

Crypto Council for Innovation

July 5, 2022

VIA REGULATIONS.GOV

Hon. Gina M. Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
Attention: International Trade Administration

Dear Secretary Raimondo:

The Crypto Council for Innovation (CCI) hereby submits these comments to assist the Department of Commerce with the development of a policy framework for advancing the competitiveness of U.S. digital asset businesses. These comments are being submitted pursuant to the agency's May 19, 2022 notice entitled "Developing a Framework on Competitiveness of Digital Asset Technologies"¹ and pursuant to President Biden's March 2022 Executive Order on "Ensuring Responsible Development of Digital Assets".² For purposes of these comments, digital assets are "virtual records of value directly held on and transferred across a shared cryptographically secured ledger"³ and include central bank digital currencies, cryptocurrencies, stablecoins, non-fungible tokens (NFTs), and the enabling blockchain technology.

¹ *Developing a Framework on Competitiveness of Digital Asset Technologies*, 87 Fed. Reg. 30,450 (Dep't Commerce May 19, 2022) ("Request for Comments").

² *Ensuring Responsible Development of Digital Assets*, 87 Fed. Reg. 14,143 (Mar. 14, 2022) (Executive Order 14067) (Mar. 9, 2022) ("Executive Order 14067"), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>.

³ *Digital Assets: The Next Frontier of Finance*, SWIFT (Apr. 20, 2022), available at <https://www.swift.com/news-events/news/digital-assets-next-frontier-finance> ("The Next Frontier").

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I. INTRODUCTION

CCI is a global alliance of crypto industry leaders with a mission to demonstrate the transformational promise of crypto and communicate its benefits to policymakers, regulators, and stakeholders around the globe. Its members include Paradigm, Coinbase, Fidelity Digital Assets, Andreessen Horowitz, Block, Electric Capital, Gemini, and Ribbit Capital.⁴ As the U.S.

⁴ See Crypto Council for Innovation, <https://cryptoforinnovation.org>.

Government is aware, digital assets have immense potential to spur international economic growth, create jobs, improve financial inclusion and access, and enhance privacy and security. By sharing insights, expertise, and the facts about the global digital assets ecosystem, CCI supports institutions worldwide in shaping and encouraging the responsible regulation of assets in ways that unlock potential and improve lives.

Today, more than 100 countries, including the United States, are exploring, piloting, or rolling out central bank digital currencies (CBDC), which are digital forms of a country's sovereign currency.⁵ Additionally, there are over 460 crypto-exchanges around the world.⁶ Thousands of major corporations now accept cryptocurrencies as payments and are using digital assets for a variety of investment, operational, and transactional purposes. Indeed, as digital assets are now becoming mainstream, many financial institutions worldwide have been working to integrate and expand their offerings and investments pertaining to digital assets. U.S. industries are significant drivers of innovation in this emerging sector and are firmly positioned to capture a significant share of this growing market.

In light of the critical importance of a U.S.-driven approach to digital assets, CCI applauds the U.S. Government's efforts to develop a meaningful framework to support the United States' competitive position. The Commerce Department's request for public input provides an extremely important pathway for industry to apprise the Government of current challenges and potential solutions. CCI provides the following comments in furtherance of the Government's work, and has cross-referenced responses to each Commerce question in the relevant heading.

⁵ *From Next-Generation to Now: Digital Assets*, Deloitte (Apr. 2022), available at <https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/from-next-generation-to-now-digital-assets.html> ("Next-Generation to Now").

⁶ *Cryptocurrency Regulation: Where Are We Now, And Where Are We Going?*, World Economic Forum (Mar. 28, 2022), available at <https://www.weforum.org/agenda/2022/03/where-is-cryptocurrency-regulation-heading/>.

The most productive policies are those that will:

- Facilitate engagement with new customers, businesses, and other counterparties.
- Encourage market entry for new U.S. digital businesses.
- Promote a highly-skilled U.S. workforce, and create workforce development opportunities for U.S. digital assets businesses seeking new talent.
- Enable more real-time, accurate revenue information and transparency across transactions.
- Properly safeguard assets held in digital form on blockchains.
- Allow companies to access new asset classes as well as new capital and liquidity pools through tokenized investments (this also provides access to capital to traditionally underserved communities).
- Create cybersecurity best practices that protect American firms from cyberattacks and a range of other cybersecurity risks.
- Advance flexible taxation policies that enable businesses to invest, grow, thrive and compete with foreign competitors.
- Promote market access for U.S. business abroad, and level the playing field for cross-border digitized capital flows.
- Enhance the public's understanding of the benefits and risks arising from blockchain-based assets.

The principles promoted here will help capitalize a vital and evolving U.S. industry.

II. THE UNITED STATES MUST AUGMENT CURRENT ACTIVITIES TO ENCOURAGE THE GROWTH OF U.S. DIGITAL ASSETS AND BUSINESS OPPORTUNITIES FOR MARKET PARTICIPANTS (Qs. 3, 9)

The United States has been engaging in ongoing international discussions concerning the responsible development of digital assets, including work through the G7 and Financial Action Task Force (FATF).⁷ As these efforts are in their nascent stages, we encourage the Biden Administration to further develop, and elevate, these discussions through additional fora including existing trade agreements and newly-created agreements, and through the international trade and privacy policy work of the G20, World Trade Organization (WTO), International Monetary Fund (IMF), World Bank (WB), and the Asia-Pacific Economic Cooperation (APEC).

⁷ See Request for Comments at 30,451.

The cross-border nature of digital assets and the emergence of international standards in this space warrant forward-leaning leadership by the United States Government with its global counterparts to ensure that U.S. interests are represented and promoted.

Indeed, the Administration's March 2022 Executive Order was a critical first step in creating a public-private engagement plan for the U.S. Government. We note, however, that the Executive Order calls for extensive Government study on the use and proliferation of digital assets, which, if not conducted expeditiously, may preclude the Administration from leading internationally, especially in light of intense international competition. Given that digital assets – including both cryptocurrencies and stablecoins – are in very early stages of development and market penetration both within the United States and globally, it will be extremely difficult for the U.S. Government to meaningfully measure and predict future use, market trends, competition, and national security/privacy implications. Moreover, without active leadership and engagement in this area, it will be extremely difficult for the U.S. Government to create and maintain an effective regulatory framework that protects users, facilitates innovation, and strengthens the economy, let alone enable global competitiveness.

In order to expedite an urgently-needed broad understanding of the contours of this multifaceted sector, the U.S. Government should establish a Digital Assets Task Force, comprised of both Government stakeholders and business leaders. The Task Force should leverage the expertise of private sector leaders to keep the U.S. Government apprised of current market and technology trends, risks, and opportunities. Through the Task Force, the U.S. Government would likewise keep businesses apprised of federal and international efforts to promote growth and leadership of the U.S. industry. The Task Force could also facilitate business and federal agency engagement with Congress. A structured framework, such as this,

for public-private engagement is the most efficient way for the United States to develop and advance a successful digital assets strategy.

III. DIGITAL ASSETS CAN IMPROVE INTERNATIONAL FINANCIAL FLOWS AND IMPROVE ACCESS FOR USERS

A. Financial Institutions Should be Provided With Clear Regulatory Guidance on Handling Digital Assets In a Responsible Manner (Qs. 3, 13, 17)

Some U.S. financial institutions are already starting to offer services related to digital assets, often following the lead of consumer demand for these kinds of services.⁸ These include cryptocurrency custody services, wealth management, trading, and research coverage.⁹ Indeed, retail-banking clients and institutional investors are expressing increased interest in cryptocurrency.¹⁰ Digital assets have the potential to outperform conventional banking products while offering greater efficiency and more transparency.¹¹ Indeed, the value of many, if not most, assets has been volatile in the current market. Volatility is not unique to digital assets, and it merely reinforces the need for clear guidance on a responsible approach.

The U.S. approach to crypto and digital assets remains overly precautionary. As discussed above, for instance, the FDIC is asking banks to report their current and future crypto-related activities, after which the banking regulator will issue “relevant supervisory feedback.” The result is significant uncertainty around the expectations for banks when they engage with cryptocurrency assets.¹² Unpredictability will discourage legacy financial

⁸ *Factbox: How U.S. Banks are Dipping Their Toes in the Crypto Water*, Reuters (Apr. 5, 2022), available at <https://www.reuters.com/business/finance/how-us-banks-are-dipping-their-toes-crypto-water-2022-04-05/>.

⁹ *See id.*

¹⁰ *How Banks Can Succeed with Cryptocurrency*, BCG (Nov. 5, 2020), available at <https://www.bcg.com/publications/2020/how-banks-can-succeed-with-cryptocurrency>.

¹¹ *See id.*

¹² *Understanding Cryptocurrency: What Banks Need to Know*, American Bankers Association (July 2021), available at <https://www.aba.com/-/media/documents/reports-and-surveys/understanding-cryptocurrency.pdf?rev=b813e4468819485ca024a6aec0a6e5cb>.

institutions from adopting responsible digital asset policies, particularly if they are concerned that regulatory approaches may vary significantly over time.

Financial institutions will benefit from clarity around the ability to transact with digital assets and an approach that is not cautious to the point that it deters responsible attempts to respond to consumer demand for digital assets. The Administration can help lead the way with a coordinated approach that recognizes the benefits of digital assets and encourages more proactive regulatory engagement.

B. Digital Assets Can Improve International Payments, Trade Finance, and Promote Financial Inclusion (Qs. 13, 14)

The global trade finance ecosystem faces many challenges that impede efficient flows of capital. Many of these challenges may be overcome by the use of digital assets. As of 2020, the global trade finance market covered a value of approximately \$5.2 trillion, which is approximately 6 percent of global GDP.¹³ According to a study by the Asian Development Bank, at the same time, the global trade finance gap grew to an all-time high of \$1.7 trillion, representing 10 percent of global trade, exacerbated by the COVID-19 pandemic.¹⁴ The survey showed that small and medium-sized enterprises (SMEs) were hit the hardest, accounting for 40 percent of rejected trade finance requests.¹⁵ The inefficiencies existing in legacy financial payment systems include the number of intermediaries involved in transactions, currency conversion inefficiencies, lengthy transaction times, high costs, and economic uncertainty.¹⁶

¹³ *Reconceiving the Global Trade Finance Ecosystem*, McKinsey & Company (Nov. 2021), available at <https://www.mckinsey.com/industries/financial-services/our-insights/reconceiving-the-global-trade-finance-ecosystem#>.

¹⁴ *See id.*

¹⁵ *Global Trade Finance Gap Widened to \$1.7 Trillion in 2020*, Asian Development Bank (Oct. 12, 2021), available at <https://www.adb.org/news/global-trade-finance-gap-widened-17-trillion-2020>.

¹⁶ *Crypto Adds Efficiency to Global Trade and Financing, Says Bequant exec*, CoinTelegraph (Mar. 1, 2022), available at <https://cointelegraph.com/news/crypto-adds-efficiency-to-global-trade-and-financing-says-bequant-exec>.

Digital assets hold an important key to improving financial data flows. They facilitate broader and more direct access to capital, including for SMEs, through the harnessing of massive amounts of liquidity around the world.¹⁷ The assets are also able to expedite the financial application process, make transactions more efficient and secure, and provide more flexible payment terms.¹⁸ In fact, various forms of digital asset currencies are increasingly being used as cross-border payment methods, and they show significant potential in remittances.¹⁹

For their part, stablecoins, by virtue of being privately held and backed by an underlying asset, can minimize price fluctuations and play a significant role in financial inclusion. Tokenized assets offer investors greater access to a wider range of financial assets and returns. Through the practice of “fractionalization,” whereby assets are broken into smaller value digital tokens, retail investors are able to purchase ownership stakes in high-value assets (funds, equity securities, precious metals) in digital token form.²⁰

Cryptocurrencies may also enable broader access to capital by underserved populations through greater financial inclusion by reducing transaction costs and barriers to access, while increasing the liquidity available for transactions. As Commerce itself noted, according to the FDIC’s 2019 “How America Banks” survey, approximately 7.1 million households (5.4 percent) did not have at least one bank or credit union account in 2019.²¹ A 2017 study by the FDIC also

¹⁷ *See id.*

¹⁸ *See id.*; *How Blockchain Is Bridging the Trade Finance Gap*, CoinDesk (Feb. 17, 2022), available at <https://www.coindesk.com/sponsored-content/how-blockchain-is-bridging-the-trade-finance-gap/>.

¹⁹ *Cryptocurrency In Cross-Border Payments: After Coinbase’s Success, Can Crypto Flourish Beyond Assets*, Forbes (Apr. 21, 2021), available at <https://www.forbes.com/sites/danielwebber/2021/04/21/cryptocurrency-in-cross-border-payments-after-coinbases-success-can-crypto-flourish-beyond-assets/?sh=b6f5dfc416f1>.

²⁰ *The Next Frontier*.

²¹ *Crypto Transactions Grow in the U.S. Among Lower-Earning and Unbanked Adults*, Business Insider (June 1, 2022), available at <https://www.businessinsider.com/transactional-cryptocurrency-benefits-the-lower-earning-and-unbanked-2022-6>.

indicated that 25 percent of U.S. households are either unbanked or underbanked.²² Cryptocurrencies may allow unbanked or underbanked individuals access to financial services and opportunities that would not otherwise be available to them. They will also benefit users through lower transaction costs and times.

Statistics show that populations that historically have limited access to capital and to legacy financial institutions like banks have been early and engaged adopters of digital assets. A survey released in August 2021 by Morning Consult indicated that 37 percent of underbanked people and 12 percent of unbanked people in the United States reported owning cryptocurrency.²³ The Federal Reserve Bank's "Economic Well-Being of U.S. Households in 2021" report, issued in May of this year, included questions regarding cryptocurrency for the first time.²⁴ While the survey results were different for cryptocurrency use as an investment, the industry views the survey results as suggesting a trend of unbanked or underbanked adults and lower-earning adults using cryptocurrency for transactions.²⁵ Of the people who used cryptocurrency for transactions, for instance, 13 percent lacked a bank account, compared to six percent of people who did not use cryptocurrency. Similarly, 27 percent of people who used cryptocurrency for transactions did not have any credit cards, compared to 17 percent of non-users. Many reports also indicate that people unable to access the legacy financial industry are increasingly turning to digital assets.²⁶

²² 25 % of U.S. households Are Either Unbanked or Underbanked, CNBC (Mar. 9, 2019), available at <https://www.cnbc.com/2019/03/08/25percent-of-us-households-are-either-unbanked-or-underbanked.html>.

²³ *Is Crypto a Solution for America's Unbanked*, Morning Brew (Feb. 28, 2022), available at <https://www.morningbrew.com/daily/stories/2022/02/25/crypto-solution-for-unbanked>.

²⁴ *Economic Well-Being of U.S. Households in 2021*, Federal Reserve Board Publication (May 2022), available at <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>.

²⁵ *Crypto transactions Grow in the U.S. Among Lower-Earning and Unbanked adults*, Business Insider (Jun. 1, 2022), available at <https://www.businessinsider.com/transactional-cryptocurrency-benefits-the-lower-earning-and-unbanked-2022-6>.

²⁶ See, e.g., *Locked out of Traditional Financial Industry, More People of Color are Turning to Cryptocurrency*, The Washington Post (Dec. 1, 2021), available at https://www.washingtonpost.com/national/locked-out-of-traditional-financial-industry-more-people-of-color-are-turning-to-cryptocurrency/2021/12/01/a21df3fa-37fe-11ec-9bc4-86107e7b0ab1_story.html.

This is true globally as well, and high rates of cryptocurrency adoption are reported in frontier economies.²⁷ The potential for greater financial inclusion with the growth of digital assets underscores the importance of supporting this emerging industry.

IV. THE UNITED STATES MUST ADOPT POLICIES THAT ENABLE BUSINESSES TO BETTER COMPETE DOMESTICALLY AND INTERNATIONALLY

A. U.S. Digital Asset Technologies Have Key Benefits That Should Be Promoted (Qs. 1, 2, 4, 5)

The United States will derive significant economic and national security benefits from the global success of America’s digital assets businesses, including stablecoins and cryptocurrencies. Indeed, U.S. leadership in this sector is imperative to maintaining American influence, financial power, and economic interests around the world.

As noted above, key benefits of U.S. digital asset technologies include innovation and the ability to promote safe and affordable financial services. Of course, the White House itself has acknowledged that “[t]he United States has a strong interest in promoting responsible innovation that expands equitable access to financial services, particularly for those Americans underserved by the traditional banking system.”²⁸ This, and a range of additional critical objectives – including the growth of technological and economic competitiveness globally – can be realized through the rapid, responsible development of digital asset technologies. It is also important that the United States leads in exploring novel approaches to addressing illicit activity and security risk within the financial system, including taking advantage of new opportunities enabled by blockchain technology.²⁹

²⁷ *Cryptocurrencies Are Democratizing the Financial World. Here’s How.*, World Economic Forum (Jan. 22, 2021), available at <https://www.weforum.org/agenda/2021/01/cryptocurrencies-are-democratising-the-financial-world-heres-how/>.

²⁸ Executive Order 14067.

²⁹ *An Analysis of Bitcoin’s Use in Illicit Finance*, Michael Morrell (April 13, 2021), available at https://cryptoforinnovation.org/resources/Analysis_of_Bitcoin_in_Illicit_Finance.pdf

Given the importance of the foregoing, the United States needs to develop policies that advance American business' global competitive positions, in order to remain in a strong position to influence international rules and strategy. Cementing American business leadership will ensure that best practices are extended to other jurisdictions. Innovation, market growth, safety, equity, and economic and national security should be paramount drivers of U.S. strategy in both the business and policy arenas.

Of course, as blockchain technology comprises the underlying network and consensus protocol that enable digital assets, it is critical that blockchain technology be supported as a fundamental element of the digital asset strategy. The core benefits of blockchain are its resiliency and tamper-proof nature, the open and transparent state of its source code, and the permissionless and censorship-resistant nature in which communication and transactions can be executed without the need for intermediaries.³⁰ Blockchains also enhance network security because of the immutable network, sophisticated cryptography, and distributed consensus protocol that defines the technology.³¹

Today, blockchain technology enables a broad range of commercial transactions by way of smart contracts, which are self-executing code or a network of computers that can make commitments. Blockchains are powering trading platforms, tracing goods in supply chains, automating insurance claims, centralizing medical records, and facilitating cross-border

³⁰ *What Is Blockchain?*, Forbes Advisor (Apr. 28, 2022), available at <https://www.forbes.com/advisor/investing/cryptocurrency/what-is-blockchain/>; *Making Sense of Bitcoin, Cryptocurrency and Blockchain*, PwC (last accessed June 17, 2022), available at <https://www.pwc.com/us/en/industries/financial-services/fintech/bitcoin-blockchain-cryptocurrency.html>; *Blockchain for Investment Managers*, Deloitte (last accessed June 17, 2022), available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Financial-Services/gx-fsi-blockchain-in-im.pdf>.

³¹ *Id.*; *How Blockchain Can Transform the Financial Services Industry*, U.S. News & World Report (Sept. 3, 2021), available at <https://money.usnews.com/investing/cryptocurrency/articles/how-blockchain-can-transform-the-financial-services-in-dustry>.

international business and government transactions.³² Tomorrow, we expect digital asset transactions will proliferate and blockchain technology will be used to facilitate all or virtually all or all of these transactions.

Of course, as digital assets and underlying blockchain technologies are still evolving, the U.S. Government should refrain from overregulating this nascent industry. Instead, at this stage, the U.S. Government and economy will benefit from policies that encourage these technologies to advance, evolve, and mature in ways that facilitate innovation, advance user interests, accelerate global adoption, and ultimately promote U.S. economic leadership around the world. The most productive policies are those that will:

- Facilitate engagement with new customers, businesses, and other counterparties.
- Encourage market entry for new U.S. digital businesses.
- Promote a highly-skilled U.S. workforce, and create workforce development opportunities for U.S. digital assets businesses seeking new talent.
- Enable more real-time, accurate revenue information and transparency across transactions.
- Properly safeguard assets held in digital form on blockchains.
- Allow companies to access new asset classes as well as new capital and liquidity pools through tokenized investments (this also provides access to capital to traditionally underserved communities).
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- Promote market access for U.S. business abroad, and level the playing field for cross-border digitized capital flows.
- Enhance the public's understanding of the benefits and risks arising from blockchain-based assets.

The principles promoted here will help capitalize a vital and evolving U.S. industry.

³² *NASDAQ Launches Linq, a Private Blockchain-Powered Trading Platform*, CCN (last modified Mar. 4, 2021), available at <https://www.ccn.com/nasdaq-launches-linq-a-private-blockchain-powered-trading-platform/>; *Bullish on Blockchain: 12 Companies Using Distributed Ledger Technology to Transform Financial Trading*, Built In (last accessed June 17, 2022), available at <https://builtin.com/blockchain/trading-finance-investments>.

Internationally, allies and adversaries are proliferating their own forms of digital assets and, by doing so, capturing market share and revenue away from U.S. industries, as well as diverting job opportunities overseas. The United States needs to expand its presence in the international market quickly, and the policy framework outlined here will promote a domestic industry that is able to outcompete internationally.

B. Regulatory Oversight Must Be Balanced with the Need to Foster Innovation (Qs. 3, 9)

Presently, national and international rules specific to the use of digital assets are limited. To the extent that rules are being developed by nations abroad, those rules are under significant pressure by specific countries to tilt the competitive advantage away from the United States.³³ Regulatory uncertainty in the United States is further constraining the growth of a robust U.S. digital assets sector. Accordingly, as outlined above, regulatory oversight must have an intrinsic consideration of the need to facilitate industry growth and innovation.

To further augment healthy industry growth, the Administration and Congress should make available resources that will catalyze research and development (R&D) and market expansion for U.S. digital asset businesses. Specifically, the Government should consider providing financial incentives – including Government grants, loans, and tax credits – for startup enterprises as well as mature corporations that are developing new and improved digital asset platforms. Such incentives could include:

- U.S. Department of Defense, Defense Production Act, Title III awards,³⁴
- U.S. Department of Energy, grant and loan programs for innovation,³⁵

³³ *See id.*

³⁴ U.S. Department of Defense – Defense Production Act Title III, Industrial Base Policy (last accessed July 4, 2022), available at <https://www.businessdefense.gov/ai/dpat3/overview.html>.

³⁵ U.S. Department of Energy – Funding Programs (last accessed July 4, 2022), available at <https://www.energy.gov/energy-economy/funding-financing>.

- U.S. Department of Treasury, tax free zones and tax deduction policies,³⁶ and
- U.S. Development Finance Corporation and Ex-Im Bank loan programs for export promotion.³⁷

Moreover, the U.S. Government should eliminate provisions in the tax code that penalize U.S. investments in new equipment technologies through depreciation accounting that does not permit firms to realize the full value of depreciated assets. Such current biases in the tax code have deterred, rather than encouraged, productive investments in emerging technologies to date.

These initiatives, when implemented, will go a long way toward offsetting some of the investment costs, and will help level the playing field for U.S. firms and position them to better compete against foreign counterparts that receive billions of dollars in subsidies. Of course, these investment incentives also align with the United States' policy objectives of technological leadership and strengthening U.S. presence in the global digital financial market.

C. Various Obstacles Are Preventing U.S. Digital Assets Industry Growth and Global Competition (Qs. 2, 7, 9, 10)

U.S. industry is currently facing serious obstacles that challenge industry growth. These include the volatility of the broader economic market, waning consumer confidence due to the volatility of the digital currency market, and a general absence of a system that shields market participants from undue risks. In fact, the digital currency market's recent precipitous decline in value, due at least in part to regulatory uncertainty, soaring inflation, and the Federal Reserve's response to tighten interest rates, has sown even greater uncertainty in the market.³⁸

³⁶ U.S. Department of Treasury – Tax Policy (last accessed July 4, 2022), available at <https://home.treasury.gov/policy-issues/tax-policy>.

³⁷ U.S. Development Finance Corporation (last accessed July 4, 2022), available at <https://www.dfc.gov/>; Ex-Im Bank Loan programs (last accessed July 4, 2022), available at <https://www.exim.gov/>.

³⁸ *Bitcoin Has Lost More Than 50% of its Value This Year. Here's What You Need to Know*, CNBC (June 15, 2022), available at <https://www.cnbc.com/2022/06/15/bitcoin-has-lost-more-than-50percent-of-its-value-this-year-what-to-know.html>.

It is difficult to overstate the risk to U.S. digital asset technological leadership posed by the uncertain and fragmented regulatory landscape. Innovators are reluctant to develop technologies in the United States in the event that new, evolving regulations threaten their investments, market opportunities, and ability to maximize revenue. Companies must contend with an alphabet soup of potential regulators, including the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), U.S. Department of the Treasury, prudential banking regulators, the Consumer Financial Protection Bureau (CFPB), and others.

Further, given state oversight, many companies involved in financial services find themselves needing to obtain at least 50 licenses (in many cases up to 100 or more) to provide services across the United States. The burden and costs of navigating an enormous amount of bureaucracy is unsustainable, and serves to disincentivize both new market entrants and further innovation by existing participants.

In fact, any one of the various regulatory agencies can act as a choke point for innovative deployments of digital assets technologies based on its own view of its regulatory authority. While some regulatory complexity is inevitable, the Administration can greatly enhance the potential for innovation by facilitating coordination among agencies to develop a more streamlined and predictable approach – without sacrificing any regulatory oversight deemed necessary. In fact, coherent and cohesive regulatory frameworks can enhance consumer protection and domestic industry competitiveness, and create more job opportunities as digital asset innovators and service providers are able to grow their businesses in the United States.

Another obstacle is that the current model for financial infrastructure upgrades favors legacy systems that may not effectively respond to consumer needs. Because of a lack of regulatory clarity, innovation in digital assets is currently incentivized to follow established

patterns of legacy architecture, which are partially responsible for slow progress and exclusion within legacy systems. For instance, FedNow, which is not scheduled to launch until 2023, remains centralized, which may lead to missed opportunities to meet consumer needs by leveraging decentralized systems and innovation within the digital assets space.³⁹ Rather than encouraging adoption of effective crypto and stablecoin innovation, systems replicate and build upon old operating models.⁴⁰ Those entering the market using new technologies, including stablecoins and decentralized payment networks, are wary of entering a market with a regulatory environment that favors established legacy players. These innovators have experienced rapid adoption, but then face a chasm before mass adoption. This especially affects low-income, less-educated, and historically excluded customers, who are overrepresented in the United States's un- and under-banked population.⁴¹

Uncertainty over national privacy rules and international divergence in privacy norms also limit technological innovation options. Domestically, there is no comprehensive federal data privacy law. Rather, businesses operate among a complex patchwork of sector-specific privacy regulations at both the federal and state levels, including four new and different state laws set to go into effect in 2023.

Globally, there exists the APEC Cross-Border Privacy Rules System (CBPR), which is a voluntary, government-backed data privacy certification system that companies can adopt to demonstrate compliance with internationally-recognized data protections.⁴² CBPR,

³⁹ See *id.*; *About the FedNow Service*, The Federal Reserve (last accessed July 4, 2022), available at <https://www.frb.services.org/financial-services/fednow/about.html#:~:text=The%20FedNow%20Service%20is%20a, every%20day%20of%20the%20year>.

⁴⁰ *The Innovator's Dilemma and U.S. adoption of a Digital Dollar*, The Brookings Institution (Mar. 24, 2022), available at <https://www.brookings.edu/techstream/the-innovators-dilemma-and-u-s-adoption-of-a-digital-dollar/>.

⁴¹ *Economic Well-Being of U.S. Households in 2021*, Federal Reserve (May 2022), available at <https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf>

⁴² *What is the Cross-Border Privacy Rules System*, Asia-Pacific Economic Cooperation (last updated October 2021), available at

unfortunately, does not harmonize international data protection principles. If harmonization were achieved, it would facilitate the rollout of U.S. digital asset technologies across a range of countries.

The General Data Protection Regulation (GDPR), which is the European Union's version of a data privacy law, makes it enormously difficult for foreign digital assets firms, including U.S. firms, to access and expand across the European market given the GDPR's restrictions on data use, storage, transfers and processing.⁴³ Further, blockchain and the distributed ledger technology are, to some extent, misaligned with GDPR because of decentralized data handling.⁴⁴

In addition to the foregoing challenges, criminal actors who operate in unregulated international jurisdictions could cause significant disruptions in the market. There has been a large growth in international cryptocurrency fraud in recent years, which is a trend that is expected to continue with greater international proliferation in the absence of international coordination.⁴⁵ Consistent international requirements that address fraud and manipulation and establish standards on conflicts of interest would mitigate overall global market risk.⁴⁶

Finally, China's anti-competitive policies deserve specific mention. These are particularly concerning because Chinese government-backed national champions are rapidly advancing in the

<https://www.apec.org/about-us/about-apec/fact-sheets/what-is-the-cross-border-privacy-rules-system#:~:text=The%20APEC%20Cross%2DBorder%20Privacy,2005%20and%20updated%20in%202015.>

⁴³ *What is GDPR? Everything you need to know about Europe's new data law*, Ivana Kottasova, CNN Business (May 21, 2018), available at <https://money.cnn.com/2018/05/21/technology/gdpr-explained-europe-privacy/index.html>; *Summary of the GDPR's 10 Key Requirements*, IT Governance (Mar. 30, 2021), available at <https://www.itgovernance.eu/blog/en/summary-of-the-gdprs-10-key-requirements>.

⁴⁴ *GDPR Compliance for Fintech, Blockchain & Crypto Companies*, Tech GDPR (last accessed July 4, 2022), available at <https://techgdpr.com/industries/gdpr-compliance-for-blockchain-crypto-companies/>.

⁴⁵ *Ponzi Schemes Using Virtual Currencies*, Security and Exchange Commission, Office of Investor Education and Advocacy (last accessed July 4, 2022), available at https://www.sec.gov/files/ia_virtualcurrencies.pdf.

⁴⁶ *Why Cryptocurrency Regulation Is Actually 'A Good Thing' for Investors*, According to These Experts, NextAdvisor (Apr. 19, 2022), available at <https://time.com/nextadvisor/investing/cryptocurrency/why-crypto-regulation-is-good-for-investors/>.

Chinese and global markets and capturing significant market share. For example, in China, the government has quashed all types of cryptocurrency competition to make room for the rapid proliferation of the digital yuan. In fact, in 2021, the Chinese government issued a blanket ban on all cryptocurrency transactions and mining.⁴⁷ The People’s Bank of China (PBOC) confirmed that cryptocurrencies must not circulate and that overseas exchanges are banned from providing services to China-based investors.⁴⁸

Yet the Chinese government has been pursuing other uses of blockchain technology and non-fungible tokens (NFTs), as long as the technology stays under its control.⁴⁹ While China blocks public blockchains like Ethereum (the largest crypto by market capitalization after Bitcoin), the Blockchain Services Network (BSN), a Chinese state-backed blockchain company, is slated to roll out infrastructure that will allow individuals and businesses in China to make, sell, and buy NFTs.⁵⁰ The BSN will use adapted blockchains from Ethereum and nine other platforms that allegedly meet regulatory requirements in China.⁵¹ In addition, the BSN will allow users to buy NFTs using only Chinese yuan, instead of the cryptocurrencies commonly used to trade NFTs outside of China.⁵² China’s ban on cryptocurrencies will ultimately force non-Chinese companies to cede market share to the rapidly-expanding digital yuan. The economic and national security implications here are obvious and should not be underestimated.

⁴⁷ *China’s Top Regulators Ban Crypto Trading and Mining, Sending Bitcoin Tumbling*, Reuters (Sept. 24, 2021), available at <https://www.reuters.com/world/china/china-central-bank-vows-crackdown-cryptocurrency-trading-2021-09-24/>.

⁴⁸ *See id.*

⁴⁹ *China Banned Cryptocurrencies, But It’s Going All in on NFTs*, Fortune (Jan. 14, 2022), available at <https://fortune.com/2022/01/14/china-nfts-cryptocurrency-bitcoin-blockchain-ban/#:~:text=Last%20year%2C%20China's%20government%20banned,technology%20stays%20under%20its%20control> (“*China Banned Cryptocurrencies*”).

⁵⁰ *See id.*

⁵¹ *See id.*

⁵² *See id.*

D. The U.S. Government Must Address Regulatory Actions That Deter Innovation in the United States (Q. 3)

Apart from global competition constraints, certain regulators in the United States have taken approaches that raise barriers to deploying innovative digital asset technologies, even when companies are looking to deploy the technologies in a responsible fashion and are actively seeking predictable rules and guidelines to follow. In particular, the SEC continues to focus on enforcement rather than issuing clear guidance on how U.S. securities laws apply to many digital assets. CCI is aware of many developers that launch products outside the United States and block U.S. access because SEC guidance is unclear, and because of the high cost of a mistaken evaluation of the SEC's legal position in a potential investigation and enforcement action. The obvious downside is that even projects that the SEC might conclude are lawful are still deployed outside the U.S. out of an abundance of caution. At the same time, the SEC's enforcement approach has not meaningfully deterred actual bad actors in the digital asset space, to the frustration of both government and industry actors.

Indeed, despite the Executive Order's directives to the agencies to thoughtfully study responsible innovation while promoting the United States as a global leader in innovation,⁵³ many regulatory agencies have been taking actions and issuing statements that have the effect of preemptively hindering efforts at responsible innovation. In addition to the SEC's counterproductive enforcement-first approach:

- The U.S. Federal Deposit Insurance Corporation (FDIC) issued a Financial Institution Letter (FIL) on April 7, 2022, directing all FDIC-supervised institutions, prior to engaging in, or if currently engaged in, any activities involving or related to crypto assets to notify the FDIC and provide certain information.⁵⁴ The FDIC will review the information and “provide relevant

⁵³ See generally Executive Order 14067.

⁵⁴ *Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities*, U.S. Federal Deposit Insurance Corporation, Financial Institution Letter FIL-16-2022 (April 7, 2022), available at <https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html#letter>.

supervisory feedback.”⁵⁵ While awaiting this feedback, innovation in the U.S. is stalled.

- In a similar vein, the Office of the Comptroller of the Currency issued an Interpretive Letter on November 18, 2021 stating that national banks and federal savings associations must demonstrate that they have adequate controls in place before they can engage in certain cryptocurrency, distributed ledger, and stablecoin activities.⁵⁶ The Interpretive Letter notes that these entities must notify their supervisory offices of their intention to engage in the activities and should not engage in the activities until receiving a non-objection.⁵⁷ This approach again puts U.S. industry at a disadvantage compared to other jurisdictions.

The Administration can play an important role in driving a more thoughtful and organized regulatory approach, focused on promoting predictable regulation that recognizes the value of innovation in digital assets. Despite each independent federal agency viewing matters through the lens of its authorizing statutes and agenda, the Executive Order does provide an opportunity to set priorities for a more rational and harmonized regulatory approach while aligning different agency priorities.

E. The United States Can Act Expeditiously to Secure its Position in the Global Digital Currency Market By Collaborating With U.S. Industry (Qs. 7, 12, 15, 16)

As noted, international competition for digital currency supremacy has become intense, and the U.S. is currently not in the leadership position it generally enjoys. Dozens of nations are entering the digital currency market for a variety of reasons, including that they see tremendous opportunity in positioning themselves as a central force in a sector that will bring more sophisticated and efficient financial and other innovative products, jobs, and extraordinary talent to their countries. This reality underscores the need for the United States to maintain a position

⁵⁵ See *id.*

⁵⁶ Chief Counsel’s Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank, Office of the Comptroller of the Currency, Interpretive Letter #1179 (Nov. 18, 2021), available at <https://occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>.

⁵⁷ See *id.*

of strength within the global financial sector in order to protect its national security and foreign policy interests. U.S. crypto firms are racing ahead and currently well-positioned to dominate significant segments of the global market, but continued lack of regulatory support will erode this advantage.

As the global race to lead in digital assets intensifies, governments of countries that are ahead of the curve are likely to push to set the international standards and “rules” for global market participation, including for the future operating system of the Internet. Many will also aim to skew global competition in their favor by limiting market access.⁵⁸ For example, the Chinese government has already placed restrictions on the ability of foreign banks to do business in the country,⁵⁹ and has banned Bitcoin and other cryptocurrencies in favor of blockchain technology and NFTs that can remain under the government’s control.⁶⁰ Further, non-Chinese companies are being compelled to transact with Chinese businesses using the digital yuan,⁶¹ and this practice is on track to displace the United States and its allies from the global marketplace – not only in the digital assets market, but also in the services and manufacturing markets, which will be transacting with digital currencies in the near future.

This risk of displacement is real. China currently leads the world in CBDC adoption and testing. According to Goldman Sachs research, by 2030, the digital yuan is expected to reach one billion users, \$229 billion in issuance, \$2.7 trillion in annual total payment value, and

⁵⁸ U.S. Firms Still Face More Restrictions in China than Chinese firms Face in U.S., Says Business Group, CNBC (May 13, 2021), available at <https://www.cnbc.com/2021/05/13/american-chamber-of-commerce-in-china-unequal-access-for-us-business.html>; China Puts Limits on Foreign Banks, Worrying Businesses, The New York Times (Apr. 2, 2021), available at <https://www.nytimes.com/2021/04/02/business/china-foreign-banks.html>.

⁵⁹ See *id.*

⁶⁰ China Banned Cryptocurrencies.

⁶¹ See *id.*

account for 15 percent of total consumption payments.⁶² Cumulative digital yuan transactions reached \$13.68 billion as of January 2022.⁶³ Further, given that four of the six largest banks in the world are currently based in China,⁶⁴ the Chinese government is able to fulfill its aspirations to leverage cross-border payments in digital yuan and its market size and power to gain economic hegemony.⁶⁵ China already has in place extensive cross-border wholesale testing programs with the Bank of International Settlements, as well as banks in Thailand, the United Arab Emirates,⁶⁶ and a number of South American countries to develop CBDC interoperability. These programs are expanding rapidly.

China is also outpacing Fintech companies around the world. China's Ant Group users reach approximately 1.3 billion, compared to the approximately 1.4 billion users of 27 other Fintech companies around the world combined.⁶⁷ Tencent, another Chinese giant internet-based platform company, has made Fintech investments in 21 companies in 12 countries, while Ant Group has invested in 14 companies in 12 countries.⁶⁸ Moreover, China has the largest mobile

⁶² *Goldman Sachs Expects Digital Yuan to Reach 1B Users Within 10 Years*, Nasdaq (Nov. 19, 2020), available at <https://www.nasdaq.com/articles/goldman-sachs-expects-digital-yuan-to-reach-1b-users-within-10-years-2020-11-19>.

⁶³ *China's Digital Yuan Notches \$8.3 Billion in Transactions in 6 Months, Taking a Tiny Share of Payments*, CNBC (Jan. 18, 2022), available at <https://www.cnbc.com/2022/01/18/chinas-digital-yuan-notches-8point3-billion-transactions-in-half-a-year.html>.

⁶⁴ *The World's Largest Banks 2022: China's ICBC Leads While JPMorgan Chase Falls*, Forbes (May 12, 2022), available at <https://www.forbes.com/sites/sergeiklebnikov/2022/05/12/the-worlds-largest-banks-2022-banks-face-challenging-economic-environment-but-could-benefit-from-fed-rate-hikes/?sh=60be0fe67e67>.

⁶⁵ *China to explore cross-border payments in digital yuan*, Reuters (July 16, 2021), available at <https://www.reuters.com/business/china-cbank-says-it-will-steadily-push-forward-digital-yuan-pilots-2021-07-16/>.

⁶⁶ *A Report Card on China's Central Bank Digital Currency: the e-CNY*, Atlantic Council (Mar. 1, 2022), available at <https://www.atlanticcouncil.org/blogs/econographics/a-report-card-on-chinas-central-bank-digital-currency-the-e-cny/>.

⁶⁷ *Ant, Alibaba Plan for Less Intertwined Future After China Crackdown*, Reuters (June 21, 2022), available at <https://www.reuters.com/world/china/ant-alibaba-plan-less-intertwined-future-after-china-crackdown-2022-06-21/>; *Ranked: The 27 Fintech Unicorns from Around the World*, Insider (May 8, 2018), available at <https://www.businessinsider.com/27-fintech-unicorns-ranked-by-value-2018-5>.

⁶⁸ *Crypto Council for Innovation statistics*.

payments market in the world. China’s mobile payments transaction volume was projected to reach more than \$40 trillion in value in 2020, and its 2020 mobile payment was larger than the volume of major U.S. companies combined.⁶⁹ Alipay serves close to four times the number of users as PayPal and reaches more than 300 million users outside of China.⁷⁰

For its part, the Russian Government too is entering this market through the creation of the “Digital Ruble” to trade directly with other countries willing to accept it without first converting into dollars.⁷¹ Russia is finding willing partners in other nations under U.S. sanctions, including Iran, that are developing their own government-backed digital currencies to trade outside the influence of U.S. financial institutions.⁷²

Of course, the result of the U.S. dollar losing global dominance would be catastrophic for the American economy and national security. The United States needs to make progress quickly before it cedes much more of the global currency market to China and other non-democratic nations. Through common sense, pro-business policies, the U.S. Government has the ability to turn the tide by enabling U.S. crypto businesses to outcompete internationally and thereby secure America’s leadership in the emerging digital global financial system. The Digital Assets Task Force will be a highly effective convening mechanism to bring industry and Government voices together to shape such policies.

V. CONCLUSION

In sum, the United States has much to gain from supporting the growth of a robust digital assets sector, and CCI reiterates its support for the U.S. Government’s coordinated action plan

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Russia Could Use Cryptocurrency to Blunt the Force of U.S. Sanctions*, The New York Times (Feb. 23, 2022), available at <https://www.nytimes.com/2022/02/23/business/russia-sanctions-cryptocurrency.html>.

⁷² *See id.*

for enhancing U.S. economic competitiveness for the crypto industry. The challenges outlined here can be overcome through a coordinated Government approach, and one effective way to expedite progress is through the creation of a Digital Assets Task Force. Through a public-private partnership, the U.S. Government will be able to regularly draw from the experience and market intelligence of business and technology leaders to develop effective policies that encourage businesses growth and secure America's leadership in the evolving global financial markets. CCI stands ready to support the U.S. Government's plans and be part of any such effort.

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If you have any questions concerning this submission, please do not hesitate to contact us.

Respectfully submitted,



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