U.S. Chamber of Commerce

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Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Proposed Framework, Financial Stability Board; Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Consultative report, and High-level Recommendations of the Regulation, Supervision and Oversight of Global Stablecoin Arrangements: Consultative report (October 11, 2022)

To Whom it May Concern:

The U.S. Chamber of Commerce's ("The Chamber") Center for Capital Markets Competitiveness ("CCMC") is pleased to provide comments on the consultative report ("Consultation") by the Financial Stability Board ("FSB") on *"Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Consultative report"* and the FSB's *"High-level Recommendations of the Regulation, Supervision and Oversight of 'Global Stablecoin' Arrangements: Consultative report."* As the FSB notes, the two sets of recommendations are closely interrelated, "reflecting the interlinkages between stablecoins and the broader crypto-asset ecosystem."

The Chamber released a report last year, "Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader," to provide a roadmap to U.S. policymakers. The report notes that the digitization of assets has the potential to revolutionize how goods and services are offered and how value is transferred for generations to come. The report includes considerations for a digital assets framework with a particular focus on financial services regulatory regimes because of their significant impact on digital assets and related blockchain innovation. A competitive and workable regulatory framework for digital assets is critical to the ability to attract the capital to fund this growing industry and for the promise of the technology to be realized.[1]

The FSB is an important interlocutor for understanding how digital assets could reshape our financial system, and for establishing standards to achieve shared objectives of innovation, consumer protection, market integrity, and market stability.

[1] Digital Assets: A Framework for Regulation to Maintain the United States' Status as an Innovation Leader. (January 2021). U.S. Chamber of Commerce, Center for Capital Markets Competitiveness.

We believe the FSB should be actively engaged on the topic of how to appropriately regulate and supervise digital assets with the objectives of avoiding regulatory fragmentation. We agree with the FSB's statement that, "An effective regulatory framework must ensure that crypto-asset activities are subject to comprehensive regulation, commensurate to the risks they pose, while harnessing potential benefits of the technology behind them."[2] A workable regulatory regime that is fit for purpose can promote compliance for the use of blockchain technology in financial products – both the traditional financial institutions and crypto-native companies are seeking this outcome.

We trust the FSB to remain open-minded to the benefits of stablecoins, and other digital assets, as it considers the development of standards for regulation and oversight. Markets are inherently risky. Although protecting investors from fraud, market manipulation, and other wrongdoing and ensuring market stability is vital, policymakers are not responsible for eliminating the risk of investing in new or emerging technologies and business models, nor should policymakers pick winners and losers – this is the responsibility of investors and other market participants. The discussion in the Consultation includes little discussion on the tradeoffs of imposing new regulations on the market for crypto-assets. When participating in the crypto-asset market, just like with other markets, there is a downside potential, but there are also substantial potential upsides. It is unfortunately much easier to focus on the negative headlines highlighting shortcomings in the crypto-asset market instead of working towards a framework that embraces how it might flourish and spur many benefits with the appropriate regulatory workability and clarity.

The business community – including firms active in the market for crypto-assets – is eager to work with relevant authorities to provide the requisite clarity about the applicability of the existing regulatory framework, how it may need to be expanded to appropriately empower regulators, and where amendments are appropriate. As described above, the goal should be a workable regulatory regime that promotes consumer protection, market stability and integrity, and encourages innovation.

Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets: Consultative report

The FSB states that an "effective regulatory framework must ensure that crypto-asset activities are subject to comprehensive regulation, commensurate to the risks they pose, while harnessing potential benefits of the technology behind them."[3] The U.S. Chamber of Commerce supports this objective and hopes the FSB's

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[2] International Regulation of Crypto-asset Activities: A proposed framework – questions for consultation (October 11, 2022). Financial Stability Board. https://www.fsb.org/wp-content/uploads/P111022-2.pdf
[3] Ibid.

leadership will promote the development of regulatory frameworks that enable this market to flourish, while also protecting consumers and the stability of the financial system.

The FSB indicates its desire to adhere to the principle of same activity, same risk, same regulation, but the policy questions it is addressing require more nuance. In general, we understand how this principle can be a helpful starting point, but it is important that it is not used as a slogan to avoid the granular and rigorous work needed to develop specific regulatory requirements tailored to the unique characteristics of cryptocurrencies. The FSB does take a step towards additional nuance by stating, "where crypto-assets and intermediaries perform an equivalent economic function to one performed by instruments and intermediaries of the traditional financial sector, they should be subject to equivalent regulation." This concept should be further unpacked. The economic functions of cryptocurrencies may be similar, but they will not be exactly the same, in part because crypto assets rely on a new technological innovation. The FSB may find it more constructive to look towards standards that achieve equivalent outcomes (e.g., financial stability, consumer protection, oversight) instead of recommending identical regulations that do not appropriately account for the underlying distributed ledger technology in cryptocurrencies. The FSB makes note of this approach in its overview of the consultation – "such regulation should ensure equivalent regulatory outcomes"[4] – but seems to lose sight of it elsewhere in the Consultation. The particularities of regulation need to be workable in light of the technology upon which crypto assets are built. However, new technology does not change the need for appropriate controls, governance, oversight, and consumer protection standards.

The Chamber is emphasizing an approach that discourages companies from attempting to operate in the regulatory shadows. We are encouraging policymakers to recognize the efforts made by some financial institutions to operate within existing regulatory frameworks. It is important that the market for crypto-asset activities is appropriately regulated so that firms upholding best-practices and agreed to standards for consumer protection and market integrity can be appropriately recognized for their efforts to comply with the law. Inversely, regulators should appropriately identify firms that fail to adhere to these standards. Incentivizing companies to operate in the shadows, and outside the regulatory framework, is not conducive to establishing the trust with stakeholders – in both the public and private sector – that is necessary for this market to flourish.

Recommendations

[4] Ibid.

The Chamber generally supports the recommendations for crypto-assets and markets. The recommendations provide a helpful framework for jurisdictional authorities to implement regulations. To that end, we believe jurisdictional authorities should be provided the appropriate flexibility and discretion to implement the standards in a manner such that they may consider the unique aspects of their legal framework and market dynamics. We encourage the FSB to consider these principles as it continues its work:

- Cost-benefit analysis. The FSB should strive to propose recommendations for new regulation and supervision only where it can provide evidence that the benefits exceed the costs. Through the use of cost-benefit analysis, policymakers can determine if their proposals will actually work to solve the problem they are seeking to address. This is a fundamental building block to ensure regulations work as intended. Cost-benefit analysis should, among other things, contribute to more efficient regulations due to consideration of costs, benefits, and competing alternatives.

- Proportionality. The FSB should adhere to the principle of proportionality when developing regulatory and supervisory standards for cryptocurrencies. These standards should be tailored to account for the specific risks of market participants. We appreciate the FSB noting that the regulation, supervision, and oversight of crypto-asset activities and markets "should be applied to crypto-asset issuers and service providers in a way that is proportionate to their risk, size, complexity, and systemic importance."[5] We believe local authorities should have the flexibility to tailor these standards such that they are appropriate for their respective markets and legal frameworks.

- Global Coordination. The FSB should ensure global coordination to avoid regulatory fragmentation and conflicts as local authorities seek to implement its recommendations. We agree with the FSB's finding that "The applicability of regulations relies on the classification of crypto-assets in the jurisdictional legal framework."[6] The FSB should encourage cooperation among regulators to promote global harmonization and to avoid an outcome that benefits some markets or firms over others. We also believe the FSB should discourage gold-plating of global standards by local regulators, especially if not justified by the risk or required by local legal frameworks. The FSB should also provide appropriate flexibility to enact standards that can align with local legal frameworks. For example, in the U.S., appropriate regulatory authority may, in

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[5] Regulation, Supervision and Oversight of Crypto-Asset Activities and Markets (October 11, 2022). Financial Stability Board. https://www.fsb.org/wp-content/uploads/P111022-3.pdf

[6] International Regulation of Crypto-asset Activities: A proposed framework – questions for consultation (October 11, 2022). Financial Stability Board. https://www.fsb.org/wp-content/uploads/P111022-2.pdf

certain cases, already exist, including at the state level with well-established and tested state licensing and regulatory regimes for banks, trust companies, and money transmitters."[7]

- Activities-Based Approach. The FSB should pursue an activities-based approach to systemic risk and not revisit its approach of G-SIFI designations. The FSB has previously deemed certain nonbanks as systemically important and considered deeming others as systemically important. It has since rejected this approach in favor of encouraging activities-based regulation by jurisdictional authorities. For example, the FSB ceased publishing a list of Global Systemically Important Insurers (G-SIIs) in 2017 after starting the annual exercise in 2013. When announcing the end of the G-SII list in 2017 the FSB recognized the work of the International Association of Insurance Supervisors on developments of an activities-based approach to systemic risk.[8] Similarly, after announcing a framework for "Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions," the FSB and International Organization of Securities Commissions (IOSCO) changed course in favor of an activities-based approach.[9]

  The U.S. government continues to express support for an activities-based approach to systemic risk domestically. Janet Yellen, Secretary, U.S. Treasury Department noted her support in her confirmation hearing, *"When I served on FSOC as Fed Chair, it was proposed to look at activities that asset managers engage in that might pose systemic risks…this was an activities-based approach that FSOC was pursuing and I thought that was the right approach,*

[7] Request for Comments, Department of the Treasury; Ensuring Responsible Development of Digital Assets (87 Fed. Reg. 40,881 – 40,883, July 8, 2022) (August 8, 2022). U.S. Chamber of Commerce. http://www.centerforcapitalmarkets.com/wp-content/uploads/2022/08/U.S.-Comments_ResponsibleDevelopmentofDigitalAssets_Treasury-Final.pdf?

[8] FSB statement on identification of global systemically important insurers (November 21, 2017). Financial Stability Board. https://www.fsb.org/2017/11/fsb-statement-on-identification-of-global-systemically-important-insurers/

[9] Consultative Document (2nd): Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions (May 22, 2015). U.S. Chamber of Commerce. https://centerforcap.wpengine.com/wp-content/uploads/2015/05/2015-5.22-GRGI-FSB-Comment-Letter.pdf

so I would hope to look again at some of those approaches.[10] The U.S. Congress has continued its support for this type of approach.[11]

High-level Recommendations of the Regulation, Supervision and Oversight of 'Global Stablecoin' Arrangements: Consultative report

Stablecoins serve an important role in the digital asset ecosystem. These assets, engineered toward achieving price stability, have a value that is backed by fiat money, commodities, or other cryptocurrencies. Unlike other digital assets, a stablecoin's value is fixed to a known unit of currency (or basket of currencies) or some other asset that essentially collateralizes it. The largest stablecoins by market capitalization are pegged to the U.S. dollar and backed by U.S. dollar denominated reserve assets held in custody. By contrast, an algorithmic stablecoin is not necessarily collateralized and instead uses algorithms and smart contracts to monitor supply and demand with reference to another cryptocurrency to ostensibly keep the value stable. The cryptographic security of stablecoins "allows users to settle transaction near-instantaneously without double-spending on an intermediary that facilitates settlements."[12] Stablecoins can combine the speed and cost efficiencies of other digital assets, with price stability akin to that of a fiat currency. Stablecoins can be an especially useful payments option when the price stability is preserved.

The Chamber supports reaching a global agreement on standards that promote financial stability, including price stability, and that protects consumers. Clarity about the regulatory treatment of these assets is paramount to the financial institutions part of the stablecoin arrangement, and critical for providing consumers the confidence to participate in this market. Regulators, businesses, and consumers can benefit from clarity about regulatory treatment. It is difficult to make progress regarding the

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[10] Hearing to Consider the Anticipated Nomination of the Honorable Janet L. Yellen to Secretary of the Treasury (January 19, 2021). U.S. Senate Committee on Finance. https://www.finance.senate.gov/hearings/hearing-to-consider-the-anticipated-nomination-of-to-be-the-honorable-janet-l-yellen-to-secretary-of-the-treasury

[11] "The Committee recognizes the guidance finalized by FSOC on December 4, 2019, regarding the designation of nonbank financial companies as systemically important financial institutions, which outlines an activities-based approach and is intended to make FSOC's process more transparent, accountable, and rigorous. While FSOC's guidance is important, the Committee recognizes Congress may also codify these changes to require FSOC to focus on activities-based risk assessments for nonbank financial companies, which would target areas of potential systemic risk, instead of on designations of individual companies." https://appropriations.house.gov/legislation/financial-services-and-general-government-subcommittee-legislative-activity

[12] Liao, G. Y., & Caramichael, J. (2022). (rep.). Stablecoins: Growth Potential and Impact on Banking. Retrieved from https://www.federalreserve.gov/econres/ifdp/files/ifdp1334.pdf.

appropriate regulation framework for stablecoins, however, without agreement on what constitutes a "stablecoin arrangement" ("SA") or "global stablecoin arrangement" ("GSC").

Steps taken by U.S. towards regulation of stablecoins

The U.S. is making progress towards implementing a clearer and more comprehensive regulatory framework for stablecoins. On November 1, 2021, the President's Working Group on Financial Markets released a report and recommendations on stablecoins ("PWG Report").[13] We are encouraged by the discussion in the PWG Report that moves policymakers closer to ensuring that there are sound standards for payment SAs around issues such as governance, management of reserve assets, custody of reserve assets, settlement, redemption, and distribution. The PWG report encourages the U.S. Congress to enact legislation and suggests FSOC would intervene, barring the enactment of a new law governing stablecoins.

We believe Congress should enact legislation that provides for clear authorization and principled standards for the regulation of stablecoins, and we are encouraged by progress made-to-date. We believe any legislation should be appropriately tailored for the risk of certain stablecoins rather than to subject stablecoins to a one-size-fits-all regulatory scheme. There are numerous bills pending before Congress, with bipartisan support, that we believe are constructive markers for building consensus. Also, leaders in Congress continue to indicate stablecoin legislation is a top priority.

Defining Stablecoin Arrangement and Global Stablecoin Arrangement

The FSB has not provided an adequately clear definition for SA or GSCs. This distinction is important given the FSB has recommended heightened regulatory and supervisory treatment of the latter. The FSB has stated, "There is no universally agreed definition of stablecoin. The term stablecoin does not denote a distinct legal or regulatory classification."[14]

The FSB should clarify the treatment of bank tokenized deposits in the definitions for SAs and GSCs. The FSB could move towards this clarification by first

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[13] U.S. Department of the Treasury. (2021, November). Report on Stablecoins. President's Working Group on Financial Markets (PWG), Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (OCC). Retrieved from https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf

[14] Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements: Final Report and High-Level Recommendations (October 13, 2020). Financial Stability Board. https://www.fsb.org/wp-content/uploads/P131020-3.pdf

providing its views on how a bank tokenized deposit is defined. For example, the FSB should consider whether or not the tokenized deposit constitutes a new or different liability of the bank.

The FSB's 2020 report[15] described three characteristics that distinguish a GSC from other crypto-assets and other stablecoins. Those characteristics include: (i) the existence of a stabilization mechanism, (ii) the usability as a means of payment and/or store of value1, and (iii) the potential reach and adoption across multiple jurisdictions. The first two characteristics (the existence of a stabilization mechanism and usability as a means of payment and/or store of value), and the unique risks that these characteristics pose, distinguish stablecoins from other crypto-assets. The third, the potential reach and adoption across multiple jurisdictions, differentiates GSCs from other stablecoins. The FSB's definitions are overly broad given the application of heightened regulatory and supervisory treatment could hinge upon how they are interpreted. Under the FSB's current approach presumably every SA could be a GSC.

The market's need for clarity and workability

Additional detail from the FSB about the definition of GSC arrangement would contribute to consistency as to how it is interpreted around the globe. Financial institutions would benefit from a definition that can be interpreted consistently. Regulators and supervisors would benefit from additional guidance in implementing policies that avoid both the potential for regulatory arbitrage and conflicting frameworks. An open-ended definition of GSC arrangements could cause some jurisdictions to treat a financial institution as systemically important, while others may not. This could undermine the need for the application of a global framework to address the potential for systemic risk.

The FSB has put financial institutions in a predicament by asserting that GSC arrangements adhere to global standards before clarifying what firms are in scope or providing an opportunity for jurisdictional authorities to implement appropriate regulatory and supervisory requirements. The FSB appears to be putting the cart before the horse with statements like "GSC arrangements are expected to adhere to all applicable regulatory standards and to address risks to financial stability before commencing operation." Many SAs, including those that may be considered "global," are already in operation. The FSB's posture, as a result, seems to be that all stablecoins cease operation until local authorities implement the supervisory and regulatory frameworks recommended. Financial institutions and their partners should not be punished for inaction on behalf of policymakers, especially given their longstanding and expressed desire to be subject to appropriate regulation.

[15] Ibid.

Financial institutions deserve transparency from the FSB to inform their businesses strategy. Currently, financial institutions have no way of definitively knowing whether they will be deemed globally systemically important (i.e. considered a GSC arrangement) and be subject to the applicable enhanced regulatory and supervisory treatment. Some financial institutions may opt to limit their activities if it means limiting their regulatory costs and burdens, while others may determine their business strategy can justify the additional costs.

Recommendations for clarifying definition of GSC arrangement.

The FSB should narrow its definition of GSC arrangement and provide additional detail for how it can be interpreted by regulators and the entities that may be subject to heightened standards. To narrow and clarify the definition of GSC arrangement, the FSB should:

- Clarify what it means by ***"global"*** in the context of a GSC arrangement. The FSB notes, "The attribute global refers to a stablecoin with a potential reach and adoption across multiple jurisdictions and the potential to achieve substantial volume, thus posing financial stability risks, rather than a specific legal or regulatory concept." Vague terms like "potential" and "multiple" would appear to scope in every SA. The distributed ledger technology for SA inherently makes them global with the possibility of reaching scale. What stablecoins arrangements do not have the potential to achieve "substantial volume"? What is meant by "substantial"? What is meant by multiple jurisdictions? More than one? This definition of ***"global"*** is extremely open-ended and raises more questions than it answers.
- Clarify applicable use cases. The FSB notes that a stablecoin could meet the definition of GSC arrangement "including as a means of making payments" which suggests operations beyond "making payments," such as a savings and/or investment vehicle, could be included. https://www.fsb.org/2020/10/regulation-supervision-and-oversight-of-global-stablecoin-arrangements/
- Clarify the scope of the ***"arrangement"*** for the GSC. According to the FSB, "An SA [stablecoin arrangement] is an arrangement that combines a range of functions to provide an instrument that purports to be used as a means of payment and/or store of value."[16] In this case, it is not clear what "functions" are expected to be included and what it means to "provide." For example, stablecoin issuers have no ability to control validators, even with third-party risk management, given the payment rail is disaggregated. Validators on a blockchain network have no relation to an SA other than the fact they are involved in processing transactions on the network and should not be subject to these regulatory and supervisory requirements. Additionally, the FSB has

[16] October 2021 report, Committee on Payments and Market Infrastructures

suggested "service providers" in a SA outside of the payment system, "for example wallets" could be part of the arrangement.[17]

- In general, move to eliminate references about if a stablecoin ***"could"*** or ***"may"*** be global or the ***"potential"*** coverage of financial institutions and adhere to a bright line definition where appropriate. These types of qualifiers undermine the FSB's work by leaving the door open for any SA to be considered systemically important. For example, the revised recommendations emphasize the need for authorities to be ready to "apply relevant regulations to any stablecoins that ***could*** become GSCs." For example, the FSB notes, "If a stablecoin arrangement combines such infrastructure with features that ***may*** be attractive to a broad range of users across multiple jurisdictions, its user base may rapidly grow, i.e. it may become a GSC."[18] Also, "The ***potential*** reach and adoption of stablecoins across multiple jurisdictions and the potential to achieve substantial volume differentiates a GSC from other stablecoins."[19] These type of open-ended statements are not helpful for achieving the clarity sought by regulatory authorities and their stakeholders.

Regulatory Treatment of Stablecoin Arrangements and Global Stablecoin Arrangements

The Chamber supports the FSB developing a framework for recommended regulation of both SAs and GSCs. The latter should be subject to heightened standards to address potential financial stability risks, but the potential regulatory tools that could be applied to each are similar. The below recommendations should be considered as part of a global baseline for the regulation of SAs and GSCs.

- Reserve Requirements. Stablecoins should be subject to minimum reserve requirements to make sure that any stablecoin holders' redemption requests can be fulfilled under a range of scenarios. Reserves should at minimum meet 100% of the par value of the stablecoin outstanding. These reserves should be held in low-risk, highly liquid assets such as cash, or cash equivalents.
- Reserve Disclosures. Requirements for regular disclosures should provide confidence to the public that the reserve requirements are being followed. These disclosures should be completed on a regular basis (e.g. monthly or

[17] *"The document also acknowledges that other service providers in a stablecoin arrangement outside of the payment system, for example wallets, have the potential to pose systemic risks."* Regulation, Supervision, and Oversight of "Global Stablecoin" Arrangements: Progress Report on the implementation of the FSB High-Level Recommendations (October 7, 2021). Financial Stability Board. https://www.fsb.org/wp-content/uploads/P071021.pdf

[18] Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements: Final Report and High-Level Recommendations (October 13, 2020). Financial Stability Board. https://www.fsb.org/wp-content/uploads/P131020-3.pdf

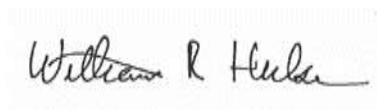
[19] Ibid.

annually). The disclosures should be accompanied by fully independent attestations, completed by qualified persons, that the reserve requirement obligations are being met.

- Proportionality. We agree with the FSB's finding that regulation of stablecoins should be "proportionate to the risks."[20] Even within these two regulatory categories, described above, there should be appropriate tailoring of regulation. Not all stablecoins arrangements are the same, and not all GSC arrangements will be the same. What may have global systemic risk might not have local systemic risk, and what might have local systemic risk may not have global systemic risk.

Thank you for considering our comments. We would be happy to discuss these issues further.

Sincerely,



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[20] Ibid.