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Diane Farrell
Deputy Under Secretary for International Trade
International Trade Administration, U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Re RFC: Ensuring Responsible Development of Digital Assets

Dear Ms. Farrell,

The Association for Digital Asset Markets ("ADAM") appreciates the opportunity to comment on the International Trade Administration and U.S. Department of Commerce's (collectively, "Commerce") Request for Comment on Ensuring Responsible Development of Digital Assets ("RFC"). ADAM firmly believes that the U.S. has a unique opportunity to establish a position of global leadership for this new and novel technology, and doing so will create jobs, enhance U.S. competitiveness internationally, and allow for U.S. fingerprints on the design decisions on a technology that has the potential to underpin a new internet-based financial system.¹ However, such positioning is not guaranteed and will require thoughtful policy leadership and a properly functioning regulatory system to ensure that a framework is created to promote innovation, domestic job creation, and consumer protection.

ADAM is writing to promote member views of the future trajectory of the digital asset space as well as international competitiveness considerations. ADAM is trade association of digital asset market makers, custody providers, exchanges, fund providers, venture capital firms, and other financial service providers focused on market integrity and standards-setting in the digital asset space. As such, ADAM is greatly interested in this RFC and future collaboration with Commerce.

ADAM Background

ADAM is a private, non-profit, membership-based association of firms² operating in the digital asset markets and is a standards-setting body and self-governing association committed to

¹ U.S. enterprise and innovation ranging from car manufacturing to silicon-based computing allowed most of the leading technological advancements of the 20th and early 21st century to have U.S. characteristics.

² ADAM is a broad-based industry group that includes a wide variety of market participants, including trading platforms, custodians, investors, asset managers, traders, liquidity providers, and brokers. Our members are firms

promoting market integrity and best practices. ADAM works with leading financial firms, entrepreneurs, and regulators to develop industry best practices that facilitate fair and orderly digital asset markets. In this vein, ADAM's objectives are to (1) protect market participants from fraud and manipulation; (2) provide clear standards for efficient trading, custody, and the clearing and settlement of digital assets; (3) encourage professionalism and ethical conduct by market participants; and (4) increase transparency and provide information to the public and governments about digital asset markets. In furtherance of this, ADAM released a principles-based Code of Conduct ("Code")³ in late 2019 that sets certain standards of professional conduct for ADAM members. In particular, the Code addresses the following areas:

- Compliance and Risk Management
- Market Ethics
- Conflicts of Interest
- Transparency and Fairness
- Market Integrity
- Custody
- Information Security and Business Continuity
- Anti-Money Laundering and Countering the Finance of Terrorism

Every ADAM member agrees to adhere to the Code of Conduct. The goal is to bring professional standards into the nascent but rapidly growing digital asset markets and to develop trust in those markets so that they can flourish.

ADAM members are at the cutting edge of innovation through the use of new technologies, such as blockchain. However, they recognize that proper regulation and conduct are essential to their businesses and to the development of a sustainable marketplace and public trust. They believe that a diverse financial ecosystem is a source of strength, and they aim to use their technology to find new ways of reaching consumers and work within the current financial system to improve efficiencies.

ADAM and its members are committed to working with lawmakers and regulators to promote responsible innovation in the digital asset space in a manner that expands the availability of financial services. ADAM welcomes a clear regulatory picture because our members seek full compliance.

that are active in digital asset markets or seek to participate in those markets. ADAM members include. Anchorage Digital, N.A.; BitGo; BitOoda; BlockFi; BTIG; CMT Digital; CoinFund; Cumberland; Crowe LLP; Digital Asset Council of Financial Professionals; Dunamis Trading; Eventus Systems; Fireblocks; FTX.com; FTX.us; Galaxy Digital; Genesis; Grayscale; GSR; HRT; Hxro Foundation; Jane Street Capital; Jump Crypto; Multicoins Capital; Oasis Pro Markets; Parataxis; Paxos; Robinhood Crypto; Solidus Capital; Solidus Labs; Symbiont; Symphony; WisdomTree; and XBTO. ADAM law firm partners include Anderson Kill; DLA Piper; DLx Law; Morgan Lewis; and McGonigle, P.C.

³ The Code is available at <http://www.theadam.io/code/>.

Overview of Comments

This RFC lends itself to be taken in multiple directions, covering a wide swath of the industry. For the purposes of this letter, ADAM has chosen to address the following areas: (1) Overview of Digital Asset Ecosystem and Business Models; (2) ADAM Comments Regarding Competitiveness Towards the Digital Asset Industry; (3) Central Bank Digital Currencies & The Role of Stablecoins; (4) The Innovation Potential of Web3; (5) Digital Assets Mining & Energy Usage (6) Overview of U.S. Domestic Regulatory Considerations; and (7) Overview of International Policy Considerations.

Overview of the Digital Asset Ecosystem and Business Models

The digital asset ecosystem is made up of a wide range of stakeholders, including exchanges, wallet and custody providers, trading applications, miners, creators, and other nodes that provide computing resources for recording and verifying a digital ledger, developers that launch distributed applications (dApps), users that range from hobbyists to institutional investors, off-chain service providers that provide reporting and monitoring services, and cross-chain communications. Digital asset platforms benefit from a number of technical advancements ranging from transparent market information to unique transaction methods, which allows many new types of transactions to occur and economic value to be created and shared in new ways.

The digital asset industry aims to leverage blockchain and other digital asset technology to provide digital stores of value, as well as saving vehicles, lending, liquidity, and asset transfer services for digital asset users. The added transparency provided by on-chain transactions and open participation is attractive to many users seeking to transact in a decentralized manner. In many ways, the digital asset ecosystem is seeking to address critical shortcomings of the internet, as well as the traditional financial services industry, and allow users greater control over their personal data.

These services have provided millions of Americans access to financial instruments, full trust transactions, and substantial wealth generation. Recent studies⁴ have indicated that 15-20% of Americans own or are interested in having exposure to digital assets, with Bitcoin being one of the most desired digital assets. A young and diverse consumer interest in digital assets (especially in Bitcoin) provides a unique opportunity, which, if seized, can reshape the U.S. financial system, lead to more Americans gaining financial literacy, being brought into the financial services umbrella, and making prudent investment decisions.

⁴ Pew Research, 16% of Americans say they have ever invested in, traded, or used cryptocurrency, available at: <https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/>. Additionally, Bitcoin users skew younger and Asian, Black and Hispanic adults are more likely than White adults to say they have ever invested in, traded, or used a digital asset. Id.

The participants and infrastructure that make up digital asset markets vary widely, and ADAM finds it useful to use the following definitions of key ecosystem and business model terms:

- **“Digital Asset”** (i) a cryptographically-derived digital instrument available on a public, private or permissioned blockchain or other form of distributed ledger, including without limitation instruments that represent, or facilitate the exchange of or access to, any digital or real-world asset, or any set of rights, protocols, or rules; or (ii) any option, futures contract, swap or other instrument or index, the value of which is derived wholly or principally from the value of underlying instruments meeting the description in clause (i). Digital Assets may be categorized in many different ways, and may be subject to varying legal and regulatory regimes depending on their features or the manner in which they are issued or exchanged. This definition is intended to be construed broadly to include all instruments generally meeting the descriptions in clauses (i) and (ii) above.
- **“Proof of Work”** (“PoW”) is the mechanism that allows the decentralized blockchain networks to come to consensus or agree on elements of a digital asset transaction, like account balances and the order of transactions. This prevents users from "double spending" their coins and ensures that the blockchain is tremendously difficult to attack or manipulate. PoW is the underlying algorithm that sets the difficulty and rules for the work miners do.⁵
- **“Mining”** Mining is the "work" itself. It's the act of adding valid blocks to the chain. This is important because the chain's length helps the network follow the correct blockchain chain and understand blockchain's current state. The more "work" done, the longer the chain and the higher the block number, the more certain the network can be of the current state of things. Validation involves solving a complex mathematical problem that is difficult to solve but easy to verify.⁶⁷
- **“Miners”** Miners are the users validating the blockchain transaction on the distributed ledger. Miners that successfully solve the mathematical problem receive a reward from the network. For all major PoW blockchains, this reward is the native cryptocurrency.
- **“Bitcoin Miners”** Bitcoin Miners build and maintain the public ledger, thus recording every past, present, and future Bitcoin transaction. Sending and receiving Bitcoin, for example, are considered transactions which are validated and settled by a miner.

Bitcoin Mining is a race in which all miners compete against each other to win the block. While typically referred to as solving a math problem, a more accurate comparison would be completing a puzzle.

⁵ Ethereum Foundation: Poof of Work (March 28, 2022) <https://ethereum.org/en/developers/docs/consensus-mechanisms/pow/>.

⁶ *ibid.*

⁷ Techopedia: Cryptomining (December 9, 2021) <https://www.techopedia.com/definition/33729/cryptomining>

Bitcoin Miners have three main roles in the network: (1) confirming transactions; (2) securing the blockchain; and (3) participating in the fair distribution of new Bitcoin. Bitcoin Miners build the blockchain by publishing new blocks of transactions, which are secured by hashing (the work done by miners). They are in turn rewarded with Bitcoin, in amounts pre-determined by the network's underlying code.

Individual nodes are tasked with verifying that the protocol rules are adhered to at any point in time, and propagating transactions across the network to reach miners -- thus confirming no new transactions are fraudulent against the network's rules. Nodes also ensure the distribution and decentralization of Bitcoin by storing the entire history of the network (the Bitcoin blockchain). Nodes are distributed all around the world, and protect the information contained in blocks from being altered or deleted.

- **“Hashrate”** Hashrate is a measure of the computational power per second used when mining. More simply, it is the speed of mining. It is measured in units of hash/second, meaning how many calculations per second can be performed. Machines with a high hash power are highly efficient and can process a lot of data in a single second.⁸
- **“Cryptologic Block”** Blocks are data structures within the blockchain database, where transaction data in a cryptocurrency blockchain are permanently recorded. A block records some or all of the most recent transactions not yet validated by the network. Once the data are validated, the block is closed.⁹
- **“Proof of Stake”** (“PoS”) is a type of consensus mechanism used by blockchains to achieve distributed consensus. In PoS, validators explicitly stake capital in the form of ether into a smart contract on the blockchain. This staked ether then acts as collateral that can be destroyed if the validator behaves dishonestly or without care. The validator is then responsible for checking that new blocks propagated over the network are valid and occasionally creating and propagating new blocks themselves.¹⁰
- **“Layer 2 Protocol”** A layer 2 protocol is a system built on top of an existing blockchain. The protocol can serve multiple purposes, but most often the layer 2 protocol seeks to lower cost, increase speed, and allow scaling for the base blockchain.
- **“dApps” or “Smart Contracts”** dApps are autonomous code that function like computer programs shared across the applicable distributed ledger, which can track, process, receive

⁸ bitFlyer Hashrate: <https://bitflyer.com/en-us/s/glossary/hashrate>

⁹ Investopedia: Bitcoin Block (January 9, 2022)
<https://www.investopedia.com/terms/b/block-bitcoin-block.asp#:~:text=Blocks%20are%20data%20structures%20within,validated%2C%20the%20block%20is%20closed.>

¹⁰ Ethereum Foundation: Poof of Stake (June 16, 2022)
<https://ethereum.org/en/developers/docs/consensus-mechanisms/pos/>

and send network transactions that may (but are not required to) relate to digital assets interoperable with the Decentralized Finance (“DeFi”) platform.

- **“DAOs” or “Decentralized Autonomous Organizations”** DAOs are a special kind of smart contract platform that allows users to control certain aspects of the administration of funds under management by the DAO. For example, in the context of a DeFi platform, a DAO may control features offered on the DeFi platform or the migration of the DeFi platform to a new set of contracts.
- **“Governance Tokens”** Governance tokens are issued by smart contracts that allow holders to vote on DAO administration. In addition to voting rights, these tokens may be resold for other digital assets or may have certain powers in respect of the DAO.
- **“Stablecoins”** Stablecoins are tokens issued with the aim of maintaining a 1:1 exchange rate (or an approximation thereof) with another asset, such as USD. USDP and USDC are examples of stablecoins.
- **“Non-Fungible Token” or “NFT”** NFTs are a form of digital asset on a blockchain that represent a unique digital identifier that cannot be copied substituted, or subdivided. NFTs can be transferred by owners and have been used to demonstrate ownership on the internet.
- **“Oracles”** Oracles are reporting services that link information from within or without a blockchain to dApps and smart contracts on the blockchain. Frequently, oracles will report the prices for digital assets, either curated internally or from centralized exchanges.
- **“AMM” or “Automated Market Makers”** AMM are algorithms within smart contracts that provide pricing for buying and selling digital assets managed by the DeFi platform. AMMs may rely on Oracles or may have internal pricing models that may be reactive to arbitrage.
- **“Wrapped” tokens or coins** Wrapping refers to receiving one digital asset and reissuing it at a 1:1 basis as another "wrapped" form. The wrapped form is typically more compatible with user wallets and widely available smart contracts. For example, ETH, the native unit on the Ethereum blockchain, is expensive to transact in. wETH is issued by an ERC-20 type smart contract that trades 1:1 with actual ETH and can be traded more easily. wBTC is "wrapped bitcoin" issued by a smart contract on the Ethereum Blockchain when a user sends native BTC to a particular contract on the bitcoin blockchain.
- **“Guardians”** Guardians are monitoring programs, like Oracles, that monitor transactions across different blockchains.
- **“Staking”** Staking is a reward or opportunity to pool resources to provide staking services that blockchains or certain DeFi projects may offer. For example, a blockchain utilizing proof of stake validation lets users participate in verifying the blockchain by staking the native token, providing a reward if they propose and approve valid smart contracts. Users may pool their tokens for shared staking rewards.

- **“Nodes”** Nodes typically refer to a computer resource involved in validating transactions or providing information, such as pricing information, to the blockchain (like an Oracle). More generally, nodes also refer to an instance of operating software to interacting with a blockchain, whether as a validator, application or end user.
- **“Project Administrators”** Project administrators are provided with limited administrative powers by several DeFi projects to certain trusted individuals, such as the ability to freeze all trading and liquidate assets under management. For some DeFi projects, there are no Project Administrators or the powers granted to those Project Administrators are significantly restricted.
- **“Liquidity Providers”** Liquidity providers of digital assets for use by a smart contract. Typically, they are compensated via the fees charged by the smart contract or in governance tokens.

Using these and other tools, digital asset innovators have created a variety of projects with immense potential. Innovation in this area is proceeding rapidly and globally, with the precise contours of this technology impossible to determine at this time.

ADAM Comments Regarding Competitiveness Towards the Digital Asset Industry

As ADAM members and other players in the digital asset space develop, they are creating businesses built for the 21st century through the development of new technology stacks, new ways for systems to interact, or the application of novel technologies. Some of these innovations are digital asset specific, while others can be applied to traditional market activities ranging from inventory database management to transaction settlement. For the innovations touching traditional business, digital asset innovation may offer increasingly attractive alternatives to established market participants using legacy systems. Some legacy firms have updated their business models^{11 12 13} to in part harness some of the benefits from digital assets. Others, however, have sought to impede development of digital asset infrastructure and applications, often by leveraging their regulatory status to prevent alternative models from gaining regulatory acceptance.

¹¹ Bloomberg: MoneyGram CEO Sees a Future in Stablecoin Remittances *May 29, 2022) <https://www.bloomberg.com/news/articles/2022-05-29/moneygram-ceo-sees-a-future-in-stablecoin-remittances#xj4y7vzkg>

¹² Meta Founder’s Letter, 2021 (October 28, 2021) <https://about.fb.com/news/2021/10/founders-letter/>

¹³ Square, Inc. Changes Name to Block (December, 1, 2021) <https://squareup.com/us/en/press/square-changes-name-to-block>

Oftentimes, incumbent businesses, which may have a near-monopoly on certain activities¹⁴ fear their models may be at risk due to competition from blockchain-based innovations. There are several examples of incumbents leveraging the regulatory machinery to stifle competition, in some cases even when the challenge arises from duly licensed entities. One such case involves a licensing matter in front of the CFTC that resulted in an atypical CFTC roundtable and a hearing in the House Agriculture Committee that was essentially designed to provide a forum for incumbents to register their opposition to a new model of financial infrastructure. (Indeed, some members questioned the necessity of the hearing.)^{15 16} Similarly, validly state-chartered digital asset banks have been unable to gain access to a Federal Reserve, or even receive a response to their applications despite having applied over two years ago.^{17 18 19}

University of Chicago Law Professor Todd Henderson, wrote about this in a recent Wall Street Journal op-ed stating, "*Regulation is justified when it serves the public interest, but it is frequently motivated by the economic self-interest of powerful groups. Economists call this the "bootleggers and Baptists" phenomenon—those likely to profit from trade in illicit alcohol push for regulation alongside the moralists hoping to protect the vulnerable.*

*The incumbent exchanges (the bootleggers) clearly benefit from maintaining the status quo, but their self-interest won't sell on Capitol Hill or the CFTC. Instead, they cloak private gains in public terms, hoping the Agriculture Committee and farming advocates (the Baptists) play along."*²⁰

The growth of digital asset businesses provides the opportunity to leverage technology to solve challenges that established companies, despite years in existence, have yet to successfully solve.

¹⁴ In the derivatives industry for example, 97% of the total futures trading volume in the United States happens on only two derivatives exchanges. Source: <https://www.fia.org/resources/etd-volume-march-2022>.

¹⁵ U.S. House Agriculture Committee: Changing Market Roles: The FTX Proposal and Trends in New Clearinghouse Models (May 12, 2022) <https://agriculture.house.gov/calendar/eventsingle.aspx?EventID=2496>

¹⁶ CFTC Announces Staff Roundtable Discussion on Non-intermediation (April 27, 2022) <https://www.cftc.gov/PressRoom/PressReleases/8519-22#:~:text=The%20goal%20of%20the%20roundtable,trading%20and%20clearing%20more%20generally.>

¹⁷ ADAM Comment Letter to the Federal Reserve on Proposed Guidelines for Evaluating Account and Services Requests (July 10, 2021) <https://www.theadam.io/comment-letter-to-the-board-of-governors/>

¹⁸ Senator Lummis Presses Chairman Powell on the Fed's Master Account Process (June 22, 2022) <https://www.youtube.com/watch?v=oAmNBcXPXzQ>

¹⁹ Coindesk: Crypto Bank Custodia Sues Federal Reserve (June 7, 2022) <https://www.coindesk.com/policy/2022/06/07/crypto-bank-custodia-sues-federal-reserve/>

²⁰ WSJ, M. Todd Henderson: How the Future of Derivatives Markets Can Benefit Farmers (June 15, 2022) https://www.wsj.com/articles/how-the-future-of-derivatives-markets-can-benefit-farmers-ftx-bootleggers-baptists-exchanges-collateral-11655328034?mod=opinion_major_pos5

For example, the World Bank estimates that there are roughly 1.7 billion unbanked people in the world and last year remittances reached \$630 billion, with an average remittance fee (in 2021) of 6.5%.^{21 22 23} Domestically in the U.S., the FDIC found that 5.4 percent of U.S. households (approximately 7.1 million) were “unbanked” in 2019.²⁴ Low cost financial services are a promise of the digital asset industry and many projects have been attempting to simplify remittances or provide simple baseline financial services. The promise is real, for example, digital asset donations proved to be the vehicle of choice for grassroots donations to Ukraine, where in a number of days, digital assets enabled more than 100,000 people around the world to donate over \$100 million to Ukraine’s war efforts.^{25 26} In a historic first, the Ukrainian government partnered with digital asset exchange FTX, staking platform Everstake, and Ukraine’s Kuna exchange to launch a platform for the besieged nation to receive digital asset donations. According to Ukraine’s Deputy Minister of Digital Transformation, “*each and every helmet and vest bought via crypto donations is currently saving Ukrainian soldiers' lives.*”²⁷

ADAM firmly believes that Commerce should ensure a level playing field as digital asset firms grow and begin to compete against incumbent firms. Fundamentally, new industries offer new ways of doing business, and the digital asset industry often times offers products that are cheaper, faster, and more secure. Additionally, it offers new tools for systems analytics and is open to new fee structures and data disclosures that the traditional industry is potentially opposed to. In this vein, ADAM expects a number of regulatory applications from members to come under review at the financial and banking regulators and asks for fair and timely review.

21 The World Bank Group: The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19 (2021) <https://www.worldbank.org/en/publication/globalfindex>

22The World Bank Group: Remittances to Reach \$630 billion in 2022 with Record Flows into Ukraine (May 11, 2022) <https://www.worldbank.org/en/news/press-release/2022/05/11/remittances-to-reach-630-billion-in-2022-with-record-flows-into-ukraine>

23The World Bank Group and Knomad: Resilience COVID-19 Crisis Through a Migration Lens Migration and Development Brief 34 (May 2021) https://www.knomad.org/sites/default/files/2021-05/Migration%20and%20Development%20Brief%2034_1.pdf

24 FDIC: Key Findings from How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey (December 17, 2021) [https://www.fdic.gov/analysis/household-survey/index.html#:~:text=and%20Financial%20Services-,2019%20FDIC%20Survey,union%20\(i.e.%2C%20bank\).](https://www.fdic.gov/analysis/household-survey/index.html#:~:text=and%20Financial%20Services-,2019%20FDIC%20Survey,union%20(i.e.%2C%20bank).)

25 Business Insider: From dogecoin to bitcoin to polkadot, over 100,000 separate crypto donations have been made to Ukraine in a week (March 3, 2022) <https://markets.businessinsider.com/news/currencies/ukraine-crypto-donations-russia-war-bitcoin-dogecoin-polkadot-ether-markets-2022-3>

26 Coindesk: Ukraine Has Received Close to \$100 Million in Crypto Donations (March 9, 2022) <https://www.coindesk.com/business/2022/03/09/ukraine-has-received-close-to-100-million-in-crypto-donations/>

27 Coindesk: Ukraine Details What Crypto Donations Are Being Spent On (March 11, 2022) <https://www.coindesk.com/policy/2022/03/11/ukraine-details-what-crypto-donations-are-being-spent-on/>

Finally, Commerce should advocate for the Executive Branch as a whole to take a refreshed posture and stance relative to the digital asset industry due to global competition to attract digital asset business and innovation (See International Policy Considerations below for a more thorough discussion on this points). The U.S. digital asset sector cannot be competitive globally unless it is able to compete here at home. Regulatory protectionism domestically will impede the development of a robust U.S.-based digital asset sector that is well-regulated. In addition, keeping digital asset firms outside the U.S. regulatory perimeter will result in other jurisdictions setting the standards that will come to govern this inherently global industry.

Central Bank Digital Currencies & The Role of Stablecoins

ADAM believes that most of the goals of a central bank digital currency (“CBDC”) could be accomplished through the promotion of private-sector developed U.S. Dollar backed stablecoins. However, ADAM recognizes that many nations will pursue the route of issuing a CBDC and believes that CBDCs can coexist with other recent innovations in the U.S. digital asset sector, including stable forms of privately-issued money properly backed by sovereign money. Over the next months, the U.S. should prioritize the development of a framework for a well-regulated fiat-backed stablecoin to ensure the dollar maintains its supremacy as the world reserve currency, incentivize participants to develop in a safe and sound manner, and ensure democratic values are persevered in our international payment systems.

As CBDCs relate to U.S. development, the U.S.’ size and economic strength afford it the time to study various approaches. The design decisions will matter, as evidenced by the Federal Reserve’s recent CBDC paper, and the process of weighing the important design and policy considerations will assuredly be a multi-year effort.²⁸ Some forms of advancement are already on the way. FedNow's scheduled arrival in 2023 will be a welcome start to advancing payments efficiency domestically, and ADAM is interested in the effect it will have on domestic payments.

Other international CBDCs (such as China's described in greater detail in the International Policy Consideration Section) will face structural issues that will make them unattractive for cross-border use. Additionally, fears of government surveillance or technical developmental issues may lead to distrust surrounding CBDCs.

Nevertheless, ADAM believes broad adoption of appropriately tailored CBDCs would likely be a net positive for the digital asset ecosystem, because it would afford users the ability to more seamlessly transition between fiat currency and other digital assets—that is, the on- and off-ramps for digital asset markets could be significantly simplified and improved.

However, ADAM believes that many of the goals of a CBDC, including convenient, fast, secure, and low-cost payments, can be accomplished by comprehensively regulated private sector-led

²⁸ Federal Reserve Board of Governors: Money and Payments: The U.S. Dollar in the Age of Digital Transformation (January 2022)
<https://www.federalreserve.gov/publications/files/money-and-payments-20220120.pdf>

stablecoin. Bank money is a form of privately issued (and largely digital) money. It derives its stability, despite the fractional reserve nature of commercial banking, from deposit insurance and the full panoply of prudential regulation that applies to insured depositories. Stable, privately-issued digital money can also be achieved by guaranteeing that sufficient reserves, denominated in the same currency, are available to satisfy redemptions. This approach would allow us to realize many of the hoped-for benefits of a CBDC without requiring the Federal Reserve, Congress, and other policymakers to resolve the many important and difficult design and policy issues. Moreover, private stablecoins would promote consumer choice and encourage continued private sector innovation.

Market adoption of existing stablecoins has grown rapidly, providing evidence of strong demand. The total (USD) value of stablecoins in circulation grew from approximately \$6 billion in January of 2020 to \$150 billion in June of 2022.²⁹ Stablecoins' ease of use makes dollar-based transactions easier, and what started as an innovation in the digital asset trading world has shown real-world utility, which can fairly easily be converted to other sectors of the economy to work with our existing financial structures.³⁰

ADAM believes that a fully backed and redeemable dollar stablecoin with reserve requirements and audit standards is the most appropriate stablecoin for this system. To date, stablecoins have served as a catch-all term, and a wide array of products have been marketed as "stablecoins". Much media and regulatory attention in this space has focused on ambitious projects that had the potential to undermine monetary policy, failed "algorithmic" stablecoins, and other projects where opacity regarding the quantity and quality of reserves backing the stablecoin has led investors to doubt its stability at crucial moments of market volatility.

It is important that the industry clearly distinguishes between these models to promote the most safe and sound approach for a USD payment system. It is also important that regulators consider the performance of different stablecoin models through recent periods of volatility, during which some stablecoins maintained their value, while some so-called stablecoins proved to be anything but. Market-based price signals have clearly distinguished between different stablecoins, and regulators would be well-advised to look to those signals. While federal regulators have demurred with respect to establishing standards for stablecoin issuance, recommending instead that Congress take the lead, state regulators have advanced the ball. The New York Department of Financial Services, which regulates multiple stablecoin issuers (including ADAM member Paxos), recently released public guidance requiring stablecoin reserves to be held in safe and liquid assets and be subject to independent attestations. This guidance provides a helpful foundation for developing a regulatory framework that would support a stable, private sector-led, digital dollar-based payment system and would incentive market participants to develop in a safe and sound manner. As such, ADAM believes that if overseen by an appropriate prudential regulator, a properly reserved and audited stablecoin issuer does not need to be limited to insured

²⁹ The Block Crypto: Stablecoin Supply Charts (June 2022) <https://www.theblock.co/data/decentralized-finance/stablecoins>

³⁰ Finextr: PayU Partners Celso to Bring Stablecoin Payments to Merchants (July 21, 2021) <https://www.finextra.com/newsarticle/38498/payu-partners-celso-to-bring-stablecoin-payments-to-merchants>

depository institutions as the President's Working Group on Financial Markets called for in its November 2021 report.³¹

From a cross-border payment perspective, fully backed USD stablecoins would facilitate trade, commerce, and remittances denominated in USD, ensure that the USD remains readily available in the increasingly digital world of commerce, and act as a counterweight to changes in international trade, such as a decline in oil-backed dollarization that might occur from the regionalization of energy markets or a global energy transition. This stablecoin system would be fairly straightforward to design and implement and would be easier to align in international forums than a CBDC, which faces a number of unresolved macro-prudential questions in terms of cross-border payments.³² Such stablecoin offerings would be easy to use and serve as useful alternatives for businesses and consumers involved in cross-border dealings across Asia, Africa, Europe, and Latin America in comparison to a Chinese Digital Yuan and its related structural issues.

A policy of private-sector led development would create incentives for private stablecoin providers to innovate in their product offerings and tailor products for businesses and consumers. Additionally, a private sector-led approach to implementing such a system would create numerous jobs from sales to engineering, would be funded by investment from private sources, and wouldn't require a massive resource allocation from the U.S. Federal Government.

A stablecoin system would accomplish the core mission of making payments cheaper and faster and could be developed and implemented quickly. To the extent an appropriately tailored central-bank-led approach (i.e., CBDC) is pursued, the CBDC should be designed to maximize the opportunity, recognized by the Federal Reserve Board, for CBDC to "*give entrepreneurs a platform on which to create new financial products and services.*"³³

The Innovation Potential of Web3

ADAM believes that Commerce and the Federal Government should closely follow the innovations occurring in the Web3 space. Web3 is a manifestation of developments of blockchain potential, which provides individuals and communities the ability to uniquely organize, build, control user data, and maintain property ownership on the internet. As such, development in Web3 has the potential to shift our global economy into a more creator-led, open, inclusive, and democratic ecosystem.³⁴ Entrepreneurs are unlocking broad use cases for

³¹ Treasury Department: President's Working Group on Financial Markets Releases Report and Recommendations on Stablecoins (November 1, 2021) <https://home.treasury.gov/news/press-releases/jy0454>

³² Banks for International Settlements: Central Bank Digital Currencies for Cross-Border Payments (July 2021) <https://www.bis.org/publ/othp38.pdf>

³³ Federal Reserve Board, Money and Payments: The U.S. Dollar in the Age of Digital Transformation (January 2022) <https://www.federalreserve.gov/publications/files/money-and-payments-20220120.pdf>

³⁴ Giancarlo, Wetjen, and Perkins, Forkast: A bipartisan case for why the US need as Web3 regulatory overhaul (May 19, 2022) <https://forkast.news/why-we-need-better-web3-regulations/>

Web3 that range from community organizing for the medical research on rare diseases to broad-based artistic expression. Further, subsets of Web 3, such as DAOs and NFTs, are opening the door to entirely new business and governance models. ADAM has long advocated for clarity for digital assets, and the emergence and potential of Web3 reinforces the need for regulatory certainty to preserve the role of U.S. commercial and entrepreneurial activity

The promise of Web3 is tangible and can clearly be seen in the funding that has been raised by Web3 entrepreneurs, the rapid migration of high skilled workers from other sectors into Web3, and the growth of communities. Over the past year, the venture capital space has raised multiple billion-dollar Web3 funds at oversubscribed levels. Similarly, software developers are transitioning into Web3 development at a rapid pace. A report by Electric Capital found that there were 18,416 monthly developers in Web3 in December 2021 and that 65% of active developers joined in 2021.³⁵ At the same time, conversational examples from the traditional finance world find that leading hedge funds are now competing with the digital asset industry for the top young quantitative minds.³⁶ At the same time, Web3 communities have been growing at a rapid pace. For example, Metamask, a leading Ethereum self-custody wallet provider (a tool used to access Web3 application), recently passed 30 million users³⁷, and Helium, a decentralized network for the wireless internet of things, reports that there are 877,302 active hotspots, which provide an impressive geographic coverage rate as pictured on its Foundation website.³⁸

As funding for projects fills out, a tremendous amount of innovation remains, and it is critical that the value created is generated in the U.S. For example, the rapidly growing area of cross chain bridging, which aims to connect various blockchains, has seen significant technological advancements in the past months, which have generated billions in value creation.³⁹

ADAM believes that it should be a fundamental goal of the U.S. Federal Government to create a pragmatic regulatory framework that recognizes the potential of this new area of innovation. Such a framework would provide sufficient clarity to offer clear pathways for register and comply with applicable U.S. regulations, thus ensuring a greater portion of Web3 activity is carried out in the U.S. and subject to U.S. regulatory standards. (See Domestic Regulatory Considerations below for a more thorough discussion on this point.) Additionally, such a framework would provide protections to U.S. consumers and investors, many of whom in the space are still accessing these products in less regulated offshore jurisdictions.

³⁵ Maria Shen, Electric Capital Developer Report 2021 (January 5, 2022) <https://medium.com/electric-capital/electric-capital-developer-report-2021-f37874efea6d>

³⁶ CNBC Squawk Box: Paul Tudor Jones (May 3, 2022) <https://twitter.com/squawknbc/status/1521465558021156866?s=21&t=nwR7VrHuL9F9Ung6HDAGhw>
³⁷ Decrypt: Ethereum Wallet MetaMask Passes 30M Users, Plans DAO and Token (March 15, 2022) <https://decrypt.co/95039/metamask-consensus-30-million-users>

³⁸ Helium Explorer (June 29, 2022) <https://explorer.helium.com/>

³⁹ The Block: Crypto bridge Wormhole seeks \$2.5 billion price tag in private token sale (April 1, 2022) <https://www.theblock.co/post/140100/crypto-bridge-wormhole-seeks-2-5-billion-price-tag-in-private-token-sale>

As several industry and policy thought leaders recently wrote, “*A balanced, modern regulatory framework that catalyzes innovation and allows for economic transformation is urgently needed to advance bipartisan goals of economic progress, inclusive markets and job creation... U.S. policymakers should recognize not just the challenges posed by Web3, but also the opportunities. We believe Congress should prioritize and pass new legislation that can provide a comprehensive policy response, address outstanding novel issues, plug oversight holes, and encourage entrepreneurs to safely innovate the Web3 economy. The right approach would promote crypto innovation and national competitiveness by supporting responsible innovation, fostering economic growth, ensuring consumer protections, furthering financial inclusion, and supporting law enforcement, including efforts against fraud and manipulation, money laundering, and other illicit activity.*”⁴⁰

In addition to a properly tailored regulatory framework, ADAM believes that there is a real opportunity for the U.S. Government to fund research and development into Web3 to advance the technology and seek to find ways to leverage Web3 to solve issues of the global commons. Such work would provide much public good and could act as a counterweight to other state-led approaches (See International Policy Considerations below for a more thorough discussion on this point).

A successful regulatory perimeter and appropriate incentives will help ensure U.S. competitiveness and intellectual leadership in Web3.

Digital Assets Mining & Energy Usage

ADAM believes there is a leadership role that the U.S. can play internationally to incentivize clean energy usage in the blockchain mining and make it compatible with a low carbon economy. PoW mining provides international cross border economic incentives to mine digital assets and secure their economic profits, and as such ADAM believes that serious economic and environmental incentives exist for the U.S. to continue to promote sustainable mining domestically. The recent growth in domestic PoW mining provides the United States with an opportunity assume a position of global leadership to facilitate a transition of PoW mining toward cleaner energy sources, and to leverage the unique demand incentives of blockchain mining operations to develop more renewable energy supply. Bitcoin mining already uses a greater proportion of clean energy than most major countries’ national grids, but responsible industry participants, including ADAM members, understand that continued progress will be necessary in order for the digital asset industry to remain sustainable as it scales. Doing so will aid in the transition toward less carbon-intensive sources of electricity which mining activities have the potential to facilitate, and indeed are already doing so through helping fossil fuel companies reduce emissions through a process known as flare mitigation and through the ability to provide a source of countercyclical demand on an energy grid.

⁴⁰ Giancarlo, Wetjen, and Perkins, Forkast: A bipartisan case for why the US need as Web3 regulatory overhaul (May 19, 2022) <https://forkast.news/why-we-need-better-web3-regulations/>

With more mining companies now listed on capital market exchanges, the requirement of these companies to provide greater investor transparency into their operations has opened the doors for the industry to be able to gain key insights. One of the biggest benefits of having many miners publicly listed is that the industry can get better insight into hashrate growth based on the releases of companies' machine purchase orders. This not only provides insight into companies' growth plans, but also provides insight into how much capital is being invested in hardware and at what price, and how much additional capital companies may need to raise to finance the purchase. At the end of Q4 2021, publicly traded miners represented approximately 18% of the Bitcoin network's hashrate.⁴¹ By the end of 2022, public miners are expected to represent 40-45% of the Bitcoin network's hashrate, based on the 100+ Exahash of machines on order for 2022. This means that nearly half of the network's electricity consumption will be easily auditable and held to the standards of the US public equities markets.

In parallel with market-driven reporting, self-reporting organizations, such as the Bitcoin Mining Council (BMC), have begun to share information on constituent miners' electricity mix and electricity consumption. On an entirely voluntary basis, 29 firms representing 46% of the network's hashrate have reported environmental data on their operations for the last two consecutive quarters. Many miners have heard the concerns raised by regulators and communities around electricity consumption and are committed to increased transparency. The BMC data shows that participating miners rely on a greener electricity mix than most major countries' national grids and estimates that the same is true for miners across the network. In Q4 2021, BMC members' average Bitcoin mining sustainable electricity mix⁴² was 66.1% and the global Bitcoin mining network was estimated to be 58.5%.⁴³

The global nature of PoW mining and industry trends towards sustainability in the U.S. affords the U.S. government and U.S. companies the opportunity to assume global leadership to drive the competitive and sustainable development of digital assets. The U.S. should seek to promote PoW domestically and to increase transparency in the mining process. Doing so will not only drive the sustainable development of digital assets, but also provide real economic benefit.

ADAM wrote in greater depth on the Climate Implication of Digital Assets in its June 8, 2022 comment letter to the Office of Science and Technology Policy and encourages Commerce to consider the letter.⁴⁴

⁴¹ 2021: Bitcoin Mining's Big Year, Galaxy Digital Research <https://www.galaxydigital.io/post/2021-bitcoin-minings-big-year/>.

⁴² The BMC defined sustainable energy as electricity generated by hydro, wind, solar, nuclear, and geothermal. The definition does not take into account renewable energy credits (RECs).

⁴³ See, <https://bitcoinminingcouncil.com/q4-bitcoin-mining-council-survey-confirms-sustainable-power-mix-and-technological-efficiency/>.

⁴⁴ ADAM RFI Response: Climate Implications of Digital Assets (June 8, 2022) <https://www.theadam.io/adam-ostp-rfi-response-climate-implications-of-digital-assets%ef%bf%bc/>

Overview of U.S. Domestic Regulatory Considerations

Policy makers and regulators have focused a great deal of attention on digital asset markets in recent years. Congress has held dozens of hearings, regulators have given countless speeches, and the White House issued the Executive Order requiring a broad range of agencies to coordinate in producing 14 reports. The industry has responded to numerous requests for information and commented on several proposed rulemakings from a range of U.S. government agencies. And yet, neither Congress nor the regulators have resolved the fundamental questions regarding the application of the U.S. regulatory framework to digital assets. Many crypto assets do not fit neatly into existing regulatory taxonomies, presenting the industry and regulators alike with challenging interpretive questions. The banking regulators and market regulators have struggled with questions about where to set the regulatory perimeter when it comes to digital assets. There is a clear tension between regulators' desire to bring novel activity within the regulated system and concern about the risks of doing so.

The unique aspects of digital assets and the market structures that have arisen to facilitate their creation, safekeeping, and transfer, present novel questions regarding how market participants can bring their activities into full compliance with existing regulations. Regulators have urged market participants to register and come into compliance, but have not provided a roadmap for firms that wish to register. For example, the SEC has prioritized "getting [exchanges] registered and regulated" is a high priority, but at the same time has acknowledged that the staff is still considering whether and how to address a number of the peculiar features of digital asset markets and how to handle market participants who transact across securities and commodities markets.⁴⁵

SEC Commissioner Peirce described this dynamic by comparing the industry's efforts to find a regulatory home to the plight of the newly-hatched bird looking for its mother in the children's book *Are You My Mother?* "The crypto industry seems to be on a similar journey" as the bird, said Peirce, "only it is not looking for a mother, but is out looking for its regulator. In a bureaucratic twist on the story in the children's book, in our story, every agency claims to be the regulator."⁴⁶

There are several regulatory issues of particular importance to the industry, and which the industry believes are essential to the development of fair and orderly digital asset markets. These include: a clear framework or process for determining the applicability of securities laws to digital assets, measures to protect and promote market integrity, standards regarding digital asset custody qualified custodian activities, standards for stablecoin issuance, rules around digital asset lending, exchange registration and the steps necessary to come into compliance, and decentralized finance.

⁴⁵ See Prepared Remarks of Gary Gensler On Crypto Markets at (April 4, 2022), at Penn Law Capital Markets Association Annual Conference <https://www.sec.gov/news/speech/gensler-remarks-crypto-markets-040422>.

⁴⁶ Commissioner Hester M. Peirce: Remarks at "Regulatory Transparency Project Conference on Regulating the New Crypto Ecosystem: Necessary Regulation or Crippling Future Innovation?" (June 14, 2022) <https://www.sec.gov/news/speech/peirce-remarks-regulatory-transparency-project-conference>

In addition to the lack regulatory clarity, the industry has been met with hostile statements from U.S. policymakers and legislators, and face unreasonably short timeframes for proposed rulemakings, which often involve efforts to stretch existing regulatory authority. The factors have combined to create a negative perception about the regulatory picture and business environment for digital assets in the United States. This perception has led to the offshoring of various digital asset projects⁴⁷ and threatens to reduce the U.S. role as a leading destination for financial and technology innovation.

However, ADAM believes that there are tangible steps, either legislatively or through clear and transparent rulemaking, that the U.S. can take to reposition itself as the leader for market-driven innovation, and to give U.S. policymakers a leading voice in international standards-setting efforts. ADAM is encouraged by this and the broader White House EO on Digital Assets, which are designed to produce a public policy framework that will contribute to regulatory clarity for digital assets.⁴⁸

ADAM believes that it is critical that U.S. policymakers ensure that, as in other markets, U.S. markets lead the way for digital asset market trading depth. Doing so allows for U.S. regulators to lead in international standard setting, supports the continued denomination of global commerce in dollars, and will provide U.S. regulators the option to regulate by contract to protect consumers including thought the consolidation of trading data and market participant disclosures, the promotion of cyber security standards, and the implantation of trade surveillance and blockchain analytics.

Legislatively, ADAM welcomes efforts to define a digital asset taxonomy and establish processes for aligning digital assets with regulatory frameworks. Along these lines, ADAM is encouraged by the recent bipartisan legislative proposal in the Senate, the Responsible Financial Innovation Act,⁴⁹ and the Digital Commodity Exchange Act of 2022 introduced in the House.⁵⁰ ADAM firmly believes that such clear definitions are necessary to help promote U.S. competitiveness in the digital asset space, and both of these bills accomplish the core tasking.

However, in the absence of legislation, there is much that executive branch agencies can do to provide regulatory certainty while advancing the Administration's goal, as articulated in the EO, of fostering responsible financial innovation. To accomplish that objective, regulatory actions must be targeted in a clear, transparent, and limited manner. Assertions of broad regulatory jurisdiction based on vague references to decades-old statutory definitions have led us to where

⁴⁷ VentureBeat: What Switzerland's 'Crypto Valley' tells us about the state of blockchain (September 10, 2017) <https://venturebeat.com/2017/09/10/what-switzerlands-crypto-valley-tells-us-about-the-state-of-blockchain/>

⁴⁸ <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/> ("Executive Order").

⁴⁹ Lummis-Gillibrand Responsible Financial Innovation Act (June 7, 2022) <https://www.congress.gov/bill/117th-congress/senate-bill/4356/all-info>

⁵⁰ Digital Commodity Exchange Act of 2022 <https://www.congress.gov/bill/117th-congress/house-bill/7614/all-info>

we find ourselves: (1) there are still significant uncertainties regarding the extent to which digital assets fall within the purview of various federal regulators; (2) the appropriate regulatory treatment of digital assets is subject to competing views among executive branch agencies and still under active consideration by the legislative branch; and (3) as discussed above, due to digital assets' unique nature, not all traditional requirements will make sense to apply to digital assets.

Further, ADAM believes that any actions should strictly adhere to the Administrative Procedures Act ("APA"). Recent actions by the Executive have been very concerning in terms of adherence to the APA, with such examples as a late 2020 rulemaking provided the industry only 15 days to respond to an issue of critical importance⁵¹ and a February 2022 rulemaking providing the industry 30 days to respond to a 654-page request for comment with over 220 questions asked.⁵²

As Commerce is well aware, the APA applies to all executive branch and independent agencies and prescribes procedures for agency rulemakings and adjudications. In addition, it outlines standards for judicial review of final agency actions. Section 553 of the APA outlines notice-and-comment rulemaking procedures and is intended to provide the public with a meaningful opportunity to comment on proposed rules. Although a 30-day comment period is typically regarded as the minimum requirement, the legislative history of the APA indicates that longer periods are warranted for matters "of great importance, or those where the public submission of facts will be either useful to the agency or a protection to the public, [and] should naturally be accorded more elaborate public procedures."⁵³ To this end, the Obama Administration recognized the importance of having meaningful public comment on proposed rulemakings and generally instituted 60-day comment periods.⁵⁴ Even longer comment periods are needed where rulemakings are complex or where an agency is engaged in multiple rulemakings at or near the same time.⁵⁵

⁵¹ ADAM Letter to Treasury Secretary Mnuchin On Self-Hosted Wallets (December 15, 2020) <https://www.theadam.io/letter-to-treasury-secretary-mnuchin-on-self-hosted-wallets/>

⁵² ADAM Request for Extension from SEC on to Regulation ATS, Rule 3b-16, and Regulation SCI (February 2, 2022) <https://www.theadam.io/adam-sec-extension-request/>

⁵³ Administrative Procedure Act: Legislative History, S. Doc. No. 248, at 259 (1946).

⁵⁴ Executive Order 13563, Improving Regulation and Regulatory Review (Jan. 18, 2011), 76 Fed. Reg. 3821 (Jan. 21, 2011); *see also* Executive Order 12866, Regulatory Planning and Review (Sept. 30, 1993), 58 Fed. Reg. 51735 (Oct. 4, 1993) ("each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days"); Memorandum for the Heads of Executive Departments and Agencies, Modernizing Regulatory Review (Jan. 20, 2021), 86 Fed. Reg. 7223 (Jan. 26, 2021) ("This memorandum reaffirms the basic principles set forth in [Executive Order 12866] and in Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), which took important steps towards modernizing the regulatory review process. When carried out properly, that process can help to advance regulatory policies that improve the lives of the American people.").

⁵⁵ *See, e.g.*, Commissioner Hester M. Peirce Public Statement: Rat Farms and Rule Comments – Statement on Comment Period Lengths (December 10, 2021), <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021>.

In addition to time constraint compliance with APA, ADAM believes that the Executive Branch must provide the industry clarity when it undertakes a rulemaking. Under the APA, an agency must "make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible"⁵⁶ and "describe the range of alternatives being considered with reasonable specificity."⁵⁷ In one recent proposed rulemaking, a federal financial regulator made only one mention of digital assets in a footnote of a 200-page rulemaking.⁵⁸ In the context of this rulemaking, it would be unreasonable and unlawful for the executive branch to issue a final rule that *did* apply to digital assets. Such failure to provide "fair notice" regarding the scope within which digital assets would violate the APA to extend the final rule to such assets.⁵⁹

In another case, SEC career staff guidance was released on the accounting standards for digital asset firms was released without APA consideration, public consultation, or a SEC Commission vote.⁶⁰ The guidance has a large impact on the custody of digital assets and could affect the financial health and operations of many leading U.S. digital asset service providers. The career staff guidance garnered a dissent from SEC Commissioner Peirce, who noted, "*This is another manifestation of the Securities and Exchange Commission's scattershot and inefficient approach to crypto... a staff accounting bulletin may not be the appropriate vehicle through which to make this accounting change and communicate it to the public...SAB 121 is unusual among SABs in that it provides definitive interpretive guidance for a very specific, very limited number of public companies.*"⁶¹ Similarly, House Financial Services Committee Ranking Member McHenry stated at a conference, "*A staff bulletin should not be regulatory enforcement. It's the most insane thing that I have seen the SEC do in a long time.*"⁶²

Finally, ADAM believes that any Executive Action should fully consider industry viewpoints before attempting to regulate the space. The digital asset industry is approximately a 10 -year old industry that deals with many new concepts and is growing rapidly. As such, ADAM believes a public policy dialogue is extremely helpful in promoting innovation, transparency, and security in the space. Responses to requests for comments or rulemaking notices are one thing, but ADAM sees real benefit in other forms of collaboration such as roundtables and public-private

⁵⁶ *HBO, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977).

⁵⁷ *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 192 (D.C. Cir. 2011).

⁵⁸ ADAM Comment Letter Regarding SEC Proposal to Define the Phrase "As a Part of a Regular Business" in the Definitions of "dealer" and "government securities dealer" (May 27, 2022) <https://www.theadam.io/adam-comment-letter-regarding-sec-proposal-to-define-the-phrase-as-a-part-of-a-regular-business-in-the-definitions-of-dealer-and-government-securities-dea/>

⁵⁹ *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007).

⁶⁰ Staff Accounting Bulletin 121 (March 31, 2022) <https://www.sec.gov/oca/staff-accounting-bulletin-121>

⁶¹ Commissioner Hester M. Peirce: Response to Staff Accounting Bulletin No. 121: (March 31, 2022) <https://www.sec.gov/news/statement/peirce-response-sab-121-033122>

⁶² CoinDesk Consensus Conference in Austin Texas: Washington's Crypto Awakening: The Lawmaker Town Hall (June 10, 2022) <https://www.coindesk.com/video/consensus-festival-2022-highlights/washingtons-crypto-awakening-the-lawmaker-town-hall/>

partnerships. Accordingly, ADAM is hopeful that as Executive Agencies consider advisory boards, representatives from the industry are chosen.

Overview of International Policy Considerations

As the U.S. contemplates how it will domestically interact with the digital asset industry, other nations have sought to lead the way through the development of forward-leaning policy frameworks,⁶³⁶⁴⁶⁵ which provide for greater business certainty and, such as greater availability of trading in various products, including token listings and derivatives contracts. The result has attracted promising digital asset projects (many times with U.S. person founders) to incorporate in these jurisdictions. Further, some nations still contemplating regulatory frameworks, are leading with their statements that promote and do not hinder development and forward-thinking and digital asset innovation. One nation is the UK, which is making Cabinet-level speeches indicating a desire to "*lead the way*" in digital assets, and the UK "*is open for crypto business.*"⁶⁶

Other nations' openness to digital assets has shown as estimates hold that roughly 90% of trading volumes in crypto markets for spot and derivatives trading take place outside the U.S., with only around 10% on U.S.-based exchanges.⁶⁷ Further, across all international exchanges, reported derivatives volume is three times that of spot reported values⁶⁸, but in the U.S. digital asset crypto derivative markets are underdeveloped due to a lack of regulatory approved products and their ability to be accessed by consumers. Meanwhile, roughly two-thirds of the most highly traded tokens relate to projects founded and run by U.S. citizens and trade on centralized or decentralized exchanges they created.⁶⁹ This disconnect demonstrates that the many of benefits of American innovation are being harnessed outside of the U.S. to the detriment of the U.S. tax base, future innovations, and potentially consumers seeking to purchase early stage digital assets not listed in the U.S. Many of trading activities are being facilitated by dollar based stablecoins, however if these trends continue, there is the potential for future trading to move away from dollar stablecoins to other reserved stablecoins. Such a scenario would undermine the role of the

⁶³ Ipe: Swiss Rules on Crypto Asset Trading Offer Clarity to Investors (November 10, 2021) <https://www.ipe.com/news/swiss-rules-on-crypto-asset-trading-offer-clarity-to-investors/10056276.article>

⁶⁴ The Commonwealth of the Bahamas, Office of the Prime Minister: The Future of Digital Assets in the Bahamas (April 20, 2022) <https://opm.gov.bs/the-future-of-digital-assets/>

⁶⁵ Government of Dubai, Law #4 of 2022: Regulating Virtual Assets in the Emirate of Dubai (2022) [https://dlp.dubai.gov.ae/Legislation%20Reference/2022/Law%20No.%20\(4\)%20of%202022%20Regulating%20Virtual%20Assets.pdf](https://dlp.dubai.gov.ae/Legislation%20Reference/2022/Law%20No.%20(4)%20of%202022%20Regulating%20Virtual%20Assets.pdf)

⁶⁶ Keynote Speech by John Glen, Economic Secretary to the Treasury, at the Innovate Finance Global Summit (April 4, 2022) <https://www.gov.uk/government/speeches/keynote-speech-by-john-glen-economic-secretary-to-the-treasury-at-the-innovate-finance-global-summit>

⁶⁷ Giancarlo, Wetjen, and Perkins, Forkast: A bipartisan case for why the US need as Web3 regulatory overhaul (May 19, 2022) <https://forkast.news/why-we-need-better-web3-regulations/>

⁶⁸ FTX Global Volume Monitor (June 29, 2022) <https://ftx.com/volume-monitor>

⁶⁹ *ibid.*

dollar internationally in digital assets and require even more considerable work for U.S. markets to catch up with offshore markets.

Another example is the lack of a Bitcoin Exchange Traded Product ("ETP") in the U.S., where despite numerous applications and consumer demand, consumer options to purchase Bitcoin have remained limited due to the SEC not approving a domestic Bitcoin ETP in the U.S. This has not been the case internationally, where multiple international financial regulators in countries in Europe⁷⁰, Canada⁷¹, and Brazil⁷² have approved Bitcoin ETPs. In this U.S., this has led many consumers wishing to access "spot" Bitcoin to hold their Bitcoin on an exchange or self-custody their own Bitcoin, both options which present the threat of theft, hacking, or loss of their Bitcoin. In fact, a recent Economist Intelligence Unit research paper found that lack of knowledge, security considerations, and difficulties in knowing where to buy digital assets were the largest barriers to ownership.⁷³ For reference, the demand is evident for the spot ETP, as the Commission's late 2021 approval of a Bitcoin Futures-based ETF saw the largest "natural" day trading volume, despite potential drawbacks of the product to general investors.⁷⁴ A thoughtful ETP would provide American consumers a safer, more transparent, and regulated product which could serve as an entry point to financial markets investing and has the potential to incentivize Americans to save more and invest in a broad range of asset classes; however, these benefits which are afforded to many international investors are denied to American citizens.

As some nations provide user-friendly products and attract private business and trading activity, others are seeking to harness blockchain to promote a state lead approach. The most prominent example of this is China, which has launched the Chinese Digital Yuan and Chinese Blockchain Service Network, and if both of which are successful, would create a system with potential surveillance characteristics, which could be exported to like-minded countries.

⁷⁰ Finance Feeds: Fidelity Debuts Physically Backed Bitcoin ETP in Europe (February 21, 2022) <https://financefeeds.com/fidelity-debuts-physically-backed-bitcoin-etp-europe/>

⁷¹ Yahoo Finance: Americans Don't Need to Wait, Canada has ETFs that Hold Bitcoin (October 19, 2021) <https://www.yahoo.com/video/americans-dont-need-to-wait-canada-has-etfs-that-hold-bitcoin-183014643.html>

⁷² Nasdaq: Brazil Stock Exchange Lists First Bitcoin ETF in Latin America (June 23, 2021) <https://www.nasdaq.com/articles/brazil-stock-exchange-lists-first-bitcoin-etf-in-latin-america-2021-06-23>

⁷³ The Economist Intelligence Unit: Digimentality 2021 <https://digitalcurrency.economist.com/wp-content/uploads/2021/05/Digimentality-Crypto-EIU-Final2-1.pdf>.

⁷⁴ Business Insider: Bitcoin Futures ETF Sees Biggest Ever 'Day One' With \$1B In 'Natural' Volume (October 20, 2021) <https://markets.businessinsider.com/news/etf/bitcoin-futures-etf-sees-biggest-ever-day-one-with-1b-in-natural-volume-1030881243>.

⁷⁵ Financial Times: What are the drawbacks to investors of holding a bitcoin futures ETF? (November 1, 2021) <https://www.ft.com/content/5c21e984-9acf-4293-8da2-202d125c332a>.

For the time being, the Digital Yuan is focused on small domestic payments, although it could be expanded to facilitate international payments in the future.⁷⁶ Initial potential international use cases of the Digital Yuan could be concentrated in areas such as Belt and Road projects, the funding of direct projects or investment in China, or the avoidance of the U.S.-centric system for purposes such as sanctions or tax evasion.

China has publicly stated in its 14th five-year plan its desire to expand the Renminbi (RMB) internationally through leading standard-setting in digital currency and is forming partnerships with international bodies, including SWIFT to provide vehicles for the internationalization of the Digital Yuan.⁷⁷⁷⁸

China's 14th five-year plan also mentioned for the first time blockchain technology and the role that it will play in the country's digital economy⁷⁹, and President Xi noted at the 18th study of the Political Bureau that, "[China must] clarify the main direction, increase investment, focus on a number of key core technologies, and accelerate the development of blockchain technology and industrial innovation."⁸⁰

Launched in 2019, the Blockchain Service Network ("BSN") attempts to accomplish this and to create interoperability amongst multiple blockchains and serve as a global infrastructure platform similar to internet. In its 2020 Whitepaper, the BSN wrote that "*The development from the isolated framework of traditional blockchains to the resource-sharing framework of the BSN follows a path parallel to that of the development pattern of the internet, from its early stages as a collection of many isolated local area networks to its progressive expansion into a worldwide web infrastructure. The BSN can be viewed as the internet of blockchains.*"⁸¹

The envisioned resulting project is a digitized financial ecosystem that some analysts have noted could be combined with the Digital Yuan and China's One Belt One Road Project to form a digital platform to engage with Chinese markets that offers the "*efficiency of a centralized governance and control, powered by [distributed ledger technology] solutions... which could*

⁷⁶ Robert Greene, Carnegie Endowment for International Peace: What Will Be the Impact of China's State-Sponsored Digital Currency? (July 01, 2021) <https://carnegieendowment.org/2021/07/01/what-will-be-impact-of-china-s-state-sponsored-digital-currency-pub-84868>

⁷⁷ Id.

⁷⁸ Voice of America: China and SWIFT Partner to Take Digital Currency Global (February 12, 2021). https://www.voanews.com/a/east-asia-pacific_voa-news-china_china-and-swift-partner-take-digital-currency-global/6201964.html

⁷⁹ Coindesk: Blockchain Gets First Mention in China's 5-Year Policy Plan (March 12, 2021) <https://www.coindesk.com/markets/2021/03/12/blockchain-gets-first-mention-in-chinas-5-year-policy-plan/>

⁸⁰ Coindesk: President Xi Says China Should 'Seize Opportunity' to Adopt Blockchain (October 25, 2019) <https://www.coindesk.com/markets/2019/10/25/president-xi-says-china-should-seize-opportunity-to-adopt-blockchain/>

⁸¹ BSN Development Association, Blockchain-based Service Network, Introductory White Paper (February 5, 2020) <https://bsnbase.io/static/tmpFile/BSNIntroductionWhitepaper.pdf>

*therefore represent a way to safely drive overseas investments in terms of political orientation and economic accountability over the Digital Silk Road."*⁸²

The BSN platform will launch overseas in August of this year⁸³, and the platform continues to build utility such as the Digital Certificate network, which was launched earlier this year and will serve as a structure for building NFTs that is compliant with Chinese regulations.⁸⁴

If China's recent crackdown on its private sector tech giants is any indication, it is likely that the Chinese State will further incentivize domestic adoption of the Digital Yuan through the integration or takeover of Alipay and TenPay (the parent of WeChat Pay), the current leading payment rails in China and figure out use cases for the BSN. In this sense, if the Digital Yuan and BSN develop as intended, they could represent a serious trade and financial services project with Chinese State oversight, akin to China's internet Great Firewall, which has overseen vast content moderation⁸⁵, combined with the security risk associated with China's export of surveillance technologies.⁸⁶

The serious implications of such state-lead projects in the digital asset industry should capture the attention of U.S. policymakers. However, as it relates to the both of these projects, the U.S. should also consider the structural issues such as China's strict capital controls, its history of deceptive business practices such as data manipulation, its spotty record on property rights and the rule of law, the potential for data harvesting, and the potential for unwanted surveillance over payments. All of these factors combine to make the Digital Yuan and BSN unappealing international options if Western nations innovate in a responsible manner and provide consumers with a viable alternative.

China's structural issues provide U.S. policymakers with a window of opportunity to provide business clarity and promote the domestic digital assets industry. However, if they fail to do so, U.S. risks falling behind in a space with serious economic and geopolitical implications.⁸⁷ If the

⁸² Eugenio Reggiani, Hyperledger Foundation: Examining DLT Solutions for Trade and Finance, with a China Focus (December 16, 2020) <https://www.hyperledger.org/blog/2020/12/16/examining-dlt-solutions-for-trade-and-finance-with-a-china-focus>

⁸³ CNBC: China's state-backed blockchain company is set to launch its first major international project (May 22, 2022) <https://www.cnbc.com/2022/05/22/chinas-state-backed-blockchain-firm-to-launch-major-overseas-project.html>

⁸⁴ Coindesk: BSN Introduces NFT Infrastructure Platform in China (Jan 24, 2022) <https://www.coindesk.com/business/2022/01/25/bsn-introduces-nft-infrastructure-platform-in-china/>

⁸⁵ Politico Magazine: In China, the 'Great Firewall' Is Changing a Generation (September 1, 2020) <https://www.politico.com/news/magazine/2020/09/01/china-great-firewall-generation-405385>

⁸⁶ FT: Exporting Chinese surveillance: the security risks of 'smart cities' (June 9, 2021) <https://www.ft.com/content/76fdac7c-7076-47a4-bcb0-7e75af0aadab>

⁸⁷ For example, 5G technology is often cited as an example where the United States was left behind other jurisdictions because of governmental inaction. *See, e.g.*, <https://www.cnbc.com/2022/02/17/us-well-behind-china-in-5g-race-ex-google-ceo-eric-schmidt-says.html>

U.S. successful provides clarity, the policies will surely take form in the international fora such as the G7, G20, and OECD. Such leadership will enshrine U.S. leadership and competitiveness of the emerging digital asset technologies.

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ADAM appreciates Commerce's consideration of the comments above. ADAM and its members stand ready to answer any questions you may have, and we look forward to continued collaboration with the Department of Commerce.

Respectfully,

A handwritten signature in black ink that reads "Robert Baldwin". The signature is written in a cursive, flowing style.

Robert Baldwin

Head of Policy

Association for Digital Asset Markets (ADAM)
