December 15, 2022

VIA EMAIL (FSB@FSB@ORG)
Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Addressing the Regulatory, Supervisory, and Oversight Challenges Raised by Crypto-Asset Activities and Markets, and Global Stablecoin Arrangements
Dear Secretariat:

The Chamber of Digital Commerce (the "Chamber") appreciates the efforts of the Financial Stability Board (FSB) as well as the opportunity to comment on the FSB's (i) proposed framework and consultative report for international regulation of crypto-asset activities;[1] (ii) proposed framework and consultative report regarding the regulation, and oversight of crypto-asset activities and markets;[2] and (iii) updated high-level recommendations and consultative report regarding the regulation, supervision, and oversight of global stablecoin (GSC) arrangements.[3] As the world's first and largest blockchain trade association, we are writing to you to help inform those efforts by recommending a regulatory approach that addresses potential risks while allowing for continued innovation and growth.

Established in 2014, the Chamber's mission is to promote the acceptance and use of digital assets and blockchain technology, and we are supported by a diverse membership of more than 200 companies worldwide that are investing in, and innovating with, blockchain-based technologies. Recognizing that digital assets and blockchain technology offer a plethora of opportunities for business, government, and consumers, the Chamber was created to represent the world's leading innovators, operators, and investors in the blockchain ecosystem, including leading edge startups, software companies, financial institutions, and investment firms. The Chamber's leadership team and Board of Advisors includes policy and legal experts, industry pioneers, and former regulators, including two former Chairs and a Commissioner of the U.S. Commodity

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[1] International Regulation of Crypto-Asset Activities: A Proposed Framework – Questions For Consultation, FIN. STABILITY BOARD (Oct. 11, 2022), https://www.fsb.org/wp-content/uploads/P111022-2.pdf.
[2] Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Consultative Document, FIN. STABILITY BOARD (Oct. 11, 2022), https://www.fsb.org/wp-content/uploads/P111022-3.pdf.
[3] Review of the FSB High-level Recommendations of the Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements: Consultative Report, FIN. STABILITY BOARD (Oct. 11, 2022), https://www.fsb.org/wp-content/uploads/P111022-4.pdf.

Futures Trading Commission (CFTC) and a former Commissioner of the U.S. Securities and Exchange Commission (SEC).

Digital currency and cryptocurrency service providers have the capability to bring tremendous improvements to our national and international financial system by enabling frictionless, instantaneous transferability of value. With recent developments and revelations in the crypto ecosystem, it is imperative that lawmakers contemplate a regulatory scheme that can appropriately mitigate risk; however, we advocate that such a regulatory scheme should also be principles-based to afford the flexibility required to support innovation in the evolving crypto ecosystem. In fact, much of the recent turbulence in the crypto markets can be addressed with measured regulatory oversight.

This letter is set forth in three general parts. First, we address four overarching principles that we believe should be a theme in a framework to regulate and supervise crypto-asset activities and GSC arrangements. Second, we address the specifics questions the FSB set forth for consultation. And finally, we provide observations and comments to the specific crypto-asset and GSC recommendations, as set forth in the respective FSB reports.

We appreciate the opportunity to engage with the Financial Stability Board on this important matter. We are available to answer any questions and hope you will look to the Chamber as a resource on regulatory matters related to crypto assets moving forward. Thank you.

Respectfully,

Perianne Boring
Founder and CEO

Cody Carbone
Vice President, Policy

CHAMBER OF DIGITAL COMMERCE

I. General Themes

In collaboration with its membership, the Chamber has surfaced the following themes that it wishes to emphasize in conjunction with its response to the specific questions posed by the FSB. We recommend that the following four principles be overarching themes in any regulatory or supervisory framework applicable to crypt-asset activities and GSC arrangements.

Principle 1: Balancing Risks of Crypto-assets with their Potential for Innovation

Any new or introduced regulation must be workable to exist effectively in all relevant jurisdictions. As such, each type of risk associated with the various crypto-asset activities outlined by the FSB recommendations should consider the potential benefits of those crypto-asset activities.

Principle 2: Promoting Cross-Border Cooperation while Maintaining Cybersecurity and Data Privacy

Cross-border cooperation is necessary to the effective regulation of the crypto ecosystem. Access to data is necessary to facilitating this cooperation, but breadth of access must be weighed against the need for cybersecurity and maintenance of data and user privacy.

Principle 3: Creating Comprehensive Risk Management Guidance that is Proportional to Market Size

Comprehensive risk management guidance is necessary for the continued operation of crypto-asset service providers and GSC arrangements. This guidance should be reflective of the company's market size. Guidance is critically important as businesses often make decisions on what they believe to be a best practice but have limited standards for comparison.

Principle 4: Requiring Disclosures that Sufficiently Protect Consumers and Promote Transparency

Requiring appropriate disclosures will promote transparency in the crypto ecosystem, thereby protecting consumers and other market participants. Disclosure requirements should be principles-based and reflective of the risks and information relevant to the particular market participants' activities and size.

II. Chamber Responses to FSB Questions for Consultation

The FSB posed fifteen specific questions, which the Chamber responds to in turn below.[4]

[4] International Regulation of Crypto-Asset Activities: A Proposed Framework – Questions For Consultation, *supra* note 1.

A. General Questions

1. Are the FSB's proposals sufficiently comprehensive and do they cover all crypto-asset activities that pose or potentially pose risks to financial stability?

<u>Chamber Response:</u>
The FSB recommendations are generally comprehensive; however, the Chamber recommends that the FSB also distinguish between an activity that should be prohibited versus an activity that should be restricted and/or subject to certain reporting/disclosure requirements. For example, we recommend that the FSB consider whether industry participants should be *prohibited* or otherwise *restricted* from: (1) both making a market and issuing a crypto-asset, (2) both lending and borrowing crypto-assets (activities that should potentially be limited between affiliated entities); and (3) proprietary trading coupled with other activities, including asset issuance and/or crypto-asset lending/borrowing services.

Regarding liability in the decentralized finance (DeFi) ecosystem, more detail is warranted. For example, additional consideration may be appropriate regarding which parties should be held liable for the deployment of smart contracts that industry participants use to engage in DeFi activity, such as lending, borrowing, staking, and governance through decentralized autonomous organizations (DAOs), particularly when "utility" tokens double as governance tokens.

The Chamber also recommends the FSB consider whether crypto-asset and GSC issuers should be audited by independent, third-party accounting firms, how and when certain assets should be classified as defunct, and whether certain assets, once classified as defunct, should be removed from circulation.

2. Do you agree that the requirements set out in the CA Recommendations should apply to any type of crypto-asset activities, including stablecoins, whereas certain activities, in particular those undertaken by GSC, need to be subject to additional requirements?

<u>Chamber Response:</u>
Distinction should be made among crypto-assets, specifically between crypto-assets that are deemed generally as "utility" or consumptive tokens, those that double as "governance" tokens, as well as distinguishing general crypto-assets from stablecoins. In addition, distinction should be made among the various types of stablecoins, including fiat/traditional-backed stablecoins, crypto-asset backed stablecoins, and algorithmic stablecoins.

3. Is the distinction between GSC and other types of crypto-assets sufficiently clear or should the FSB adopt a more granular categorization of crypto-assets (if so, please explain)?

Chamber Response:
The FSB's assessment of GSCs as compared to other types of crypto-assets is sufficiently clear in general, but as indicated in Question No. 2, further distinction is recommended among various types of crypto-assets as well as the various types of stablecoins.

4. Do the CA Recommendations and the GSC Recommendations each address the relevant regulatory gaps and challenges that warrant multinational responses?

Chamber Response:
The FSB's crypto-asset and GSC recommendations are helpful guidance regarding regulatory gaps and challenges that warrant a multinational response. The Chamber views as fulsome the FSB's focus on investor protection and market integrity, the interaction of already-regulated entities with crypto-asset providers, the extension of the regulatory perimeter to capture crypto-asset activities, the enhancement of data standards, and the application of retrofitting of existing standards or requirements to crypto-assets.

Market participants would find it helpful if the FSB included an overview of recommendations regarding the status or designation of crypto-assets, including stablecoins, and whether such assets may be categorized as one or more of the following: securities, commodities, property, or currency, or whether a new asset class should be considered that would contemplate and accommodate the unique characteristics of certain fungible tokens, for instance those that operate as a form of utility and/or voting mechanism within a given network. In addition, the FSB should consider whether certain crypto-asset activities have no immediate corollary within traditional finance and should therefore be subject to bespoke considerations and recommended regulatory oversight. Relatedly, the FSB should also identify certain activities that may be out of scope, including the issuance of nonfungible tokens (NFTs) that do not present the same types of risks as fungible assets, understanding that this may require distinguishing among certain types of NFTs.

It would be appropriate for the FSB to address the need for a "proof-of reserves" for centralized custodial entities as well as the need for more robust, yet workable, disclosures to be provided by both centralized and decentralized platforms, products, and services. With regard to disclosures, the FSB should consider recommending that centralized entities within the crypto ecosystem clearly disclose how deposited customer funds will be used and whether such funds are segregated from other activities in which an entity engages or otherwise uses to fund operations or those of its affiliates.

It would be helpful to market participants if the FSB included an assessment of current insurance structures available in the crypto ecosystem and the issues that currently preclude the entry of insurance providers, recommendations for how insurance providers may be better integrated into the crypto, and how the inclusion of such service providers may realistically be achieved.

5. **Are there any financial stability issues that remain unaddressed that should be covered in the recommendations?**

Chamber Response:
As discussed in the Chamber's response to Question No. 4, while the Chamber views the FSB's recommendations and analysis of financial stability issues in the crypto ecosystem as generally acceptable and fulsome, the FSB should include an approach that would address the need for a "proof-of reserves" for centralized custodial entities as well as the need for more robust consumer and investor disclosures to be provided by both centralized and decentralized platforms and those that offer centralized and decentralized products and services.

The FSB should consider providing an overview of the various general types of stablecoins, including fiat/traditional-backed stablecoins, crypto-asset-backed stablecoins, commodity-backed stablecoins, and algorithmic stablecoins.

B. Crypto-Assets and Markets

6. **Does the report accurately characterize the functions and activities within the crypto ecosystem that pose or may pose financial stability risk? What, if any, functions, or activities are missing or should be assessed differently?**

Chamber Response:
The report accurately characterizes the functions and activities within the crypto ecosystem by addressing various vulnerabilities within the ecosystem as well as identifying regulatory shortcomings and gaps.

The report identifies four essential functions around crypto-assets including: (i) creation, issuance, distribution, redemption and underlying infrastructure; (ii) wallets and custody; (iii) transfer and transactions; and (iv) investment, leverage and risk management. For each essential function, the report accurately names associated risks, including operational risks, concentration risks, third-party risks, market risks, credit risks, and liquidity risks.

The Chamber recommends that the FBS further define each type of activity (decentralized, centralized, and hybrid) and include a general taxonomy of the types of businesses that service each type. This categorization can then be accompanied by an appropriate scoring of the risk each type of business poses to the crypto ecosystem as well as the potential risks posed to the broader financial system.

7. Do you agree with the analysis of activity patterns and the associated potential risks?

Chamber Response:
The Chamber recognizes that the report analyzes each of the four essential functions in the crypto ecosystem and further identifies the associated activities and risks, and believes the analysis provides a helpful and guiding basis on which to establish a regulatory scheme to best address a changing crypto ecosystem.

8. Have the regulatory, supervisory and oversight issues and challenges as relate to financial stability been identified accurately? Are there other issues that warrant consideration at the international level?

Chamber Response:
The FSB report provides a generally comprehensive response to supervisory and oversight challenges as they relate to financial stability. The Chamber agrees with the proposition that regulatory schemes should be guided by the principle of "same activity, same risk, same regulation." However, as mentioned in response to Question No. 4, the Chamber also recommends the FSB consider whether certain crypto-asset activities should be subject to bespoke considerations and recommended regulatory oversight. Additionally, the application of "same activity, same risk, same regulation" should include scaled application depending on the market size (which is appropriately measure in different ways for different participants and activities).

The Chamber further supports the creation of a regulatory framework that addresses oversight and transparency issues without hindering innovation. The Chamber further recommends that such a framework may include necessary disclosures and may also allow for authorities to access and audit *anonymized* data without full uninhibited access to data systems to protect privacy considerations.

9. Do you agree with the differentiated requirements on crypto-asset issuers and service providers in the proposed recommendations on risk management, data management and disclosure?

Chamber Response:
In general, the Chamber agrees with the differentiated requirements on the crypto-asset issuers and service providers. A risk management framework should generally be proportionate to the

risk, size, complexity, and systemic importance that may be posed by the activity or market in which the issuer or service provider is participating. It is important that issuers address the financial stability risk that may be posed by the activity or market in which they are participating.

With regard to data management, the Chamber finds it crucial to support functional segregation when service providers are handling and have custody over customer funds.

With regard to disclosures, it is appropriate to require disclosure of all material risks that are specifically and directly associated with the activities of the issuer or service provider. These disclosures are especially necessary where there is a custody arrangement of customer funds.

10. Should there be a more granular differentiation within the recommendations between different types of intermediaries or service providers in light of the risks they pose? If so, please explain.

Chamber Response:
With an understanding that the crypto ecosystem continues to evolve, the Chamber recognizes that any categorization or differentiation must be able to be responsive to change quickly and efficiently while still guarding against regulatory gaps.

C. Global Stablecoins (GSC Recommendations)

11. Does the report provide an accurate analysis of recent market developments and existing stablecoins? What, if anything, is missing in the analysis or should be assessed differently?

Chamber Response:
The Chamber agrees that the report provides an accurate analysis of recent market developments and existing stablecoins. However, it should be noted that stablecoins are rapidly evolving and regulators should take a flexible approach when implementing any oversight measures to account for new evolutions in technology. Additionally, as referenced in the Chamber's response to Question No. 3, the FSB should further distinguish among the various types of stablecoins and the corresponding risks each pose within the crypto ecosystem and the broader traditional financial ecosystem without limiting the development of new stablecoin arrangements or associated technologies.

12. Are there other changes or additions to the recommendations that should be considered?

Chamber Response:
As detailed below, the Chamber provides recommendations as to the regulatory landscape of GSC arrangements, oversight of GSC activities, cross-border cooperation and information sharing, governance and risk management, data storage and access, appropriate recovery plans for GSC arrangements, and proper disclosures.

13. Do you have comments on the key design considerations for cross-border cooperation and information sharing arrangements presented in Annex 1? Should Annex 1 be specific to GSCs, or could it be also applicable to crypto-asset activities other than GSCs?

Chamber Response:
The key design considerations for cross-border cooperation and information sharing arrangements should include compliance requirements and detailed information regarding the difference and degree of liability of actors across jurisdictions, including whether there are any exemptions.

14. Does the proposed template for common disclosure of reserve assets in Annex 2 identify the relevant information that needs to be disclosed to users and stakeholders?

Chamber Response:
While the template includes relevant information that should be disclosed to users and stakeholders, the template appears to focus primarily on GSC arrangements that are fiat backed. Consequently, the template is less useful for considering whether a given crypto-asset-backed or algorithmic stablecoin would qualify as a GSC arrangement. The Chamber recommends that the FSB consider different reporting mechanisms for these types of GSC arrangements when traditional finance requirements for proof of reserves may be inapplicable.

15. Do you have comments on the elements that could be used to determine whether a stablecoin qualifies as a GSC presented in Annex 3?

Chamber Response:
The Chamber agrees with the elements set forth by the FSB in Annex 3. The Chamber reemphasizes that the FSB should identify any unaddressed risks that may be unique to certain stablecoins, which would allow the FSB to better target the triggers that could give rise to a need for new or different regulation or oversight for one or more subsets of stablecoins.

III. Response to Recommendations on Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets

In this section the Chamber provides observations and comments as to each specific FSB recommendation on crypto-asset activities and markets.

Recommendation 1: Regulatory Powers and Tools
FSB Guidance Summary:
The FSB recommends that authorities be given appropriate powers, tools, and adequate resources to regulate, supervise, and oversee crypto-asset activities and markets, including crypto-asset issuers and service providers as appropriate.

Chamber Recommendations:
When categorizing decentralized, centralized, and hybrid exchanges, issuers, and service providers, categorization should be consistent across jurisdictions to the extent possible. To accomplish this, the Chamber recommends first defining each type of activity (decentralized, centralized, and hybrid) coupled with a general taxonomy of the types of businesses that service each type, accompanied by an appropriate scoring of the risk each type of business poses to the crypto ecosystem as well as the potential risks posed to the broader financial system. The Chamber believes that this approach will facilitate the creation of a set of "characteristics guidelines" that will support implementation of a uniform system of categorization that will allow regulators worldwide to properly map (and adapt, as applicable) various crypto-asset activities with their respective jurisdictions' regulatory, supervisory, and oversight requirements.

Regarding powers and capabilities that each jurisdiction has over various crypto-assets, the Chamber recommends the FSB identify high risk activities and provide a general framework of principles-based regulations that various jurisdictions can overlay or incorporate into their already-existing rules and regulations. For example, the Chamber recommends guidance that prioritizes disclosure, especially concerning high-risk enterprises such as centralized crypto-asset exchanges and to adopt measures that better defines how concepts such as proof of reserves would fit within already-created rules.

In determining which industry participants should be subject to audits, regulators should work to understand how crypto-asset activities fit within IFRS (and to the extent applicable, GAAP) accounting frameworks.

Recommendation 2: General Regulatory Framework
FSB Guidance Summary:
The FSB recommends that authorities should apply effective regulation, supervision, and oversight to crypto-asset activities and markets – including crypto-asset issuers and service

providers – proportionate to the financial stability risk they pose, or potentially pose, in line with the principle "same activity, same risk, same regulation."

<u>Chamber Recommendations</u>:
The Chamber generally views the FSB proposed framework as comprehensive; specifically, the recommendation that regulatory frameworks should follow the general principle of "same activity, same risk, same regulation." The Chamber recommends further, however, that the framework ensure there are no regulatory gaps regarding third-party service providers. As indicated above, the Chamber recommends that the FSB framework, therefore, identify and generally define service-provider types with a summary of the risks of each to be mitigated by regulations.

Additionally, the Chamber recommends the FSB identify generally each type of crypto-asset activity and their potential corresponding counterparts in traditional finance. This comparison will help determine whether such activities possess a similar risk and require comparable regulation.

The Chamber further notes that a comprehensive regulatory scheme should address the risks associated with breaches in security. Breaches in security pose a great risk to the national and international financial ecosystem.

While no crypto-asset activities should be fully exempt from regulation, the Chamber agrees that regulatory guidance should be proportionate to size and risk. Determining size and risk should be based on the size of the exchange in proportion to the market it occupies. It may also be prudent to introduce a time-tiered approach whereby certain requirements must be met based on the maturity or duration of existence of the entity. Determining the size, and proportionate regulation, will also be integral to consumer protection. Moreover, any regulatory framework should be nimble to account for the future risks of crypto to the larger traditional financial market.

Recommendation 3: Cross-Border Cooperation & Coordination
FSB Guidance Summary:
The FSB supports cooperation and coordination between authorities, both domestically and internationally, to foster efficient and effective communication, information sharing and consultation in order to support each other as appropriate in fulfilling their respective mandates and to encourage consistency of regulatory and supervisory outcomes.

<u>Chamber Recommendations</u>:

It is necessary that guidance for cross-border cooperation and coordination be framed with the goal in mind of eliminating fragmentation and regulatory arbitrage between jurisdictions. The Chamber recommends the implementation of effective and information sharing arrangements. Regulators should consider the different skill sets, resources, and tools that regulatory bodies have available to determine the feasibility of a cross-border regulatory scheme and encourage the various bodies to enter into memoranda of understanding amongst each other to seek consistent regulations.

Recommendation 4: Governance

FSB Guidance Summary:

The FSB recommends authorities require crypto-asset issuers and service providers to have in place and disclose a comprehensive governance framework. The governance framework should be proportionate to their risk, size, complexity, and systemic importance, and to the financial stability risk that may be posed by activity or market in which the crypto-asset issuers and service providers are participating. It should provide for clear and direct lines of responsibility and accountability for the functions and activities they are conducting.

Chamber Recommendations:

In creating a framework for requisite governance, regulators should consider issues regarding proof of reserves, run risks, and contagion risks. Governance frameworks should establish clear ground rules that allow for accountability.

To improve investor confidence, a government framework for crypto-asset issuers and service providers should be comparable to governance structures that are in place for traditional finance. However, that governance structure should be proportional to the entity's activities or size in relation to the crypto industry. Specifically, a tiered approach could be used to determine which governance requirements apply to which activities and players. Trigger points for each tier could be based on assets under management, whether the activity is consumer-facing, and the length of time the entity has been in the market.

Some issuers may not fit within a traditional finance framework for governance, regulators should consider a flexible approach when imposing requirements for a governance structure so as not to stifle innovation. In addition, the traditional finance framework may be impossible or impracticable for compliance in some circumstances, and reasonable alternatives should be permitted. In other circumstances, the traditional finance framework may not be well-suited because it is redundant or unnecessary in light of the specific technology, and should be modified accordingly.

Recommendation 5: Risk Management

FSB Guidance Summary:
The FSB recommends that authorities should require crypto-asset service providers to have an effective risk management framework that comprehensively addresses all material risks associated with their activities. The framework should be proportionate to the risk, size, complexity, and systemic importance, and to the financial stability risk that may be posed by the activity or market in which they are participating. Authorities should, to the extent necessary to achieve regulatory outcomes comparable to those in traditional finance, require crypto-asset issuers to address the financial stability risk that may be posed by the activity or market in which they are participating.

Chamber Recommendations:
Appropriate risk management measures are necessary for the ongoing development of the crypto-asset ecosystem and for ensuring consumer protection. The creation of a formalized insurance structure mitigates basic risks associated with the crypto ecosystem. An alternative to insurance that may be worthy of consideration is the creation of a fund that requires large-scale market participants to contribute to a risk-management fund, as this would likely be more feasible than third-party insurers. The goal of this fund would be to provide basic coverage for risk, while incentivizing market participants to implement their own internal risk management procedures.

Recommendation 6: Data Collection, Recording and Reporting
FSB Guidance Summary:
The FSB recommends that authorities should require crypto-asset issuers and service providers to have in place robust frameworks for collecting, storing, safeguarding, and the timely and accurate reporting of data, including relevant policies, procedures and infrastructures needed, in each case proportionate to their risk, size, complexity and systemic importance. Authorities should have access to the anonymized data as necessary and appropriate to fulfil their regulatory, supervisory and oversight mandates.

Chamber Recommendations:
The Chamber notes that regulations regarding data collection, recording, and reporting should be harmonized across jurisdictions and regulatory schemes. Regulators should have access only to certain limited data and not to the data systems themselves, which otherwise could present unintended cybersecurity and data privacy risks. Specifically, there are differences among the data formats (e.g., schemes and communication formats) for transactions and the related lifecycle events by each jurisdiction and reporting by participants likely requires different interfaces for the various global jurisdictions.

The Chamber recognizes that there are certain gaps in existing regulations regarding whether crypto-asset issuers and service providers collect, store, safeguard, and report data in a way that allows governments to monitor risks. For example, if you treat virtual currencies as commodities under the Commodity Exchange Act, the CFTC has a robust recordkeeping and reporting framework for Swaps. The CFTC recordkeeping and reporting obligations for Swaps are unlikely to properly support virtual currencies and spot transactions. These are prescriptive rules regarding transactional data fields and lifecycle events for Swaps, which do not comport with virtual currencies. Therefore, specific recordkeeping and reporting obligations will need to be promulgated for virtual currencies in a tailored way that addresses their unique attributes without requiring information that is not meaningful or necessary for regulatory goals.

Recommendation 7: Disclosures
FSB Guidance Summary:
The FSB recommends that authorities should require that crypto-asset issuers and service providers disclose to users and relevant stakeholders comprehensive, clear and transparent information regarding their operations, risk profiles, and financial conditions, as well as the products they provide and activities they conduct.

Chamber Recommendations:
Transparency within the crypto ecosystem and the firms that operate within it is necessary. Specifically, in the context of a custody relationship, explicit disclosures should be required. Those disclosures should specifically address (i) the primary risks associated with the company with an emphasis on investor protection; (ii) proof of reserves; and (iii) proof of liquidity. As to proof of reserves, a recommended best practice is for entities to employ third-party auditors.

Recommendation 8: Interconnectedness/Interdependencies
FSB Guidance Summary:
The FSB recommends that authorities should identify and monitor the relevant interconnections, both within the crypto ecosystem, as well as between the crypto ecosystem and the wider financial system. Authorities should address financial stability risks that arise from these interconnections and interdependencies.

Chamber Recommendations:
The Chamber agrees that the interconnectedness between the crypto-asset industry and wider financial system is currently limited, and that the former does not pose a systemic risk to the wider financial system for the time being.

The FSB should conduct further research to comprehensively categorize crypto-assets and markets in a way that fully captures the industry. The Chamber agrees that it would be helpful if there was an internal universal taxonomy of crypto-asset functions and activities.

It would be useful for entities within the crypto ecosystem be subject to disclosure requirements that would help mitigate contagion within and among crypto-asset entities and provide information required for industry participants to properly assess risk while doing business among one another. Disclosure requirements for digital asset exchanges and custodians should include proof of reserves.[5]

Recommendation 9: Segregation of Crypto-Asset Activities
FSB Guidance Summary:
The FSB recommends that authorities ensure that crypto-asset service providers that combine multiple functions and activities are subject to regulation, supervision and oversight that comprehensively address the risks associated with individual functions as well as the risks arising from the combination of functions, including requirements to separate certain functions and activities, as appropriate.

Chamber Recommendations:
Regulations should follow the principle of "functional segregation" especially when exchanges have custody of customer funds. Exchanges should be restricted from offering lending/borrowing to and between affiliated entities and should keep all proprietary information separate.

It is recommended that some activities should not be conducted by the same entity at a minimum without effective separation and complete segregation of activities. For examples, exchanges should generally be prohibited from both making a market and generating/issuing the same crypto-assets in that market. However, an exchange can engage in market making activities for other crypto-assets that were not issued by the exchange. In addition, regulators should consider placing restrictions on certain activities such as lending and borrowing, proprietary trading, and generation and issuance by adding requirements (i.e., licenses) for an exchange to engage in these activities.

IV. Response to Recommendations on Regulation, Supervision, and Oversight of "GSC" Arrangements

[5] In May 2021, the Chamber published a best practices document for proof of reserves that can be found here: best practices are recommended here: https://d3h0qzni6h08fz.cloudfront.net/reports/Proof-of-Reserves-.pdf.

In this section the Chamber provides observations and comments as to each specific FSB recommendation on crypto-asset activities and markets.

Recommendation 1: Authorities' Readiness to Regulate and Supervise GSCs
FSB Guidance Summary:
The FSB notes that without appropriate regulation, supervision, and oversight, continued adoption and use of GSCs may create risk to the global financial system, even if such risk is currently contained within the crypto-asset system.

Chamber Recommendations:
The following general principles should guide regulators' decision-making on stablecoin policy: (i) technology neutral; (ii) regulate proportionate to risk; (iii) recognize stablecoins as a type of digital payment, not an investment product; (vi) ensure compliance with anti-money laundering (AML) and countering the financing of terrorism requirements (CFT); and (v) craft flexible, principle-based rules.

The Chamber recommends the FSB outline a transparent and robust process for when to subject a stablecoin arrangement system to certain regulatory requirements. For example, stablecoins that reach some objectively identifiable transaction, amount, or volume level may warrant a regulatory framework (if not already applicable) that addresses potential systemic risks. When identifying GSCs to establish a regulatory framework, it is worth noting that certain stablecoins should not be subjected to a "stablecoin specific" regulatory regime such as (i) digital representations of fiat currency, such as government or central bank-issued digital currencies; (ii) money digitized by appropriately regulated financial market infrastructures, banks, credit institutions, or depository institutions; and (iii) security, settlement, or utility tokens. It would be appropriate for federal regulators to consider additional safeguards only when stablecoin payment systems are adopted at significant scale internationally.

Authorities should be encouraged to create realistic timelines for the execution of a regulatory scheme and its requirements. Types of assets should be prioritized according to like-kind and a regulatory scheme that applies to that asset should be applied across the board and according to a regulatory timeline.

The Chamber recommends considering the inclusion of stablecoins backed by marketable securities and commodities in its recommendations, as GSCs may be backed by these kinds of securities soon.

With regards to elements to qualify whether a stablecoin is a GSC, the Chamber recommends including elements related to the technological infrastructure, including applicable blockchain network, and whether the technological infrastructure is capable of hosting a global exchange.

Recommendation 2: Comprehensive Oversight of GSC Activities & Functions
FSB Guidance Summary:
The FSB recommends that authorities should apply comprehensive regulatory, supervisory and oversight requirements consistent with international standards to GSC arrangements on a functional basis and proportionate to their risks insofar as such requirements are consistent with their respective mandates.

<u>Chamber Recommendations</u>:
Consistent with the concept of "same activity, same risk, same regulation," stablecoins should be subject to the same regulatory principles applicable to crypto-assets and to equivalent categories of financial instruments, subject to the same principles regarding size discussed *supra* with regard to crypto-asset activities. Creating new or different regulations for stablecoins is appropriate only if the stablecoin activity gives rise to unique risks or vulnerabilities that are not otherwise appropriately regulated.

There is an opportunity to promote consumer protection through the software that consumers use to gain access to GSC products. While software providers should not be regulated, they may offer opportunities for GSC businesses to communicate consumer protection disclosures through the user experience on their applications.

Recommendation 3: Cross-border Cooperation, Coordination & Information Sharing
FSB Guidance Summary:
The FSB recommends that authorities should cooperate and coordinate with each other, both domestically and internationally, to foster efficient and effective communication, information sharing and consultation in order to support each other in fulfilling their respective mandates and to ensure comprehensive regulation, supervision, and oversight of a GSC arrangement across borders and sectors.

<u>Chamber Recommendations</u>:
As the Chamber has previously noted, it is of paramount importance to have comparable regulations globally. Therefore, the Chamber encourages regulators to work on a cross-border basis to harmonize any regulatory treatment of stablecoins and other crypto-assets. Authorities should work with the public and industry to evaluate, identify, and provide clarity on any equivocal laws and regulations that may otherwise provide appropriate and proportionate regulatory and/or supervisory structure to stablecoin arrangements. Cross-border and

international cooperation is crucial to mitigating financial risks and preventing regulatory arbitrage.

Recommendation 4: Governance Structures & Decentralized Operations
FSB Guidance Summary:
The FSB recommends that authorities should require GSC arrangements to have a comprehensive governance framework in place with clear and direct lines of responsibility and accountability for all functions and activities within the GSC arrangement.

Chamber Recommendations:
While the report recognizes that a decentralized governance structure may create difficulties in effectively applying relevant policies and standards and identifying entities and persons that can be held accountable, a decentralization of any system can reduce the level of dependency on, and therefore risk of abuse from, any single party in an end-to-end transaction that is processed by that system. A fully decentralized software still requires appropriately regulated participants to be designated to assume certain legal oversight and responsibility in relation to their specific roles in the stablecoin arrangement.

Any such governance requirements should be proportional to the size and risks of the GSC arrangement and relevant entities. Similar to governance for crypto-asset issuers, a tiered-approach could be used to determine which governance requirements apply to which activities and players for GSC arrangements. It is important to recognize that there are current GSC arrangements in which a decentralized governance structure may be ineffective. For example, under a decentralized governance structure, it may prove difficult or impossible to quickly freeze assets if financial crimes are being committed. It may also be challenging to extricate a bad actor in a timely fashion.

Moreover, while the Chamber generally agrees that a GSC arrangement should have a governance body in some form, regulators should consider whether a centralized governance body would hinder innovation for non-fiat backed stablecoin arrangements. A governance body is appropriate for a stablecoin arrangement that is backed by fiat, where it is subject to traditional finance requirements for proof of reserves. Exceptions should be considered for non-fiat backed stablecoin arrangements where the crypto assets are located on the blockchain and there may be less of a need for traditional finance requirements for proof of reserves.

The report notes that there are accountability issues for fully permissionless ledgers. It is the Chamber's recommendation, therefore, that regulators should consider additional issues such as the inability to identify responsible parties and the risk of a 51% attack, where a single entity gains control of the blockchain.

Recommendation 5: Risk Management
FSB Guidance Summary:
The FSB recommends that authorities should require that GSC arrangements have effective risk management frameworks in place especially with regard to operational resilience, cyber security safeguards and AML/CFT measures, as well as "fit and proper" requirements, if applicable, and consistent with jurisdictions' laws and regulations.

Chamber Recommendations:
The Chamber emphasizes the need for clarity in the context of risk management and encourages ongoing research into the benefits of DeFi/permissionless networks.

If a stablecoin arrangement is simply being used or offered "globally," this should not trigger systemic risks. Other factors such as transaction values, levels, or volumes, measured objectively, are a more appropriate determinant as to whether a level of risk exists that could justify new or different regulatory treatment. Similarly, issues such as monetary policy, monetary sovereignty, currency substitution, and other macroeconomic concerns have a significant effect on determining whether certain stablecoin arrangements rise to the level of being systemically important.

Authorities should also consider whether stablecoins are used for wholesale purposes versus retail, as these uses may pose different risks, have potentially differentiating arrangements, and address different use cases and, therefore, should be evaluated differently.

Recommendation 6: Data Storage & Access to Data
FSB Guidance Summary:
The FSB recommends that authorities require GSC arrangements to have in place robust systems and processes for collecting, storing, and safeguarding data.

Chamber Recommendations:
In decentralized ecosystems there is no central party collecting data and therefore no party from whom to collect. This should be acknowledged to not impose impossible data collection requirements on autonomous entities that have no ability to comply, and for which there is no reason to impose such requirements. While some GSC market participants use centralized systems, limitations should be acknowledged related to the ability of these centralized systems to collect, store, and safeguard GSC-related data.

Recommendation 7: Recovery & Resolution of GSCs
FSB Guidance Summary:

The FSB recommends that authorities require GSC arrangements to have appropriate recovery and resolution plans.

<u>Chamber Recommendations</u>:
There are two core issues that should be addressed upon a bankruptcy of a stablecoin issuer: (1) ensuring that assets are not dissipated and can be fairly distributed through the bankruptcy process (e.g., blacklisting addresses, freezing assets); and (2) retiring the digital assets from circulation. Technical functionality can be leveraged to address the foregoing two issues as well as distributing notice to holders of the tokens upon bankruptcy to ensure that they are aware of the loss in value.

Recommendation 8: Disclosures
FSB Guidance Summary:
The FSB recommends that authorities should require that GSC issuers provide all users and relevant stakeholders with comprehensive and transparent information to understand the functioning of the GSC arrangement, including with respect to governance framework, redemption rights and its stabilization mechanism.

<u>Chamber Recommendations</u>:
Disclosures are necessary to the maintenance of GSC arrangements. The Chamber recommends that regulators consider requiring the disclosure of the ratio of the reserves to demonstrate the adequacy of those reserves in a GSC arrangement. Where feasible, authorities should consider requiring entities to disclose the trading activity of any GSC that led to stabilization.

Recommendation 9: Redemption Rights, Stabilization, and Prudential Requirements
FSB Guidance Summary:
The FSB recommends that authorities require GSC arrangements to provide a robust legal claim to all users against the issuer and/or underlying reserve assets and guarantee timely redemption. For GSCs referenced to a single fiat currency, redemption should beat at par into fiat. To maintain a stable value at all times and mitigate the risks of runs, authorities should require GSC arrangements to have effective stabilization mechanism, clear redemption rights and meet prudential requirements.

<u>Chamber Recommendations</u>:
Robust legal claims for redemptions and timely redemptions are important aspects of GSC arrangement. The Chamber agrees that redemptions should not be unduly restricted by conditions (such as minimum thresholds) and fees that are so high as to render redemption cost-prohibitive or a deterrent.

Regulators should consider the stabilization mechanism and prudential requirements together, as they impact one another and should be viewed collectively. As for the reserve-based stabilization method, it is not always practical to exclude speculative and volatile assets, and assets with insufficient historical evidence, as this would exclude other crypto-backed reserves. The Chamber recommends that the FSB include GSCs with alternative stabilization methods. Prudential requirements are important, and the Chamber agrees that capital buffers should be consistent with size of GSC in circulation and proportionate to the risk of GSC arrangement.

Recommendation 10: Conformance with Regulatory, Supervisory, and Oversight Requirements before Commencing Operations

FSB Guidance Summary:

Authorities should require that GSC arrangements meet all applicable regulatory, supervisory and oversight requirements of a particular jurisdiction before commencing any operations in that jurisdiction and adapt to new regulatory requirements as necessary and as appropriate.

Chamber Recommendations:

The recommendations in this section are comprehensive and fulsome within the context of the Chamber's other recommended modifications to the guidance.

The Chamber recommends that AML compliance, cybersecurity data protection, and data protection regulations must be complied with first in order for any GSCs to be in operation. Due to the continuing evolution and need for further research in the context of governance frameworks; contingency plans; redemption rights; and stabilization mechanisms, the Chamber recommends that GSCs be allowed to operate in parallel with these evolving areas.

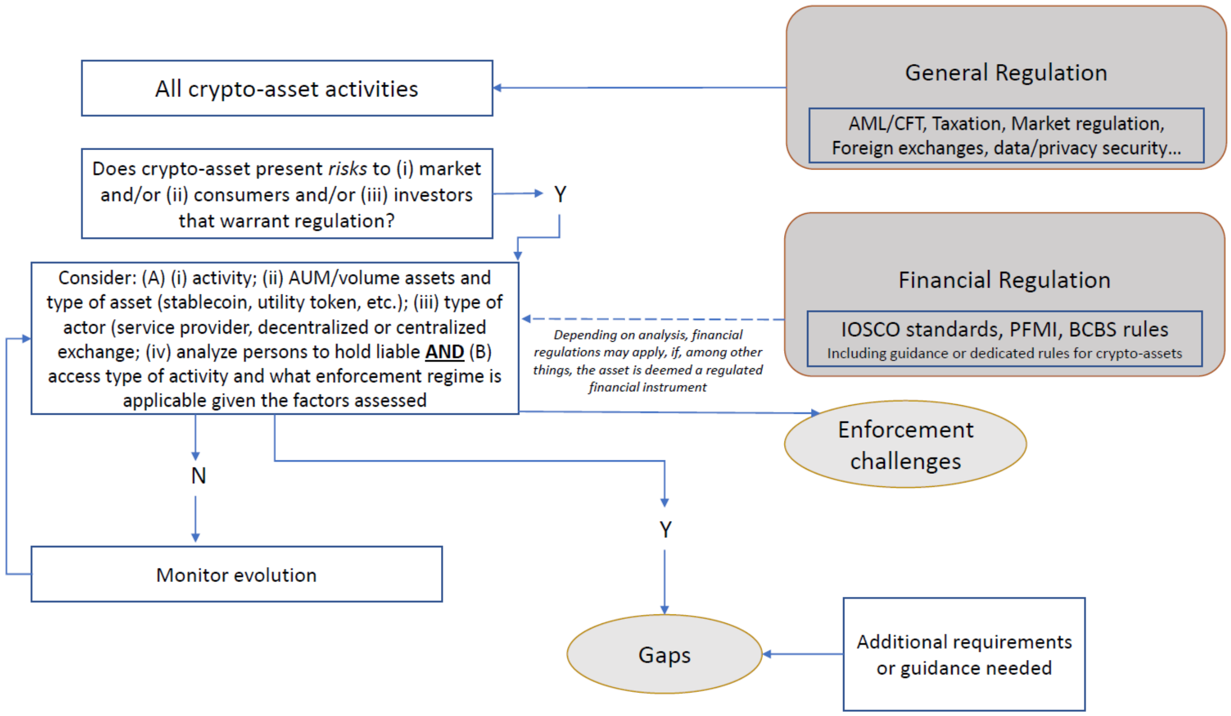
The Chamber advises that GSC issuance should be permitted to be conducted in non-bank-chartered entities, separate from any other insured depository institution subsidiary or other regulated affiliates.

The FSB should consider whether GSC arrangements should have the following consumer and investor protection measures in place before conducting activities or operations: redemption right disclosures; reserve asset disclosures; and privacy policies. It is recommended for there to be additional regulatory clarity on depository institution insurance, supervision, and regulation before requiring GSC arrangements to have such measures in place.

The Chamber advises that requiring compliance with all regulatory, supervisory, and oversight requirements before commencing any operations may inhibit innovation in GSC arrangements.

V. Proposed Regulatory Flowchart Modification

The Chamber views the FSB recommendations, as a whole, fulsome and supports much of the information presented. However, the FSB should consider updating the regulatory flowchart as follows to recognize the ambiguity that exists when determining, among other things, how a given asset may be classified, who the liability parties may be, and the risks that the asset poses. Below is a proposed update to the regulatory flowchart.[6]



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[6] Regulation, Supervision and Oversight of Crypto-Assets, *supra* note 2, at p. 5.