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Dan Harty
Director, Office of Capital Markets
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: 87 FR 40881 Ensuring Responsible Development of Digital Assets; Request for Comment

Dr. Mr. Harty:

The Association for Digital Asset Markets (“ADAM”) appreciates the opportunity to comment on the U.S. Department of the Treasury’s (“Treasury”) Request for Comment on Ensuring Responsible Development of Digital Assets (“RFC”). ADAM is a 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.

ADAM is writing to communicate our members’ views on the state and future trajectory of the digital asset industry.¹ The digital asset industry experienced tremendous growth over the last decade and we expect growth to continue at a comparable level as technological applications are expanded and greater institutional adoption is facilitated. ADAM members and other participants in the digital asset space are creating businesses built for the 21st century through the development of new technology stacks, new ways for systems to interact, and novel technologies that can be applied to traditional business or technology functions. These innovations range from inventory database management to transaction settlement. In addition, blockchain-based applications have provided new ways to organize individuals and form communities.

¹ 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 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; 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.

Despite impressive developments and growth to date, there are still many emergent use-applications that have yet to be identified or realized. It precisely these spontaneous innovations that blockchain technology, smart contracts, and new governance structures such as Decentralized Autonomous Organizations (“DAOs”) make possible and make digital assets worth nurturing.

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 the U.S. to be the decision maker for the design of a technology that has the potential to underpin a new internet-based financial system.² 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 encourages Treasury to consider the principles of internet regulation that included to *“Knowing when to act and -- at least as important -- when not to act... [and] Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce.”*³

As such, ADAM is pleased to respond to this RFC and greatly interested in future collaboration with Treasury.

ADAM Background

ADAM is a private, non-profit, membership-based association of firms operating in the digital asset markets and is a standards-setting body and self-governing association committed to 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. 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 these objectives, ADAM released a principles-based Code of Conduct (“Code”) in late 2019 that sets certain standards of professional conduct for ADAM members.⁴ In particular, the Code addresses the following areas:

- Compliance and Risk Management
- Market Ethics

² 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.

³ Clinton White House Archives: A Framework for Global Electronic Commerce
<https://clintonwhitehouse4.archives.gov/WH/New/Commerce/read.html>

⁴ The Code is available at <http://www.theadam.io/code/>.

- 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.

Overview of Comments

ADAM will focus its comments on Treasury’s main topics for consideration: Adoption to Date and Mass Adoption; Opportunities for Consumers, Investors, and Businesses; General Risks; and Impact on the Most Vulnerable.

Adoption to Date and Mass Adoption

Despite tremendous global growth and adoption, the digital asset ecosystem is still considered to be in the early stages of development. Digital asset exchange Gemini reported that in 2022, digital asset ownership [by individuals] was as high as 40% in countries such as Brazil and Indonesia and at around 20% in the U.S.⁵ ADAM expects these numbers to continue to grow as the ecosystem infrastructure is further developed through more user-friendly experiences, novel use cases, improved connectivity to traditional financial markets, and regulatory certainty from governments.

To understand adoption to date, it is important to consider the development timelines of many of the leading blockchains and the role of community open source development in their growth. For example, the Bitcoin blockchain was released in 2009, Ethereum in 2015, and Avalanche and

⁵ Gemini: 2022 Global State of Crypto Report, available at <https://www.gemini.com/state-of-crypto>

Solana in 2019 and 2020, respectively. From each blockchain’s point of release, they have relied on community-led development to usher in new use cases. The ecosystems surrounding these blockchains would not have grown to their present sizes in such short timeframes unless propelled by significant community interest.

Across all public blockchains, a key promise of digital assets has been the ability for users to control their assets, have transparency into the blockchain, and self-organize in various ways.

As it relates to user control, digital assets offer consumers the ability 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. This can be especially liberating for individuals in developing countries who face unstable currencies and limited financial services, which are often expensive, limited in function, and open to corruption.

The open source and decentralized manner of digital assets have provided users with the ability to participate in ecosystems from the beginning of development, which creates a sense of ownership. Additionally, participants have been able to gain price exposure and network standing – however large or small – from the early stages of the blockchain. These opportunities are unique to digital assets as opposed to traditional financial services, where such undertakings are reserved for individuals with significant means.

Modern development and computer code have allowed large, dislocated groups of individuals to come together and forge tight-knit communities with real social structures. 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.⁶ 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.*”⁷

⁶ See, e.g., 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), available at <https://markets.businessinsider.com/news/currencies/ukraine-crypto-donations-russia-war-bitcoin-dogecoin-polkadot-ether-markets-2022-3>; 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/>.

⁷ Coindesk: Ukraine Details What Crypto Donations Are Being Spent On (March 11, 2022), available at <https://www.coindesk.com/policy/2022/03/11/ukraine-details-what-crypto-donations-are-being-spent-on/>.

DeFi, Web3, and DAOs

Decentralized Finance (“DeFi”) and Web3 serve as just a few examples of blockchain potential. They provide individuals and communities the ability to uniquely organize, build, control user data, and maintain property ownership on the internet. Many DeFi and Web3 undertakings rely on smart contracts, which are autonomous Code that functions like computer programs shared across the applicable distributed ledger, and can track, process, receive, and send network transactions that may (but are not required to) relate to digital assets interoperable with DeFi platform.

Web3 has generated significant interest from consumers, investors, and developers. Development in Web3 has the potential to shift our global economy into a more creator-led, open, inclusive, and democratic ecosystem.⁸ Entrepreneurs are unlocking broad use cases for Web3 that range from community organizing for medical research on rare diseases to broad-based artistic expression. Further, subsets of Web3 such as DAOs and Non-Fungible Tokens (“NFTs”) are opening the door to entirely new business and governance models.

A key promise of Web3 is the reliance on blockchains utilizing zero-knowledge proofs, which are mathematical methods by which one party can prove to another party that a given item is true without requiring the underlying data. Such capabilities built into Web3 systems will allow networks to scale in a privacy-forward manner while allowing users to control their underlying personal data in ways ranging from targeted advertising to social media posts.

A community pillar of DeFi and Web3 are DAOs, which 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. DAOs have allowed like-minded communities to come together to pursue a common undertaking. DAOs can be single-purpose or multipurpose. Many DAOs have leveraged governance tokens to build passionate community buy-in (something we will further address in the Opportunities Section). 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, such as leading organization direction.

One prominent example of a single purpose DAO is the Constitution DAO, which came together in a matter of days in late 2021, with the expressed purpose of a community purchasing a copy of the U.S. Constitution. Although the DAO was ultimately unsuccessful in its bid, the group was able to publicly organize (and return) \$47 million for a unique public use case which can serve as a template for future community-based organizing and crowdfunding.⁹

⁸ Giancarlo, Wetjen, and Perkins, Forkast: A bipartisan case for why the US needs a Web3 regulatory overhaul (May 19, 2022), available at <https://forkast.news/why-we-need-better-web3-regulations/>.

⁹ The Verge: From a Meme To \$47 Million: ConstitutionDAO, Crypto, and the Future of Crowdfunding (December 7, 2021), available at <https://www.theverge.com/22820563/constitution-meme-47-million-crypto-crowdfunding-blockchain-ethereum-constitution>

Other DAOs attempt to bind users together and provide them with capabilities they currently lack. One such example is BitDAO, which is a decentralized investment fund that provides governance token holders the chance to vote on how managed capital is allocated.

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 highly 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 2021.¹⁰ 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 minds¹¹ as Web3 communities grow 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 users¹², and Helium, a decentralized network for the wireless internet of things, reports that there are 917,333 active hotspots, which provide an impressive geographic coverage rate as pictured on its Foundation website.¹³

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 of dollars in value creation.¹⁴

Brand and Sports Integrations

A number of leading corporate brands and sports teams are taking note of the consumer potential surrounding Web3. The forays into digital assets have provided an additional revenue stream, as well as the ability to integrate fandom and brand or sports team support. ADAM anticipates the early success of brand integration into digital assets to increase. This incorporation will further place digital assets in the eyes of consumers, which will familiarize them with the core technology and lead to greater adoption across other areas within the digital asset space.

For example, in efforts to stay on the cutting edge and find new sources of revenue and brand appreciation, many leading consumer-facing brands have chosen to engage with digital assets in

¹⁰ Maria Shen, Electric Capital Developer Report (2021) (January 5, 2022), available at <https://medium.com/electric-capital/electric-capital-developer-report-2021-f37874efea6d>.

¹¹ CNBC Squawk Box: Paul Tudor Jones (May 3, 2022), available at <https://twitter.com/squawknbc/status/152146558021156866?s=21&t=nwR7VrHuL9F9Ung6HDAGhw>.

¹² Decrypt: Ethereum Wallet MetaMask Passes 30M Users, Plans DAO and Token (March 15, 2022), available at <https://decrypt.co/95039/metamask-consensus-30-million-users>.

¹³ Helium Explorer (August 7, 2022), available at <https://explorer.helium.com/>.

¹⁴ The Block: Crypto bridge Wormhole seeks \$2.5 billion price tag in private token sale (April 1, 2022), available at <https://www.theblock.co/post/140100/crypto-bridge-wormhole-seeks-2-5-billion-price-tag-in-private-token-sale>.

various capacities. Some have launched NFTs, partnered with established digital asset brands, purchased metaverse land, or have decided to accept digital assets as a means of payment in their stores.¹⁵

In the sports industry, many teams have turned to digital assets as a way to bolster fan support and generate new revenue streams. Several leading European soccer teams, such as Barcelona and PSG, have enlisted Socios to generate fan tokens. The tokens provide fans the ability to vote on things such as kit designs, goal music, and where the team might travel for its pre-season tour – although the polls are ultimately decided on by the clubs.¹⁶ In the U.S. the NBA Top Shot digital asset collectible marketplace has generated substantial fan excitement and engagement as well.¹⁷

Brand and sports team engagements with digital assets are still in their infancy and have been reserved for brands with the means and resources to perform forward-looking undertakings. A number of digital asset service providers are looking to simplify this process and make onboarding and provision of projects more seamless. Easier adoption of digital asset marketing strategies will only further incorporate the space into the daily life of consumers.

Regulatory Barriers and Ensuring a Level Playing Field

ADAM believes the largest barrier to broader adoption of digital assets has been regulatory uncertainty. This uncertainty in the U.S. paired with international competition and anticompetitive actions towards the industry from established firms, creates the need for reasonable legislative or executive action to ensure that prudent policy is crafted to preserve the role of U.S. commercial and entrepreneurial activity.

In the United States and large swaths globally, regulatory uncertainty has been a significant barrier to broader digital asset adoption. 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 registering and complying with applicable U.S. regulations, thus

¹⁵ See, e.g., SuperGucci NFT collection, available at <https://superplastic.co/pages/gucci-supergucci>; CNN: Tiffany's sells out custom Cryptopunk 'NFTiff' pendants for \$50,00 each, available at <https://www.cnn.com/style/article/tiffanys-cryptopunk-nft-pendants-trnd/index.html>; Adidas: Into the Metaverse, available at https://www.adidas.com/into_the_metaverse; and Coindesk: Chipotle Now Accepting Cryptocurrency Payments at US Locations <https://www.coindesk.com/business/2022/06/02/chipotle-now-accepting-cryptocurrency-payments-at-us-locations/>.

¹⁶ Sports Pro Media: Why the likes of Inter, PSG and Barca are banking on Socios fan tokens to help generate new revenue (August 6, 2021), available at <https://www.sportspromedia.com/analysis/socios-fan-tokens-blockchain-inter-psg-barca-alexandre-dreyfus-interview/>.

¹⁷ CNBC: People have spent more than \$230 million buying and trading digital collectibles of NBA highlights (March 2, 2021) <https://www.cnbc.com/2021/02/28/230-million-dollars-spent-on-nba-top-shot.html>

ensuring a greater portion of digital asset activity is carried out in the U.S. and subject to U.S. regulatory standards. 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 (such a system would also solve many of the issues described in the Risks Section).

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.¹⁸ These frameworks provide greater business certainty and 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 and for offshore participants to have the ability to access token listings at an earlier period than U.S. consumers could. 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 example is the United Kingdom, where members of the Cabinet have made speeches indicating a desire to “*lead the way*” in digital assets, and stated that the UK “*is open for crypto business.*”¹⁹

Other nations’ openness to digital assets has shown in terms of product offerings and market share of firms operating in those jurisdictions. For example, 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.²⁰ Further, across all international exchanges, reported derivatives volume is three times that of spot reported values,²¹ 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.²² This disconnect demonstrates that the many benefits of American innovation are being harnessed outside of the U.S. to the detriment of the U.S. tax base, future innovations, and potential consumers who may be seeking to purchase early-stage digital assets that are not listed in the U.S. Many trading activities are being facilitated by dollar-

¹⁸ See, e.g., Ipe: Swiss Rules on Crypto Asset Trading Offer Clarity to Investors (November 10, 2021), available at <https://www.ipe.com/news/swiss-rules-on-crypto-asset-trading-offer-clarity-to-investors/10056276.article>; The Commonwealth of the Bahamas, Office of the Prime Minister: The Future of Digital Assets in the Bahamas (April 20, 2022), available at <https://opm.gov.bs/the-future-of-digital-assets/>; Government of Dubai, Law #4 of 2022: Regulating Virtual Assets in the Emirate of Dubai (2022) [https://dip.dubai.gov.ae/Legislation%20Reference/2022/Law%20No.%20\(4\)%20of%202022%20Regulating%20Virtual%20Assets.pdf](https://dip.dubai.gov.ae/Legislation%20Reference/2022/Law%20No.%20(4)%20of%202022%20Regulating%20Virtual%20Assets.pdf).

¹⁹ Keynote Speech by John Glen, Economic Secretary to the Treasury, at the Innovate Finance Global Summit (April 4, 2022), available at <https://www.gov.uk/government/speeches/keynote-speech-by-john-glen-economic-secretary-to-the-treasury-at-the-innovate-finance-global-summit>.

²⁰ Giancarlo, Wetjen, and Perkins, Forkast: A bipartisan case for why the U.S. need as Web3 regulatory overhaul (May 19, 2022), available at <https://forkast.news/why-we-need-better-web3-regulations/>.

²¹ FTX Global Volume Monitor (June 29, 2022), available at <https://ftx.com/volume-monitor>.

²² Ibid.

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

Another example of a regulatory barrier 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 U.S. Securities and Exchange Commission (“SEC”) declining to approve a domestic Bitcoin ETP in the U.S. This has not been the case internationally, where multiple international financial regulators in countries in Europe²³, Canada²⁴, and Brazil²⁵ have approved Bitcoin ETPs. In the 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.²⁶ For reference, the demand is evident for the spot ETP, as the SEC’s late 2021 approval of a Bitcoin futures-based Exchange Traded Fund (“ETF”) saw the largest “natural” day trading volume.²⁷ 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.

ADAM believes that Treasury 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. 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

²³ Finance Feeds: Fidelity Debuts Physically Backed Bitcoin ETP in Europe (February 21, 2022), available at <https://financefeeds.com/fidelity-debuts-physically-backed-bitcoin-etp-europe/>.

²⁴ Yahoo Finance: Americans Don't Need to Wait, Canada has ETFs that Hold Bitcoin (October 19, 2021), available at <https://www.yahoo.com/video/americans-dont-need-to-wait-canada-has-etfs-that-hold-bitcoin-183014643.html>.

²⁵ 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>

²⁶ The Economist Intelligence Unit: Digimentality 2021 <https://digitalcurrency.economist.com/wp-content/uploads/2021/05/Digimentality-Crypto-EIU-Final2-1.pdf>.

²⁷ Business Insider: Bitcoin Futures ETF Sees Biggest Ever 'Day One' With \$1B in 'Natural' Volume (October 20, 2021), available at <https://markets.businessinsider.com/news/etf/bitcoin-futures-etf-sees-biggest-ever-day-one-with-1b-in-natural-volume-1030881243>; 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>.

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.

ADAM believes that there are tangible steps, either through legislation, clear and transparent rulemaking, or outcomes-based licensing approvals 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 the White House Executive Order on Digital Assets, which could produce a public policy framework that will contribute to regulatory clarity for digital assets.²⁸

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 ability to protect consumers, including through the consolidation of trading data and market participant disclosures, the promotion of cybersecurity 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, particularly where and when aligning regulatory regimes for digital assets and traditional markets will lead to enhanced regulatory clarity, greater protections for investors, risk reductions for the digital and traditional systems as well as efficient capital deployment. Along these lines, ADAM is encouraged by several recent bipartisan bills in the Senate, including the Digital Commodities Consumer Protection Act of 2022²⁹ and the Responsible Financial Innovation Act,³⁰ as well as the Digital Commodity Exchange Act of 2022 introduced in the House.³¹ 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 we find ourselves: (1) there are still significant uncertainties regarding the extent to which digital

²⁸ <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/> (“Executive Order”).

²⁹ Stabenow, Boozman, Booker, Thune, Digital Commodities Consumer Protection Act of 2022 (August 3, 2022) <https://www.agriculture.senate.gov/newsroom/rep/press/release/stabenow-boozman-booker-and-thune-introduce-legislation-to-regulate-digital-commodities>

³⁰ Lummis-Gillibrand Responsible Financial Innovation Act (June 7, 2022), available at <https://www.congress.gov/bill/117th-congress/senate-bill/4356/all-info>.

³¹ Digital Commodity Exchange Act of 2022, available at <https://www.congress.gov/bill/117th-congress/house-bill/7614/all-info>.

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) due to digital assets' unique nature, not all traditional requirements will make sense to apply to digital assets. On the other hand, in those instances where digital-asset platform operators seek specific licenses, the regulatory agencies involved should consider these applications with flexibility and defer on specific requirements where appropriate if doing so will continue to protect investors, reduce risks, and promote responsible innovation and competition.

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 digital assets to advance the technology and seek to find ways to leverage areas such as Web3 to solve issues of the global commons.

Finally, ADAM believes that Treasury should take steps to ensure a level playing field for firms innovating in the digital asset space. Oftentimes, incumbent businesses, which may have a near-monopoly on certain activities,³² 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).³³ Similarly, 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.³⁴

University of Chicago Law Professor Todd Henderson, wrote about this in a recent Wall Street Journal op-ed stating:

³² 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>.

³³ U.S. House Agriculture Committee: Changing Market Roles: The FTX Proposal and Trends in New Clearinghouse Models (May 12, 2022), available at <https://agriculture.house.gov/calendar/eventsingle.aspx?EventID=2496>; CFTC Announces Staff Roundtable Discussion on Non-intermediation (April 27, 2022), available at <https://www.cftc.gov/PressRoom/PressReleases/8519-22#:~:text=The%20goal%20of%20the%20roundtable,trading%20and%20clearing%20more%20generally.>

³⁴ See 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/>; Senator Lummis Presses Chairman Powell on the Fed's Master Account Process (June 22, 2022) <https://www.youtube.com/watch?v=oAmNBcXPXzQ>; Coindesk: Crypto Bank Custodia Sues Federal Reserve (June 7, 2022) <https://www.coindesk.com/policy/2022/06/07/crypto-bank-custodia-sues-federal-reserve/>.

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.³⁵

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 by the financial and banking regulators and asks that within the interagency, Treasury promote fair and timely review.

Institutional Flows

ADAM believes that once regulatory certainty is provided, greater institutional flows will come to the sector, expanding the sector and leading to widespread adoption. On the investing side, institutional flows are already starting to occur as some firms such as Blackrock and Fidelity look to be forward-leaning in terms of their digital asset offerings.³⁶ However, other firms, while developing business plans, are waiting to introduce products until greater regulatory certainty is provided.

In spite of this, ADAM believes investing flows will continue to expand and that it is helpful to consider pension funds, where in recent years, large pension funds have allocated percentages of their portfolios to the digital asset sector.³⁷ Many of these allocations have occurred due to a fiduciary perspective to allocate to an emerging asset class with a strong record of performance that is challenging established technology and financial services sectors, in fact, a recent CFA Institute study found that 94% of state and government pension plan sponsors said they invest in

³⁵ 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

³⁶ See Forbes: Bitcoin Is Coming to Your 401(K) (May 2, 2022), available at <https://www.forbes.com/advisor/investing/cryptocurrency/bitcoin-401k/>; Bloomberg: BlackRock Teams Up with Coinbase in Crypto Market Expansion (August 4, 2022) <https://www.bloomberg.com/news/articles/2022-08-04/blackrock-teams-up-with-coinbase-in-crypto-market-expansion#xj4y7vzkg>.

³⁷ Forbes Pension and Sovereign Wealth Funds Eye Crypto As Regulators Focus On A Global Crypto Framework (December 30, 2021), available at <https://www.forbes.com/sites/lawrencewintermeyer/2021/12/30/pension-and-sovereign-wealth-funds-eye-crypto-as-regulators-focus-on-a-global-crypto-framework/?sh=4171fb4b7399>.

cryptocurrencies, along with 62% of corporate defined benefit plans and 48% of corporate DC plans.³⁸ Pension funds are unique, but such logic reigns true, and ADAM expects similar from other categories of asset managers.

In addition to investing flows, ADAM anticipates that other institutional financial service providers will incorporate digital assets utility in their service providing. For example, Cash App and PayPal have both allowed users to hold digital assets in their wallets, with PayPal recently announcing that users can transfer, send, and receive Bitcoin and Ethereum.³⁹ ADAM anticipates that integration of digital asset utility will continue, and institutions ranging from G-SIB banks to credit unions will provide new service lines such as custodial wallet hosting, leveraging public blockchains for specific process efficiency improvements, or providing stablecoins services.

Technical Barriers and Product Development

ADAM believes public blockchains have several technological developments that must be solved to ensure greater mass adoption of digital assets. Such issues include blockchain network speed, blockchain scalability, blockchain congestion and service fees, considerations around custody, cross-blockchain bridging, and cybersecurity risks.

The industry is acutely aware of these barriers, which are areas where there is active development and venture capital investment.

The resulting products that solve these challenges will allow greater community development and facilitate more user-friendly interfaces making offerings even more attractive to the average user. As these products gain traction, ADAM believes that simple innovations combined with increased awareness have the potential for "J-shaped" exponential adoption growth.

Opportunities for Consumers, Investors, and Businesses

As stated at the top of the Section on Adoption to Date, the digital asset ecosystem is still considered to be in the early stages of development. Therefore, ADAM believes that there are still significant opportunities for expansion by customers, investors, and businesses within those areas already adopted. In addition to continued potential in these areas, there are also keen opportunities in Web3 and community development, blockchain-specific development, smart contract development, cross-chain bridging, custody solutions, and solutions that help

³⁸ CFA Institute: Pensions, Crypto, and Trust: Digital Assets and Retirement Funds (August 4, 2022), available at <https://blogs.cfainstitute.org/investor/2022/08/04/pensions-crypto-and-trust-digital-assets-and-retirement-funds/>

³⁹ See Cash App Bitcoin <https://cash.app/bitcoin>; PayPal Newsroom PayPal Users Can Now Transfer, Send, and Receive Bitcoin, Ethereum, Bitcoin Cash, and Litecoin (June 7, 2022) <https://newsroom.paypal-corp.com/2022-06-07-PayPal-Users-Can-Now-Transfer-Send-and-Receive-Bitcoin-Ethereum-Bitcoin-Cash-and-Litecoin>.

interconnect or facilitate flows to traditional financial markets. Collectively, there is no lack of venture funding for the space, with estimates of tens of billions of dollars in deployable capital.⁴⁰

As addressed in more detail in the previous Section, the open source and decentralized manner of digital assets have provided users with the ability to participate in ecosystems from the beginning of development, affording them the ability to gain price exposure and network standing – however large or small – from early stages of the blockchain. These opportunities are unique to digital assets as opposed to traditional financial services, where such undertakings are reserved for individuals with significant means.

As technological innovation has shifted traditional markets in ways such as moving from open outcry to electronic markets, paper to electronic settlement, or communications via letter to now text or email, market practices should also shift based on the available technological innovation. Some financial markets, and futures markets, in particular, have developed around an intermediated model, where customers rely on third parties to facilitate trading and clearing of contracts. Existing laws and rules do not require this market structure; rather, they developed out of necessity based on communication and technological capabilities decades ago.

Digital asset markets utilizing tokenization were born in an era where this arrangement is not necessary and, in fact, only adds inefficiencies and introduces operational risk. Customers have access to a much more level playing field than in other markets – all participants have access to the same market data, liquidity, and trading and risk management features.

As such, tremendous upside exists for investors and businesses in the field of tokenization of various assets. Tokenizing creates a digital asset corresponding to a real-world asset. Tokenized assets can vary widely, including equity securities, commodities, the dollar (stablecoins), debt securities, artwork, and real estate. Key benefits of tokenization are increased liquidity, improved ownership tracking, lowered risks, lowered costs, and faster settlement.⁴¹

To date, stablecoins have been the most prominent example of tokenized assets where dollar-reserved stablecoins have allowed for fast, secure, and cheap payments to be made. 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 2020 to \$143 billion in August 2022.⁴² 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

⁴⁰ Twitter, Frank Chaparro, Editor at The Block, available at <https://twitter.com/fintechfrank/status/1556031575028125697>.

⁴¹ See, e.g., Fireblocks: Tokenization Use Cases Reshaping Financial Markets (April 28, 2022), available at <https://www.fireblocks.com/blog/3-tokenization-use-cases-reshaping-financial-markets>; BNY Mellon: Tokenization: Opening Illiquid Assets to Investors (June 2019), available at <https://www.bnymellon.com/us/en/insights/all-insights/tokenization-opening-illiquid-assets-to-investors.html#:~:text=Tokenization%20is%20a%20capability%20that,costs%20and%20bolstered%20risk%20management>.

⁴² The Block Crypto: Stablecoin Supply Charts (August 2022), available at <https://www.theblock.co/data/decentralized-finance/stablecoins>.

utility, which can fairly easily be converted to other sectors of the economy to work with our existing financial structures.⁴³ In the digital asset space, stablecoins are now being used as the basis for transaction settlement on mergers and acquisitions, and from a cross-border payment perspective, fully backed USD stablecoins have the potential to 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.

Stablecoins can take a variety of forms and are currently under intense policy scrutiny. ADAM believes that a practical regulatory solution is within grasp. A sensible solution will allow for the growth of stablecoins, creating a large opportunity for sector growth and a prominent expansion of the dollar.

Similar to stablecoins, a large opportunity is present for the tokenization of various commodities. One such example of a current tokenization commodity is the Paxos Gold Digital Token, a digital token backed by physical gold, which is regulated by the New York Department of Financial Services and currently has a market capitalization of \$600 million.⁴⁴ The tokenization of Paxos Gold allows for far superior settlement, lower management fees, and cheaper custody arrangements than other products in the gold space, making it an extremely attractive product for individuals seeking exposure to gold. ADAM expects tokenization to continue for other commodities and that many of the benefits of tokenized assets will drive large adoption and market capitalizations.

Similar to commodities, equity securities are an area where ADAM expects tokenization to expand significantly. Tokenized stocks have the potential to be traded and reach settlement near instantly. For example, Paxos' equities settlement service, used by Bank of America and Credit Suisse, enables faster processing because of its underpinning blockchain technology.⁴⁵ Such an ability is not limited to large companies but also smaller market capitalization companies that are used to trading in limited liquidity environments with high fees associated with trading.

ADAM believes that tokenization of assets will improve market structures by limiting counterparty risk build-up either intraday or during market closures, such as over a weekend. As evidenced by recent volatility in the London Metal Exchange, even the most advanced markets

⁴³ Finextr: PayU Partners Celo to Bring Stablecoin Payments to Merchants (July 21, 2021), available at <https://www.finextra.com/newsarticle/38498/payu-partners-celo-to-bring-stablecoin-payments-to-merchants>

⁴⁴ Paxos: Paxos Gold <https://paxos.com/paxgold/>.

⁴⁵ Bloomberg: BofA Joins Paxos Blockchain Stock-Settlement Network (May 17, 2021), available at <https://www.bloomberg.com/news/articles/2021-05-17/bank-of-america-joins-paxos-blockchain-stock-settlement-network#xj4y7vzkg>.

are subject to pricing issues, leading to negotiated haircuts and caps on price movement.⁴⁶ ADAM firmly believes that technological developments in tokenization will improve market functioning, resulting in greater liquidity, risk reduction, and price discovery.

A final business opportunity that the digital asset space has afforded is the role of software companies leveraging public blockchains to develop a host of market surveillance and blockchain analytic capabilities to provide real-time trade monitoring solutions and transaction tracing analytics. These insights are unique to the digital asset space and have the potential to switch our financial regulation to one of real-time monitoring. Such a system will allow risk and contagion to be identified in real-time, as well as help regulators identify fraudulent activity. These tools can also be utilized by consumers to gain deep and transparent insights into the digital asset markets as they wish to engage.

Risks in Digital Assets Financial Markets

ADAM firmly believes that risks exist in all markets, especially nascent markets. This is why ADAM's founding members came together to devise its Code of Conduct on digital asset market best practices for trading.⁴⁷ As mentioned earlier, ADAM believes that a sensible U.S. regulatory framework is one of the best starts to approaching such risk, combined with trade surveillance and blockchain analytics, to create an efficient regulatory framework. Additionally, the digital asset industries' novelty provides an opportunity for the U.S. government and private sector to collaborate on the space's standard-setting and best practices early on, thus establishing a safer future and marketplace.

One of the digital asset space's biggest risks to consumers, businesses, and investors is cybersecurity. It is something that the digital asset sector is intently focused on as malicious actors, sometimes at the nation-state level, look for vulnerabilities across entire blockchain ecosystems. ADAM believes that there is room for the industry to devise comprehensive cybersecurity and DeFi contract auditing standards as best practices. In addition, to combat cybersecurity threats, ADAM believes that public-private partnership with law enforcement and intelligence agencies and two-way information sharing will help to identify threats and stop or minimize harmful actions.

Another threat is fraudulent activity, in the form of falsified information, disruptive trading practices, or scams run through social media. Again, in these cases, proper network trade monitoring and public-private partnerships will be key to prosecuting those engaging in fraud. Additionally, it is important that the industry work with internet and social media providers to identify and stop the spread of persistent scams.

⁴⁶ Wall Street Journal, *London Nickel Trading to Restart Wednesday, With Caps on Price Moves* (March 15, 2022), available at <https://www.wsj.com/articles/london-nickel-trading-to-restart-wednesday-with-caps-on-price-moves-11647319846> (March 15, 2022)

⁴⁷ The Code is available at <http://www.theadam.io/code/>.

An important step in addressing risks is the continued education of consumers in the space. Digital assets are unique in many ways ranging from handling self-custody and finality of transactions. Similarly, there is the persistent threat of fraud or phishing. Continued education through media and on digital asset platforms is an important step to protecting customers.

Impact on the Most Vulnerable

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 solve successfully. 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%.⁴⁸ 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.

ADAM anticipates that the advent of stablecoins will greatly improve the remittance process. In addition to digital asset native firms, large money transfer businesses such as MoneyGram recognize stablecoins' potential and are exploring options.⁴⁹ The three largest barriers (which ADAM believes will be solved in the near term) are the technical sophistication and access to hardware and internet of the user and remittance receivers, the opportunities to convert stablecoins to physical cash in the country or use in the home country for payments, and potential know your customer ("KYC") ID requirements for users remittance users accessing centralized digital asset platforms. Nevertheless, ADAM believes that stablecoins' application to remittances has exciting potential in an area that developmental economists have long identified as key to improving lives across the world.

Another area that ADAM believes has real potential to improve financial access for the underserved is the ability for users to participate in DeFi and Web3. DeFi and Web3 connectivity requires access to an internet connection and physical hardware such as a cell phone or a computer. There have been moves in the space towards integrating Web3 infrastructure into the physical hardware of cell phones. Connectivity of users will provide business opportunities, as well as saving vehicles, lending, liquidity, and asset transfer services for digital assets. These opportunities will not rely on credit scores, but instead collateral a user has on platform. ADAM also anticipates that greater tokenization will lower the cost for engaging in financial services,

48 The World Bank Group: The Global Findex Database 2021: Financial Inclusion, Digital Payments, and Resilience in the Age of COVID-19 (2021), available at <https://www.worldbank.org/en/publication/globalfindex>; The World Bank Group: Remittances to Reach \$630 billion in 2022 with Record Flows into Ukraine (May 11, 2022), available at <https://www.worldbank.org/en/news/press-release/2022/05/11/remittances-to-reach-630-billion-in-2022-with-record-flows-into-ukraine>; The World Bank Group and Knomad: Resilience COVID-19 Crisis Through a Migration Lens Migration and Development Brief 34 (May 2021), available at https://www.knomad.org/sites/default/files/2021-05/Migration%20and%20Development%20Brief%2034_1.pdf.

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

and in situations where there are fees, the fees will likely be negligible or percentage based, as opposed to set dollar fees seen in many banking relationships.

Finally, to best serve the underserved, risk disclosures of interest-bearing products or potentially volatile assets is a prudent step to ensure users are well informed on the risk of various products. Additionally, considerations will need to be put in place on custody arrangements to find user-friendly approaches for disadvantaged individuals. Lastly, these services will require access to internet and infrastructure connections, and as mentioned in the stablecoin discussion above, KYC information for digital asset services could challenge access for those without identity documents.

* * *

ADAM appreciates Treasury'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.

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)