI, ABA and SIFMA Comment on Staff Accounting Bulletin No. 121” (June 23, 2022) ([link](#)); and Letter to Senator Cynthia Lummis, from the Securities Industry and Financial Markets Association and Bank Policy Institute, “Re: SEC Staff Accounting Interpretation Regarding Crypto-Assets” (May 19, 2022) ([link](#)).

<sup>50</sup> See “Joint Agency Statement [on crypto-asset policy sprint]” *supra* note 23 (recognizing the importance of providing timely, clear guidance on digital-asset-related topics).

<sup>51</sup> See *supra* pp. 4-5 & note 20.

<sup>52</sup> See *supra* pp. 3-4.

<sup>53</sup> Part of the attractiveness of the dollar today is the fact that U.S. commercial banks are generally averse to extra-judicial seizures of deposits, which gives depositors confidence in U.S. property rights and the rule of law generally. (See Jeremy Mark, “US-China financial market tensions: The road to riches or ruin?” Atlantic Council (Jan. 31, 2022) (noting that Chinese government data protection laws and requirements are impacting U.S. corporate behavior and investment). See also “U.S. Firms in China Cautious About Expanding Amid Crackdowns,” Bloomberg News (Mar. 7, 2022) (noting that U.S. firms reported concern about increasing investment in China due to regulatory uncertainty and concerning Chinese state actions); and Department of Homeland Security, “Data Security Business

➤ **Question 4: What are the primary challenges to U.S. technological leadership in the digital assets sector?**

U.S. technological leadership in the digital assets sector, and the use of digital assets for financial services purposes, would benefit from uniform federal rules, greater legal/regulatory certainty, and the creation of consistent protections for digital asset users.<sup>54</sup> Building greater certainty for suppliers and users of digital-asset-based financial services, and confidence in digital-asset-based systems, will help products, services, and platforms establish network effects.<sup>55</sup> U.S. technological leadership would also benefit from an architecture policy<sup>56</sup> that prioritizes exchangeability between cryptocurrency/stablecoins and commercial bank money,<sup>57</sup> the most widely-used settlement asset today.<sup>58</sup>

➤ **Question 6: What is the future role of digital assets mining in the U.S. digital assets sector? Can digital assets be compatible with a low-carbon economy that emphasizes renewable energy? If so, how? In what ways can the U.S. government and U.S. companies drive competitive, sustainable development of digital assets?**

Technology used in connection with specific digital asset implementations can raise significant policy considerations and often requires decisionmakers to make tradeoffs. For example, distributed ledger technology (“DLT”), depending on how it is implemented, may offer a high level of resiliency and data integrity but can raise serious environmental concerns, putting certain DLT-based digital asset implementations in tension with U.S. environmental policy.<sup>59</sup> DLT-based digital asset implementations

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Advisory” (Dec. 2020) (advising U.S. businesses of risks associated with doing business with firms influenced by the Chinese Communist Party and with efforts by the People’s Republic of China to monitor and record data.)

<sup>54</sup> See Jacques Pelkmans and Andrea Renda, “Does EU Regulation Hinder or Stimulate Innovation?” Center for European Policy Studies Special Report No. 96 (Nov. 19, 2014) (finding that regulation can stimulate innovation where the regulation is performance- or outcome-based and provides clarity to the market).

<sup>55</sup> See Tim Stobierski, “What are Network Effects?” Harvard Business School Business Insights (Nov. 12, 2020).

<sup>56</sup> See Speech by Acting Comptroller of the Currency Michael J. Hsu, *supra* note 3 (characterizing this concern as “interoperability across stablecoins,” and noting that “an enormous amount of economic activity take place efficiently because of the fungibility of modern-day commercial bank deposits).

<sup>57</sup> Today, it can be expensive to transfer a digital asset from one wallet to another; and redeeming digital assets for U.S. dollars (presumably commercial bank money) can also be quite costly. (As of Jun. 6, 2022, transferring a stablecoin from one wallet to another wallet cost approximately \$5 (see Etherscan.com); in comparison, the same transfer cost an estimated \$22 on Nov. 5, 2021, and \$54 on Nov. 22, 2021 (see Alexis Goldsten, “Written Testimony before the Committee on Banking, Housing, and Urban Affairs, United States Senate,” p. 15 (Dec. 14, 2021)); and redeeming tether’s USDT (the most popular payments stablecoin by market capitalization) for fiat currency (withdrawal) costs the greater of \$1,000 or 0.1% of the amount being redeemed (see Tether, “Fees” (Jun. 21, 2022)).)

<sup>58</sup> See *supra* note 30.

<sup>59</sup> See University of Cambridge, Cambridge Bitcoin Electricity Consumption Index; *and* Total World Production & Consumption estimates (noting that the environmental impact of distributed ledger-based systems can be significant). See also Peter Stella, “Who Will Afford to Use Bitcoin?” (International Monetary Fund paper abstract) (2021) (comparing cost and efficiency of Bitcoin blockchain and six centralized fiat money payments systems — TARGET2, FEDWIRE/CHIPS, NACHA ACH, Hong Kong CHAPS, UK CHAPS, and Payments Canada, and concluding that although technological innovations may improve the relative efficiency of POW in cryptocurrencies and digital

may also not be as decentralized as one might think. According to recent research commissioned by the Defense Advanced Research Projects Agency, DLT, and blockchains specifically, are not immutable, are subject to interference and disruption, and present technological inefficiencies and concerns (*e.g.*, the vast majority of nodes do not meaningfully contribute to the network).<sup>60</sup> With respect to payments, DLT-based digital asset implementations may not enable transaction processing speeds customary for commercial and consumer payment systems.<sup>61</sup> Throughput requirements, and other factors, such as trust parameters, appear to be the main reasons why the Federal Reserve Bank of Boston has chosen to not focus on DLT as the operational platform for experimental CBDC administered by a central party.<sup>62</sup> Another example of a technology decision that has policy tradeoff implications is whether to use open-source code to develop a digital asset.<sup>63</sup> Proponents of using open-source code note the benefits of leveraging the large community of developers that look to improve the code and identify and fix bugs, ultimately leading to a more secure, resilient digital asset. Reliance on open-source code for important digital asset design or functions is not, however, without risks to the stability and integrity of the digital asset as the openness may provide opportunities to introduce viruses that cause programming changes or threaten the integrity of the digital asset. Design choices such as these are of critical importance to central bank digital currencies,<sup>64</sup> as well as to any widely used digital asset.<sup>65</sup>

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currencies, there are likely to remain significant differences based on asymmetrical incorporation of knowledge and party identity that will make cryptocurrencies and digital currencies less efficient).

<sup>60</sup> Sultanik, et al., “Are Blockchains Decentralized?” (June 2022).

<sup>61</sup> See, *e.g.*, Aaron Klein and George Selgin, “We shouldn’t have to wait for FedNow to have faster payments,” Brookings (Mar. 3, 2020) (highlighting the need for faster payments as a matter of public policy). Note: A payment over the RTP network, a real-time payment system in the US, is completed, with good funds available to the payee of the payment, in a matter of seconds, whereas a payment using Bitcoin could take anywhere from 10 minutes to an hour or more depending on the number of end points that are required to confirm the transaction. (See Steve Buchko, “How Long do Bitcoin Transactions Take?” Coin Central (De. 12, 2017) (noting that the average time to mine a block is 10 minutes and that the Bitcoin community has set a standard of 6 confirmation, meaning that a transfer takes approximately 60 minutes before it can be considered complete); “Average time it take to mine a Bitcoin from January 2017 to April 13, 2021,” Statista (Apr. 14, 2021) (estimating the average time to mine a Bitcoin at around 10 minutes; meaning that a transaction would be completed in around an hour); *and* Alexandria/Decentralized Dog, “How Long Does a Bitcoin Transaction Take?” (Sept. 30, 2020) (noting that the average time for a Bitcoin-based payment is 10 minutes, but that transaction times can vary significantly).)

<sup>62</sup> See Federal Reserve Bank of Boston and Massachusetts Institute of Technology Digital Currency Initiative, “Project Hamilton Phase 1[,] A High Performance Payment Processing System Designed for Central Bank Digital Currencies,” pp. 3-5 (Feb. 3, 2022) (noting baseline requirements of “time to finality of less than five seconds, throughput of greater than 100,000 transactions per second, and wide-scale geographic fault tolerance,” and model performance).

<sup>63</sup> See Federal Reserve Bank of Boston, “The Federal Reserve Bank of Boston announces collaboration with MIT to research digital currency,” FRB Boston Press Release (Aug. 13, 2020) (detailing a multi-year collaboration between the Reserve Bank and MIT to “perform technical research related to a central bank digital currency”); *and* MIT, “Digital Currency Initiative” and “Central Bank Digital Currency” (noting that MIT “supports open source core developers, research scientists, and students committee to harnessing these technologies for the public good).

<sup>64</sup> “On the Road to a U.S. Central Bank Digital Currency — Challenges and Opportunities,” *supra* note 26, pp. 12-13.

<sup>65</sup> See E. Napoletano and Benjamin Curry, “Proof of Stake Explained,” Forbes Advisor (noting the benefits of a proof-of-stake design for digital assets).



- **Question 7: What impact, if any, will global deployment of central bank digital currencies (CBDCs) have on the U.S. digital assets sector? To what extent should the design of a U.S. CBDC (e.g., disintermediated or intermediated, interoperable with other countries' CBDCs and other domestic and international financial services, etc.) impact the sector?**

Where CBDCs are being pursued elsewhere in the world (only three central banks have issued CBDC),<sup>66</sup> these projects are extremely limited in size,<sup>67</sup> and, in at least one instance, experienced significant operational difficulties as the result of an outage.<sup>68</sup> Additionally, countries already issuing CBDC generally fall into two categories: (1) countries with limited, under-developed and/or unreliable payments infrastructure,<sup>69</sup> and (2) countries led by authoritarian regimes focused on exercising greater control, and which view CBDC as a tool for such control.<sup>70</sup> Given the diversity, reliability and stability of the U.S. payments infrastructure, and bedrock U.S. values that run counter to those of authoritarian states, any decision about a U.S. CBDC should be made independently from the global deployment of CBDCs.

To the extent the U.S. nevertheless proceeds with a CBDC, it will be essential that the central bank distribute CBDC through depository financial institutions or some other type of highly-supervised and regulated entity because the government has neither the infrastructure nor the manpower today to carry out the necessary KYC, AML and CFT screenings that would be associated with CBDC. Yet while an intermediated model addresses AML/CFT risk by placing screening and compliance obligations on the private sector, it is unclear that the private sector will want to take on the associated risks without a clear business case for doing so. So far, such a business case has not been articulated. As holding CBDC would be a type of custodial service provided by banks, and custodial services typically operate on a very low margin,<sup>71</sup> fees will be necessary to make a custodial holding model viable, particularly if

<sup>66</sup> While many countries report some form of exploration or evaluation of CBDC, including pilots, only three central banks have launched a CBDC. (See [Atlantic Council](#), “Central Bank Digital Currency Tracker” (June 9, 2022) (stating that 10 countries have launched a CBDC) (note, however, that the Organization of Eastern Caribbean States is comprised of 9, not 7, states, and the Bank of Jamaica says the JAM-DEX is “coming soon” (see Bank of Jamaica, “Jamaica’s Central Bank Digital Currency (CBDC) - JAM-DEX” (June 13, 2022)).) Thus, effectively, three central banks – the Central Bank of the Bahamas, the Eastern Caribbean Central Bank and the Central Bank of Nigeria – have launched a CBDC.)

<sup>67</sup> At the end of 2021, there were approximately \$300,000 worth of Sand Dollars in circulation, for use only in the Bahamas; and the JAM-DEX initial issuance will be J\$230MM (about \$1.5MM U.S. dollars), for example. (See CBDC Insider, “Central Bank Estimates ‘North of \$300K’ Sand Dollars in Circulation” (Nov. 2, 2021); and “Jamaica’s Central Bank Digital Currency (CBDC) - JAM-DEX,” *supra* note 66.)

<sup>68</sup> The Eastern Caribbean Central Bank’s DCash CBDC was offline for more than a month earlier this year. (See Jim Wyss, “A Bold Caribbean Experiment in E-Cash Hits a Major Obstacle,” *Bloomberg* (Feb. 21, 2022).) While one might think the U.S. is immune from such challenges, it is not. (See Matt Egan, “The Federal Reserve suffers widespread disruption to payment services,” *CNN business* (Feb. 25, 2021).)

<sup>69</sup> See Alfonso, Tombini and Zampolli, “Retail payments in Latin America and the Caribbean: present and future,” *Bank for International Settlements Quarterly Review*, pp. 71-74 (Dec. 2020) (noting the high cost and limited reach of Caribbean payment systems).

<sup>70</sup> See Rana Mitter and Elsbeth Johnson, “What the West Gets Wrong About China,” *Harvard Business Review* (May-June 2021)).

<sup>71</sup> This assumes that CBDC would remain a liability of the central bank, and not of an intermediary, such as a bank, which is a foundational characteristic. TCH notes, however, that “Staff Accounting Bulletin No. 121,” *supra* note 48,

intermediaries are going to be responsible for KYC, AML/CFT screening and other compliance obligations. In short, in an intermediated model, some fee structure would have to support the CBDC framework, most likely meaning that CBDC would not be cost free for use by consumers and businesses, and likely would not be a cheaper form of payment as some have argued.

In terms of how a U.S. CBDC might interact with other countries' CBDCs and other domestic and international payment systems, The Clearing House makes two observations: (1) work is underway today to link real-time payment systems around the world, making near-immediate cross-border payments possible, and obfuscating any need for CBDC to enable fast, cross-border payments;<sup>72</sup> and (2) commercial bank money is already digital, low-risk, and an effective settlement asset. Harmonious operation of a U.S. CBDC alongside existing U.S. paper currency (Federal Reserve notes) and existing U.S.-currency-denominated systems (systems denominated in U.S. dollars and that permit transfers into and out of commercial bank money) will require CBDC to be exchangeable for federal reserve notes or commercial bank money.

Ultimately, the substantial risks associated with possible issuance of a U.S. CBDC outweigh any potential benefits of a CBDC, particularly in light of the fact that the policy goals articulated in support of a CBDC can be addressed through less risky, more efficient, and more economical alternatives readily available in the market today (see Appendix A).<sup>73</sup>

➤ **Question 9: What other factors related to economic competitiveness should Commerce consider in the development of the framework?**

U.S. payment systems are diverse, well-functioning, provide consumers and businesses with an extraordinary degree of choice, and are constantly improving. For example, The Clearing House, which introduced its real-time payments system, the RTP network, several years ago,<sup>74</sup> already has the technical connectivity to reach roughly 75% of the demand deposit accounts in the country.<sup>75</sup> The RTP network gives the banking industry a modern platform for domestic payments, complete with rich data capabilities and immediate payment confirmation,<sup>76</sup> and enables instantaneous settlement and availability, so funds that are transferred can be used or withdrawn as cash within seconds.<sup>77</sup> Additionally, The Clearing House, through its IXB Initiative, has demonstrated the feasibility of linking

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defines "crypto-asset" as "a digital asset that is issued and/or transferred using distributed ledger or blockchain technology using cryptographic techniques" and might therefore require CBDC, if designed in such a way as to meet the definition of "crypto-asset," to be presented by banks as a liability on their balance sheets and to be recognized as an asset at the same time. Although specific design elements of a CBDC are not yet determined, and TCH believes it is too soon to assess the applicability of SAB 121 to a U.S. CBDC distributed through banks, such a treatment would dramatically raise the cost to banks or providing custodial services for CBDC.

<sup>72</sup> See The Clearing House, SWIFT, and EBA CLEARING, "EBA CLEARING, SWIFT, and The Clearing House join forces to speed up and enhance cross-border payments" (Oct. 11, 2021) ([link](#)); and "EBA CLEARING, SWIFT, and The Clearing House to deliver pilot service for immediate cross-border payments" (Apr. 28, 2022) ([link](#)).

<sup>73</sup> See Letter from Robert C. Hunter, *supra* note 27, p. 1.

<sup>74</sup> The Clearing House, "First New Core Payments System in the U.S. in more than 40 Years Initiates First Live Payments" (Nov. 14, 2017) ([link](#)).

<sup>75</sup> See Central Banking, "Real-time payment systems for the real world" (Aug. 16, 2021).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

the RTP network with other real-time payments systems around the world and is proceeding with an actual pilot that will enable real-time, cross-border payments that will settle in real-time or near-real-time.<sup>78</sup>

The RTP network and IXB Initiative are not the only improvements occurring in U.S. payment systems. Examples abound. The Fed is building its real-time payment network, FedNow;<sup>79</sup> banks are leading innovation in domestic person-to-person, or P2P, payments with Early Warning Services' Zelle service, which enables individuals to electronically transfer money from their bank account to another domestic registered user's bank account, typically within minutes and without cost;<sup>80</sup> and banks continue to innovate on their own, and through partnerships, to meet the changing financial needs of households and individuals.<sup>81</sup>

Policymakers considering the development of a digital asset framework should consider improvements already underway to U.S. payment systems;<sup>82</sup> the substantial room for growth for certain of these improvements;<sup>83</sup> and the significant promise of modifications to existing systems, including extending operating hours, adopting uniform standards, and implementing, globally, SWIFT GPI.<sup>84</sup>

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<sup>78</sup> See "EBA CLEARING, SWIFT, and The Clearing House join forces to speed up and enhance cross-border payments," *supra* note 72.

<sup>79</sup> See The Federal Reserve FRBServices.org, "About the FedNow[SM] Service" (2022); The Federal Reserve FRBServices.org, "FedNow Instant Payments"; and The Federal Reserve FRBServices.org, "Service Provider Showcase" (2022) (providing details on the Fed's real-time payments service, FedNow). See also Board of Governors of the Federal Reserve System, "Federal Reserve announces details of new 24x7x365 interbank settlement service with clearing functionality to support instant payments in the United States" (Aug. 6, 2020) (noting a target launch date of 2023 or 2024).

<sup>80</sup> See Zelle, "What's Zelle®? Glad you asked!" (2022); Zelle, "How long does it take to receive money with Zelle®?" (2022); and Zelle, "Sending Money Safely with Zelle®" (2022) (noting that transactions are typically completed within minutes and generally do not incur transaction fees).

<sup>81</sup> The Clearing House, et al., "Delivering Financial Products and Services to the Unbanked and Underbanked in the United States – Challenges and Opportunities," pp. 21-27 (May 2021) ([link](#)).

<sup>82</sup> See *supra* pp. 14-16 and notes 72, 79 & 80.

<sup>83</sup> As of 2021, there were more than 60 real-time payments systems, covering 65 countries/territories, in operation, and more under development. Linking these systems across the globe will allow cross-border payments to clear and settle in real-time or near real-time. (See "Real-time payment systems for the real world," *supra* note 75.)

<sup>84</sup> Extended hours of operation, such as 24x7x365 Fedwire operation, could help improve international bank-to-bank wire transfers; broad adoption of ISO 20022 standards – a global and open standard that creates a common language for payments worldwide – presents an opportunity to boost operational efficiency, enhance customer experience through more robust data standards and better data throughput, and enable innovative new services; and global implementation of SWIFT GPI also holds promise to improve the speed, efficiency, transparency and data integrity of cross-border payments. (See Board of Governors of the Federal Reserve System, "Frequently Asked Questions," at "Federal Reserve Actions to Support Instant Payments" (2022) (noting areas of Fed study and interest); SWIFT, "What is ISO 20022?"; and SWIFT, "SWIFT gpi[,] The new norm in cross-border payments.")

- **Question 10: Beyond enhanced economic competitiveness, how can the U.S. digital assets sector advance the other objectives outlined in the Executive Order? These other objectives include protection of consumers, investors, and business in the U.S.; protection of U.S. and global financial stability and the mitigation of systemic risk; and mitigation of illicit finance and national security risks posed by misuse of digital assets.**

***Protecting consumers, investors, and businesses in the U.S.*** In general, consumers, investors, and businesses must have a clear understanding of the benefits and risks of digital assets, as well as an understanding of how digital assets differ from traditional payment instruments and rails, so that they can make informed decisions. New laws (or revisions to existing laws) may be necessary to ensure that appropriate consumer protections, and transaction risk allocation, are in place, with business models that enable potential losses to be absorbed. Ensuring that consumers and business are able to make informed decisions may also require guardrails be put in place to enable consumers to identify when long-standing sources of protection, such as deposit insurance, exist/apply, and when they do not.<sup>85</sup>

With respect to risks presented by cryptocurrency/stablecoins, where privately-issued digital assets represent the obligations of unregulated or lightly regulated non-bank entities (*e.g.*, many stablecoins), or private token-based money that is not issued by anyone (*e.g.*, Bitcoin, Ethereum), the risks to consumers, investors, and businesses as outlined previously on pages 3 and 4 are significant. So too is the growing trend observed by federal regulators of consumers and digital asset users falling victim to scams involving cryptocurrency and theft (according to the FTC, consumers reported losing over \$1 billion to fraud involving cryptocurrency from Jan. 2021 through Mar. 2022; according to Securities and Exchange Commission Chair Gary Gensler, more than \$14 billion of value was stolen from digital asset customers in 2021; and according to Acting Comptroller of the OCC, Michael Hsu, crypto theft amounted to \$3.2 billion in 2021).<sup>86</sup> TCH firmly believes that the appropriate response to the growth of stablecoins and other nonbank cryptocurrencies is regulation, and supports the recommendations made in the PWG's "Report on Stablecoins."<sup>87</sup> A comprehensive federal prudential framework should be adopted that applies standards to digital assets that are equivalent to those that apply to depository financial institutions when engaged in functionally similar activities. In adopting such a framework, policymakers should, among other things, require issuers of digital currencies (including stablecoins) to be licensed and subject to supervision, and should require any token marketed as "stable" to come with specific protections. For example, a "stable" token might: (1) be clearly tied to a single national currency; (2) constitute an obligation of the issuer to the holder; (3) provide appropriate consumer protections; and (4) be subject to clear rules around the issuer's capital requirements and holding of collateral. Taking this approach to regulating new forms of private money (*i.e.*, cryptocurrency and stablecoins), not only

<sup>85</sup> See, *e.g.*, Federal Deposit Insurance Corporation, "False Advertising, Misrepresentations of Insured Status, and Misuse of the FDIC's Name or Logo," 87 Fed. Reg. 33,415 (June 2, 2022) (elaborating on what constitutes false advertising of the protections of federal deposit insurance).

<sup>86</sup> Federal Trade Commission, "New Analysis Finds Consumer Reported Losing More than \$1 Billion in Cryptocurrency to Scams since 2021," Press Release (June 3, 2022); Prepared Remarks of Gary Gensler On Crypto Markets, at the Penn Law Capital Markets Association Annual Conference (Apr. 4, 2022); and Speech by Acting Comptroller of the Currency Michael J. Hsu, *supra* note 3.

<sup>87</sup> "Report on STABLECOINS," *supra* note 7, p. 7.

avoids relying on inadequate frameworks, such as state money transmitter licensing regimes,<sup>88</sup> but is consistent with the history of private money in the U.S.<sup>89</sup>

In comparison to cryptocurrency and stablecoins, the risks to consumers, investors, and businesses from a CBDC generally flow from the impact that the introduction of a CBDC would have on existing financial systems. These risks include, but are not limited to: (1) a decline in credit availability (and increase in cost) that flows from a reduction in bank deposits; (2) exacerbation of runs on financial firms; (3) complication of monetary policy; (4) privacy concerns; (5) potential destabilization of foreign financial systems where individuals and businesses may prefer the relative safety and security of a U.S. central bank obligation to an obligation of their home central banks; (6) potential exposing of the Fed to increased political pressures over time; and (7) increased cyber and operational risk.<sup>90</sup>

***Systemic risk and global financial stability.*** Both cryptocurrency/stablecoins and CBDC pose systemic and global financial stability risks, but these risks are different. Although no single cryptocurrency or stablecoin arrangement has yet achieved the size and scale such that its disruption or failure would pose a financial stability risk, a global cryptocurrency or stablecoin with reach and adoption across multiple jurisdictions, and substantial volume, could pose such risks,<sup>91</sup> and is feasible in a world in which global technology companies and social media platforms have worldwide footprints and billions of users. A cryptocurrency or stablecoin released by such a company has the potential for immense scale and significant, if not systemic, importance immediately upon release into the global marketplace.<sup>92</sup> In order

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<sup>88</sup> State money transmitter licensing schemes largely pre-date the development of cryptocurrency and stablecoins, are often not fit for purpose, and may not even cover specific arrangements at all based on how they are structured. While some states have addressed this issue by enacting specific regulations targeting digital currencies, the vast majority of states have yet to do so, leaving the potential for significant coverage gaps across the U.S. Even if state money transmitter laws apply to cryptocurrency and 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 cryptocurrency/stablecoin arrangements that could scale the fastest would likely be associated with an already existing fintech platform. Additionally, (1) many state money transmitter laws and regulations promulgated under them do not impose third-party and vendor risk management requirements; (2) some state money transmitter laws fail to impose portfolio restrictions or restrictions on the use of customer funds and may not contain adequate 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; and (3) state money transmitter laws do not provide access to lender of last resort facilities. (See Letter from Robert C. Hunter, Deputy General Counsel and Director of Regulatory and Legislative Affairs, The Clearing House, to Chairman Sherrod Brown and Ranking Member Patrick J. Toomey, Senate Banking Committee (Feb. 11, 2022) ([link](#)) (providing a statement for the record on stablecoins and stablecoin arrangements, and discussing state money transmitter licensing schemes).)

<sup>89</sup> See “Taming Wildcat Stablecoins,” *supra* note 29.

<sup>90</sup> See *supra* pp. 7-8. See also Letter from Robert C. Hunter, *supra* note 27, pp. 3-10.

<sup>91</sup> Financial Stability Board, “Addressing the regulatory, supervisory, and oversight challenges raised by ‘global stablecoin’ arrangements,” Consultative Document (Apr. 14, 2020), pp. 7 & 13-14 (noting that “attribute global refers to a stablecoin with a potential reach and adoption across multiple jurisdictions and the potential to achieve substantial volume, thus posing financial stability risks, rather than a specific legal or regulatory concept”). See also Financial Stability Board, “Regulation, Supervision and Oversight of ‘Global Stablecoin’ Arrangements,” Final Report and High-Level Recommendations (Oct. 13, 2020), pp. 9 & 12-13.

<sup>92</sup> See Sergio Goschenko, “Facebook’s Novi Launches Pilot Program in Guatemala and US Using Pax Dollar, Bitcoin.com (Oct. 20, 2021) (noting that Facebook’s digital wallet Novi will be initiating a pilot program using the



to address the systemic risks posed by such digital assets, TCH has expressed its agreement with the Committee on Payments and Market Infrastructure and Board of the International Organization of Securities Commissions (“CPMI-IOSCO”) that full application of the Principles for Financial Market Infrastructures should be applied to systemically important stablecoin arrangements,<sup>93</sup> and further urges the Financial Stability Oversight Council to consider ways it might use the authorities granted to it to address systemic risks of cryptocurrency or stablecoins.

In the case of a U.S. CBDC, there are significant risks of jeopardizing financial stability and the safety and soundness of domestic and global banking and financial systems. Domestically, the migration of bank deposits to CBDC, likely exacerbated in times of stress, will impact banks, the current safety net, and have a direct effect on the U.S. financial system. Abroad, a U.S. CBDC, backed as it would be by the Fed, could have significant destabilizing effects on foreign financial systems as populations in other parts of the world sought the relative safety and security of a U.S. central bank obligation. Foreign recipients of internationally transmitted U.S. CBDC would be the beneficiaries of 100% deposit protection from a foreign central bank – a benefit that they may not enjoy in their national banking system.

***Illicit Finance & AML/CFT risk.*** Both cryptocurrency/stablecoins and CBDC pose illicit finance and AML/CFT risks. In the case of cryptocurrency and stablecoins, the growth and reach of cryptocurrency/stablecoins, the degree to which they permit anonymity, their usability,<sup>94</sup> exchangeability for fiat currency, and other characteristics, all present AML/CFT risks that must be addressed as part of the development of a comprehensive federal prudential framework that applies standards to digital assets that are equivalent to those that apply to depository financial institutions when engaged in functionally similar activities. Additionally, gaps that exist between those AML/CFT regulations applicable to nonbank stablecoin arrangements and those applicable to banks’ payments-related activities and functionally similar stablecoin-related activity must be closed. TCH has urged FinCEN to address AML/CFT risks related to nonbank stablecoin arrangements, and to specifically address the gaps,<sup>95</sup> which would not only reduce illicit activity conducted using privately-issued digital

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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, pp. 9-13 (Nov. 2020) (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).

<sup>93</sup> Letter from Robert C. Hunter, Director of Legislative & Regulatory Affairs and Deputy General Counsel, The Clearing House, to CPMI Secretariat and IOSCO Secretariat (Dec. 1, 2021) ([link](#)).

<sup>94</sup> For example, nefarious actors might create solutions similar to Tornado Cash, and other programs, that are designed to evade whatever AML and CFT controls might exist on digital asset networks network. (*See, e.g.*, “Tornado Cash Privacy Solution” (noting that Tornado Cash is a “non-custodial Ethereum and ERC20 privacy solution” that “improves transaction privacy by breaking the on-chain link between the recipient and destination addresses”; that that Tornado Cash “uses a smart contract that accepts ETH deposits that can be withdrawn by a different address”; and marketing itself by stating that “[w]henver ETH is withdrawn by the new address, there is no way to link the withdrawal to the deposit, ensuring complete privacy”).)

<sup>95</sup> Letter from Robert C. Hunter, Director of Legislative & Regulatory Affairs and Deputy General Counsel, The Clearing House, to Policy Division, Financial Crimes Enforcement Network (Dec. 1, 2021) ([link](#)).

assets but would also bring the U.S. more closely into alignment with the Financial Action Task Force Recommendations and Guidance of a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers,<sup>96</sup> which the U.S. Treasury has supported.<sup>97</sup> In general, TCH believes that rules addressing the AML/CFT risks of cryptocurrency and stablecoins must be aligned with rules applicable to banks' payments-related activities and functionally similar stablecoin-related activity.

In the case of a U.S. CBDC, the digital nature of a CBDC – unlike cash, which is bounded by its physical characteristics and the requirement that it be transported in physical form – would raise heightened AML/CFT concerns and would be particularly dangerous in a CBDC designed to be used in cross-border or international trade and finance. Further, because the federal government has neither the infrastructure nor the manpower to conduct KYC, AML and CFT screening and other compliance today, it would need to either build and fund these capabilities alongside CBDC issuance or rely on the private sector to manage these risks. If the private sector is relied upon, then the experience of the private sector in managing these risks can be leveraged, but the significant reputational risk that comes with taking on these activities will be transferred to the private sector, as well as the costs of these activities (requiring an economic model that supports these activities). Moreover, to ensure AML/CFT compliance, either the government or the private sector will need to understand the nature and purposes of transactions and monitor for and provide reports on potential illicit activity,<sup>98</sup> but this may be difficult given the “strong privacy protections” the Fed suggests will apply.<sup>99</sup>

- **Question 12: What factors and conditions, if any, that have driven and sustained the global leadership of U.S.-based legacy financial institutions will foster the same leadership for U.S. digital asset businesses? If there are no common factors, what factors and conditions will differentiate global competitiveness for U.S. digital asset businesses?**

U.S. banks have a long history of successfully addressing the needs of the economy and accommodating changes in consumer preference. This success is built upon a foundation of laws and regulations that

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<sup>96</sup> FATF, “Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers” (Oct. 28, 2021).

<sup>97</sup> See President’s Working Group on Financial Markets, “President’s Working Group on Financial Markets Releases Report on Recommendations on Stablecoins” Press Release (Nov. 1, 2021) (noting that the U.S. will continue “leading efforts” “to encourage countries to implement international AML/CFT standards and [to] pursue additional resources to support supervision of domestic AML/CFT regulations [in order to prevent misuse of stablecoins and other digital assets]”).

<sup>98</sup> If CBDC is intended to be a substitute for cash, then it would likely need to be designed as an electronic bearer instrument. A bearer-instrument model, which does not require the central administration of accounts or wallets, could be designed using tokens and could preserve the privacy protections that users of cash have today by using technology applications and devices (e.g., phones) that enable the exchange of tokens without creating a record on a ledger, meaning off-line payments could be conducted between private parties. Importantly, electronic bearer instruments, especially those that have the stability of Fed backing raise additional AML/CFT concerns and complexity. Unlike physical bearer instruments, which are bounded by their physical nature – there is only so much money you can fit into a suitcase – digital bearer instruments have no such limitation and present heightened concerns.

<sup>99</sup> “Money and Payments: The U.S. Dollar in the Age of Digital Transformation,” *supra* note 24, pp. 13 & 19 (noting the importance of privacy protections and the importance of balancing the need to have strong privacy protections against other interests).

ensure safe and sound operations of financial institutions, and also upon the notion that the private sector is best-positioned to innovate, while the government is best-positioned to provide services only where the private sector cannot meet the public's needs. As direct results: commercial bank money is a successful, low-risk settlement asset that has served consumers and businesses well for decades; and U.S. payment systems are diverse, well-functioning, competitive, and provide consumers and businesses with an extraordinary degree of choice.<sup>100</sup> Ensuring that U.S. banks can engage in digital-asset-related activities safely and soundly has been a focus of federal prudential regulators,<sup>101</sup> but does not address entities and activities outside of the regulatory perimeter, and has been subject, at times, to lack of coordination.<sup>102</sup> Fostering leadership in the digital asset space requires the development of a comprehensive federal prudential framework that applies standards that are equivalent to those that apply to depository financial institutions when engaged in functionally similar activities, as well as ongoing clarity from regulators.<sup>103</sup>

Assuming the regulatory issues can be addressed, the private sector stands ready to drive U.S. leadership in the global digital asset marketplace. As an example, the Regulated Liability Network (“RLN”) proposal to tokenize commercial bank, central bank, and electronic money on the same chain offers the promise of delivering a next-generation digital money format based on national currency units (e.g., denominated in U.S. dollars).<sup>104</sup> Tokens exchanged over the network (“RLN tokens”) would be redeemable at par value on demand, and would provide an unambiguous legal claim on the regulated issuer; and the liabilities would be fungible between regulated institutions. The RLN would enable the instant movement of value 24x7x365, either domestically or internationally, and would support “programmable money” insofar as payments can be automated, made conditional on events, and integrated into other digitized processes. Additionally, the RLN can deliver the benefits of tokenization without the downside of narrower proposals that might lead to a fragmented, regulated financial system.

➤ **Question 13: Can digital assets improve international payments (including trade and remittances), and improve on access to trade finance? If so, how? How do digital assets compare to other initiatives in payments such as the Federal Reserve’s FedNow?**

Cost and friction in international payments are not the result of the absence of technological solutions. From a speed and efficiency standpoint, The Clearing House Payments Company, through its IXB Initiative, is already working to link its real-time payments system, the RTP network, with other real-time payments systems around the world and has completed a proof-of-concept of the underlying technology and announced an upcoming pilot.<sup>105</sup> The linking of real-time payments systems across the globe will allow cross-border payments to clear and settle in real-time, or near-real-time, with some minimal delay for intermediaries to complete their compliance functions. Rather, cost and friction in

<sup>100</sup> See *supra* p. 7 and note 33.

<sup>101</sup> See *supra* p. 5 and note 23.

<sup>102</sup> See *supra* note 23.

<sup>103</sup> See “Joint Agency Statement [on crypto-asset policy sprint]” *supra* note 23 (recognizing the importance of providing timely, clear guidance on digital-asset-related topics).

<sup>104</sup> See Citi, “The Regulated Internet of Value” ([link](#)); and Tony McLaughlin, “The Regulated Internet of Value[,] Executive Summary” ([link](#)).

<sup>105</sup> See *supra* note 72.

international payments arise from the differing legal jurisdictions through which the payment must travel. Each legal jurisdiction has its own legal standards relating to payments, including KYC, AML and CFT requirements, and all requirements must be addressed for an international payment to take place. Because friction in cross-border payments is not due to technology, and will not be materially solved by technology, digital asset technology – unless designed to function as digital bearer instruments, which raises a host of even more heightened AML/CFT concerns – will not lower costs and reduce frictions in international payments. Instead, government engagement on addressing and harmonizing different legal regimes relating to payments should be pursued.

- **Question 14: 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. Can digital assets play a role in increasing these and other underserved American’s access to safe, affordable, and reliable financial services, and if so, how? What role can the Federal government and the digital assets sector play to ensure that underserved Americans can benefit from the increased commercial availability of digital assets?**

Advocates for digital assets to serve as a vehicle for financial inclusion often ignore the reasons households and individuals in the U.S. are unbanked or use nonbank financial services in the first place. These reasons, which are varied (*e.g.*, lack of trust, privacy concerns, lack of broadband access, lack of documentation to fulfill KYC requirements, etc.) and complex, are not generally related to the absence of low-/no-cost digital payment tools or bank accounts.<sup>106</sup> For example, a segment of domestic unbanked consumers rely on cash and do not possess the tools (smartphones and devices capable of connecting to the internet) that are necessary to hold and use digital assets.<sup>107</sup> As a further example, another segment of the unbanked do not trust banks and would not likely trust a digital asset issued by a private entity, or CBDC issued by the government.<sup>108</sup> While the absence of a central, issuing party – a characteristic of some cryptocurrencies (*e.g.*, bitcoin) – may be attractive to individuals who do not trust private entities or the government, the anonymity, easy transferability, and digital bearer instrument nature of these cryptocurrencies raise extraordinary AML and CFT concerns, offsetting any potential benefits from financial inclusion. Further, holding and using an issuer-less cryptocurrency provides a limited benefit, as it does not come with the attendant benefits of the banking system, such as wealth building, establishing credit, access to mortgage and other loans, and financial counseling.

Consequently, digital assets very likely cannot make a meaningful difference in further reducing the unbanked rate in the U.S., as a segment of the unbanked cannot use them, and there is no obvious reason why consumers who do not trust banks, or who are concerned with the privacy implications of sharing information with anyone else, would trust private issuers of cryptocurrency or stablecoins or the federal government as an issuer of CBDC, or be willing to accept privacy-related incongruities between cash and digital currencies (*i.e.*, the digital trail behind any digital asset). Instead, financial inclusion in the U.S. would benefit from: (1) public-private partnerships that highlight low- and no-cost accounts offered by banks, such as the Bank On program; (2) bank and alternative financial service provider

<sup>106</sup> “Delivering Financial Products and Services to the Unbanked and Underbanked in the United States – Challenges and Opportunities,” *supra* note 81, pp. 8-16.

<sup>107</sup> *Id.* at p. 13.

<sup>108</sup> *Id.* at pp. 12.

innovations that meet the needs of unbanked individuals and households; (3) upgrades to legacy systems that, if made by the government, could facilitate the rapid distribution of benefit payments through same-day ACH or existing real time payments systems, as well as the soon-to-be-available FedNow; (4) actions by the government to study and reduce barriers to individuals entering the banking system (including digital identification); and (5) expanded broadband internet access in underserved areas.<sup>109</sup>

- **Question 15: To what extent do new standards for digital assets and their underlying technologies need to be maintained or developed, for instance those related to custody, identity, security, privacy, and interoperability? What existing standards are already relevant? How might existing standardization efforts be harmonized to support the responsible development of digital assets?**

Standards play an important role in payments, and can function to facilitate consistent, efficient, and secure exchange of payments-related information. ISO 20022, for example, which is a global and open standard that creates a common language for payments worldwide, will, if broadly adopted, boost operational efficiency, enhance customer experience through more robust data standards and better data throughput, and enable innovative new services.<sup>110</sup> And API standards, such as the one developed by the Financial Data Exchange (“FDX”), for example, allow for the secure access of permissioned consumer and business financial data.<sup>111</sup> Although federal regulators have noted the absence of standards in the digital asset marketplace,<sup>112</sup> it is important, when discussing standards, to differentiate between technical standards that govern the payment message or exchange of payments-related information, which are generally set by private operators or standard-setting bodies, and standards of general application, such as a standards for the handling and treatment of the consumers’ personal information.<sup>113</sup> With respect to digital assets, important questions arise in both contexts. For example, the ability to exchange tokens and use them as a means of payment often depends on their ability to interoperate with payment and settlement systems. At the same time, digital asset arrangements generate information and raise fundamental questions about privacy and about how personal and transactional data is stored, shared, used, and protected from unauthorized access and use.

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<sup>109</sup> *Id.* at pp. 39-41.

<sup>110</sup> See SWIFT, “What is ISO 20022?”

<sup>111</sup> See FDX, “About FDX.”

<sup>112</sup> See “OCC’s Hsu: Stablecoins Can Boost Innovation If Regulated Like Banks,” Pymnts.com (Jan. 15, 2022) (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 “Report on STABLECOINS,” *supra* note 7, 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).

<sup>113</sup> See Gramm-Leach-Bliley Act (“GLBA”), Title V, Subtitle A (15 U.S.C. §§ 6801-6809) (which applies to “financial institutions” and requires consumers’ personal information to be protected in certain ways, including with respect to information security and with respect to how information is shared); and Federal Trade Commission, “Standards for Safeguarding Customer Information” (codified at 16 C.F.R. Part 314).



- **Question 16: What new security concerns does increased adoption of digital assets raise? How can the U.S. government collaborate with U.S. digital asset businesses to protect consumers' access to their assets, personal information, and other sensitive data?**

The absence of a robust regulatory framework applicable to cryptocurrency and stablecoin issuers and arrangements means that vast amounts of consumer information, including sensitive personal information, is not subject to the same robust protection as it would be if it were held by a financial institution. An essential component of any comprehensive federal prudential framework applying standards to digital assets issuers and arrangements will be the handling and protection of the personal information of consumer users of digital assets. Ultimately, consumers' personal information should be no less protected when associated with a cryptocurrency or stablecoin payment transaction than it would be in a payment transaction over wire, ACH, or the RTP network.

With respect to CBDC, The Clearing House observes that the ability to control access, and to have visibility into holdings and transactions, are reasons why China is pursuing CBDC,<sup>114</sup> but are features of a potential U.S. CBDC that should concern, if not alarm, U.S. policymakers. Fundamentally, operating a CBDC system can provide the operator with access to account/wallet and transaction-level information, and even the power to close accounts/wallets or cancel transactions. While the Fed has suggested that "strong privacy protections" would apply to CBDC,<sup>115</sup> it is unclear whether this view would be forever enshrined in the design of a system, in how information gets transmitted in a CBDC, or gets shared between intermediary and governmental actor, whether it be the Fed, an administrative agency, or law enforcement.

- **Question 17: To what extent will interoperability between different digital asset networks be important in the future? What risks does the lack of interoperability pose? And what steps, if any, should be taken to encourage interoperability?**

Payment platforms are not designed today to allow transferability across them. Each payment platform has its own rules and statutory framework, different technological underpinnings, and different settlement mechanisms. While there are commonalities in how payment systems function (*e.g.*, most payment platforms today do two fundamental things: they transfer information and they settle the payment), interoperability across different systems would significantly increase operational and legal complexity, and risk. New technology, technical standards, and rules might, to a degree, permit interaction between systems, but these may be insufficient to support true transferability in a manner within each system's risk tolerance. Private-sector innovation, such as the RLN, contemplates fungibility between regulated institutions (*i.e.*, a dollar is a dollar irrespective of the regulated institution holding the liability), and the possibility of global linkage of different RLNs founded on different national currencies and supervised by local regulators.<sup>116</sup> Generally, The Clearing House believes that interoperability should be left to the private sector, and that prioritizing architecture policy that

<sup>114</sup> Center for Strategic and International Studies, "How Will a Central Bank Digital Currency Advance China's Interests" (Aug. 20, 2020) (noting that a digital renminbi would "enhance the government's capacity to monitor and control economic activity").

<sup>115</sup> "Money and Payments: The U.S. Dollar in the Age of Digital Transformation," *supra* note 24, pp. 13 & 19 (noting the importance of privacy protections and the importance of balance the need to have strong privacy protections against other interests).

<sup>116</sup> See *supra* pp. 20-21 and note 104.

emphasizes exchangeability between cryptocurrency/stablecoins and commercial bank money would help U.S. firms to realize the full potential of digital assets domestically and abroad.

### III. Conclusion

Privately-issued digital assets, and private token-based money that is not issued by anyone, have grown tremendously over the past decade. Today, these digital assets have neared, or possibly even surpassed, \$2 trillion in market capitalization.<sup>117</sup> Given the rapid growth of these assets, and the significant challenges and risks they represent, the work the ITA is doing to solicit stakeholder input on and to establish a framework for enhancing U.S. economic competitiveness in, and leveraging of, digital asset technologies is critical. The Clearing House believes that for U.S. firms, including banks, to realize the full potential of digital assets domestically and abroad (1) a comprehensive federal prudential framework applying standards to digital assets that are equivalent to those that apply to depository financial institutions when engaged in functionally similar activities is essential; (2) banks should be no less able to engage in digital-asset-related activities than nonbanks; and (3) federal regulatory clarity is imperative, particularly where digital assets will serve as a means of payment or will be held in custody by financial institutions.

With respect to a potential U.S. CBDC, The Clearing House believes that the risks associated with the possible issuance of a CBDC in the U.S. outweigh its potential benefits, particularly in light of the ability of existing alternatives to achieve the policy goals that have been advanced in support of CBDC.

We thank you for your consideration and review of these comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact me using the contact information provided below.

Yours very truly,

/s/

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<sup>117</sup> See Speech by Acting Comptroller of the Currency Michael J. Hsu, *supra* note 3.

## Appendix A

Purpose	CBDC	Alternative Solutions
<b>Financial Inclusion / Distribution of Government Benefits</b>	<b>Pros:</b> <ul style="list-style-type: none"> <li>- Government support</li> </ul> <b>Cons:</b> <ul style="list-style-type: none"> <li>- Poorly suited for the unbanked</li> <li>- May crowd out or compete with other systems and innovations</li> <li>- Potential to disrupt banking and payments ecosystems</li> <li>-</li> </ul>	<ul style="list-style-type: none"> <li>- No- and low-cost bank accounts</li> <li>- Bank On-certified accounts</li> <li>- Prepaid cards</li> <li>- Alternative financial products and services (fintech services)</li> <li>- Instant bank-centric payment systems with immediate funds availability (<i>e.g.</i>, RTP network and FedNow)</li> <li>- Regulated Liability Network</li> </ul>
<b>To Defend Against Unregulated Private Currencies</b>	<b>Pros:</b> <ul style="list-style-type: none"> <li>- Provides government with additional tool in public-private currency competition</li> </ul> <b>Cons:</b> <ul style="list-style-type: none"> <li>- May crowd out or compete with other systems and innovations</li> <li>- Potential to disrupt banking and payments ecosystems</li> </ul>	<ul style="list-style-type: none"> <li>- Regulate private currencies to the extent not captured under current regulatory schemes</li> <li>- Regulated Liability Network</li> </ul>
<b>To Improve Cross-Border Payments</b>	<b>Pros:</b> <ul style="list-style-type: none"> <li>- Could reduce the number of entities involved in a cross-border payment</li> <li>- Could reduce the number of networks involved in a cross-border payment</li> </ul> <b>Cons:</b> <ul style="list-style-type: none"> <li>- Not likely to be any more effective in improving cross-border payments than private sector efforts</li> <li>- May increase AML/BSA risk and sanction evasion</li> <li>- May crowd out or compete with other systems and innovations</li> <li>- Potential to disrupt banking and payments ecosystems</li> <li>- Potential to disrupt foreign banking markets</li> </ul>	<ul style="list-style-type: none"> <li>- Improvements in International bank-to-bank wire transfers through extended hours of operations, adoption of ISO 20022 standards, SWIFT GPI and other market improvement initiatives</li> <li>- Potential to extend reach of domestic instant payments systems to support cross border payments</li> <li>- Improved transparency in remittance transfers</li> <li>- Government efforts to remove frictions that only the government can address (<i>e.g.</i>, disparate regulatory and consumer protection frameworks across jurisdictions)</li> <li>- Regulated Liability Network</li> </ul>

<p><b>To Facilitate Monetary Policy</b></p>	<p><b>Pros:</b></p> <ul style="list-style-type: none"> <li>- Unlocks new tools</li> </ul> <p><b>Cons:</b></p> <ul style="list-style-type: none"> <li>- Forces central bank to take a more active role in lending and to assume risks in times of crisis</li> <li>- Politicization of the central bank (requires mass adoption)</li> </ul>	<ul style="list-style-type: none"> <li>- Traditional tools of the Federal Reserve, including interest on reserves, discount rate, buying and selling government securities</li> </ul>
<p><b>Preservation of U.S. dollar as a Reserve Currency</b></p>	<p><b>Pros:</b></p> <ul style="list-style-type: none"> <li>- U.S. would have a CBDC to defend against the introduction of CBDC by other governments</li> </ul> <p><b>Cons:</b></p> <ul style="list-style-type: none"> <li>- Potential to destabilize both domestic and foreign financial system</li> </ul>	<ul style="list-style-type: none"> <li>- Ensure that the factors that have made U.S. dollar a reserve currency continue – stable government, rule of law, etc. are maintained</li> </ul>

