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**WRITTEN TESTIMONY OF
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**BEFORE THE
United States House of Representatives Committee on Financial Services
Subcommittee on Digital Assets, Financial Technology and Inclusion**

**IN A HEARING ENTITLED
Understanding Stablecoins' Role in Payments and the Need for Legislation**

Chairman Hill, Ranking Member Lynch, and Members of the Subcommittee:

My name is Jake Chervinsky and I serve as Chief Policy Officer for the Blockchain Association (the "Association"). I am an attorney by training: I started my career in private practice in 2013, where I focused on anti-money laundering and anti-corruption compliance and investigations, financial services litigation, and government enforcement defense. In 2019, I recognized the transformative power of blockchain technology and joined Compound Labs, Inc., a prominent software development company in the decentralized finance ("DeFi") space, as General Counsel. I joined the Association to focus full-time on public policy in November 2021.

The Association is the leading nonprofit membership organization focused on promoting a pro-innovation policy environment for the U.S. blockchain industry. We represent more than 100 member companies from every sector of this dynamic industry, including software developers, infrastructure providers, exchanges, custodians, investors, and more. Our members are strongly committed to regulatory compliance and have long requested clear rules of the road so that they can build safe, sound, and successful businesses here in the United States.

Thank you for the opportunity to testify about one of the most promising applications of public blockchains, and one for which tailored legislation is needed: U.S. dollar stablecoins.

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1. Executive Summary.

Our current financial system has a problem: it is dominated and constrained by intermediaries. Modern commerce relies on a small number of large financial institutions to operate proprietary infrastructure for which they serve as the exclusive gatekeepers and middlemen. Although these institutions historically formed the backbone of a strong, well-functioning financial system, they have failed to keep pace with the digital age. The global economy is always on and always connected, but traditional financial institutions continue to use slow, inefficient, and unreliable tools that were developed for the analog era of the last century before the rise of the internet.

Public blockchains offer a solution to that problem: a revolutionary upgrade on the technology that powers the global financial system. First and foremost, blockchains offer public payments infrastructure to go along with the public internet. Blockchains can be accessed by anyone with an internet connection to transfer any amount of value to anywhere in the world, nearly instantly and at nearly zero cost. Blockchains outperform legacy payment rails in practically every way, since they are faster, less expensive, more reliable, more transparent, and inclusive by default.

Stablecoins are a particularly powerful application of blockchain technology. For the time being, other blockchain-based cryptocurrencies remain highly volatile, and thus are poor performers as “units of account” — a term describing the important role of currency in setting consistent prices for goods and services. Stablecoins, on the other hand, take advantage of all the benefits of public blockchains while maintaining a stable value against a national currency like the U.S. dollar. As a result, stablecoins represent a categorical improvement for global payments.

U.S. dollar stablecoins also offer an extraordinary opportunity to advance U.S. interests at home and abroad. At present, foreign adversaries such as China and Russia are seeking to undermine the status of the U.S. dollar as the global reserve currency. To strengthen the dollar’s dominance, our main priority should be to spread dollars far and wide, and blockchain-based stablecoins — which enable billions of people around the world who lack financial services to join the global economy for the first time — provide the best mechanism to achieve that priority.

To maximize the benefits of U.S. dollar stablecoins, Congress must move quickly to pass tailored legislation providing regulatory clarity to U.S.-based stablecoin issuers. As a matter of law, only Congress, not the federal agencies, can decide how digital assets like stablecoins should be regulated. The consequences of failing to act — losing ground to competing national currencies like China’s digital yuan, losing out on the benefits of a revolutionary upgrade to legacy payment systems, and losing innovators to other jurisdictions — are dire. There is no time to waste.

Below, I outline five principles for effective stablecoin legislation that the Association believes would protect consumers while promoting innovation. We urge the Committee to resume its focus on drafting and introducing stablecoin legislation through a bipartisan process. We, along with all of our member companies in the blockchain industry, stand ready and willing to help.

2. Introduction to Stablecoins.

“Stablecoin” is a term for a blockchain-based digital asset that seeks to maintain a stable value compared to a reference asset, typically a national currency. For example, a stablecoin that references the U.S. dollar seeks to maintain a stable value of \$1.00 per unit. Stablecoins, like other digital assets, run on decentralized public blockchains, meaning anyone can use them without having to rely on a trusted third party.

a. There are three main types of stablecoins.

There are different types of stablecoins, which all use different models to achieve the goal of maintaining stable value, each with their own benefits and drawbacks. There are three main types of stablecoins, as described below.

Custodial stablecoins are issued by an operating company and backed by collateral held in a bank or other institution. Custodial stablecoins are *fully collateralized* — \$1 of assets held in reserve for every unit of stablecoin in circulation — and seek to maintain their value based on the operator’s promise to maintain the reserve and pay redemptions on demand. Custodial stablecoins represent approximately 95% of global U.S. dollar stablecoins in circulation.¹ The largest custodial stablecoins are Tether’s USDT (~\$81b) and Circle’s USDC (~\$30b).

Decentralized stablecoins consist of autonomous software protocols on public blockchains that seek to maintain stable value without relying on a trusted central issuer. Decentralized stablecoins are backed by digital assets held in transparent smart contracts rather than in a bank or other institution. They are typically *overcollateralized* — more than \$1 of digital assets held in reserve for each unit of stablecoin in circulation — and maintain their value based on the holder’s ability to audit and redeem collateral at any time without relying on a third party. The largest decentralized stablecoin is DAI (~\$5b), which is part of the MakerDAO protocol.

Algorithmic stablecoins seek to maintain stable value without any backing at all. Algorithmic stablecoins are *uncollateralized* — Instead of collateral, they rely on financial incentives designed to influence market forces of supply and demand. The best-known algorithmic stablecoin was TerraUSD, which relied on a unique mechanism to adjust its total supply for stability.² For reasons both internal and external to TerraUSD’s design, including the potential impact of alleged fraud on the part of TerraUSD’s creator Do Kwon,³ its stability mechanism failed and the stablecoin collapsed. It is unclear if an algorithmic stablecoin with different characteristics could succeed in

¹ See *Total Stablecoin Supply*, The Block, <https://www.theblock.co/data/decentralized-finance/stablecoins> (last visited Apr. 16, 2023).

² Matt Levine, *Terra Flops*, Bloomberg (May 11, 2022), <https://www.bloomberg.com/opinion/articles/2022-05-11/terra-flops>.

³ David Yaffe-Bellany, *Crypto Fugitive Do Kwon Is Charged With Fraud by U.S. Prosecutors*, N.Y. Times (Mar. 23, 2023), <https://www.nytimes.com/2023/03/23/business/do-kwon-arrested-crypto.html>.

the future, but after the collapse of TerraUSD, the blockchain industry has moved away from research and development on algorithmic stablecoins.

b. Different types of stablecoins merit different kinds of regulation.

Different stablecoin models present substantially different risk profiles and therefore demand different regulatory treatment. Although the three main types of stablecoins identified above are all colloquially described by the term “stablecoin,” they each operate so differently that the regulatory principle “same business, same risks, same rules” does not apply.

To illustrate this difference, compare the distinct risk profiles of custodial and decentralized stablecoins. Custodial stablecoins are issued by an intermediary that maintains custody of a reserve backing the stablecoins. Holders of custodial stablecoins are thus essentially holding a liability of the issuer, and are exposed to the risk of the issuer mismanaging the reserve, refusing to process a redemption request, or otherwise failing to honor their liability.

Decentralized stablecoins remove the main risk of custodial stablecoins by replacing their trusted central operator with autonomous code storing collateral on a transparent public blockchain. Users of decentralized stablecoins benefit from that transparency, since they (along with regulators and the rest of the public) can audit the reserve of the stablecoin in real-time. This differs from holders of custodial stablecoins, who must wait for the issuer to publish periodic audits or attestations, and then must trust in their accuracy.

On the other hand, decentralized stablecoins may expose users to risks that are not present for holders of custodial stablecoins. Because decentralized stablecoins consist of blockchain-based code, which is typically immutable, they are only as safe and sound as the quality of that code. As a result, decentralized stablecoin holders may be subject to technical risks — code flaws and other vulnerabilities — that do not arise in the context of a custodial stablecoin.

Given the distinct benefits and risks involved in custodial and decentralized stablecoins, as well as the distinct constitutional rights at issue — for example, the speech rights of software developers — it would be a grave policy error to apply the same rules to all types of stablecoins. The Association urges Congress to begin by developing tailored legislation for custodial stablecoins, since that category of stablecoin makes up the vast majority of total market share, and because the benefits and risks of custodial stablecoins are already well-understood.

c. The current regulatory landscape for custodial stablecoin issuers.

Today, custodial stablecoin issuers are subject to a patchwork of regulatory requirements administered by a number of agencies at both the state and federal level. These regulations have proven effective in many ways, but fall short of a much-needed federal framework.

At the state level, issuers are generally required to obtain a money transmitter license (“MTL”) in each state where they do business. The purpose of the state MTL regime is to protect consumers by ensuring that their funds aren’t lost due to theft or mismanagement. Although the state MTL regime is somewhat burdensome, forcing custodial stablecoin issuers to comply with bespoke requirements in dozens of different states, it does offer some protection for consumers by requiring stablecoin issuers to post surety bonds, provide various statements and reports, undergo examinations, and submit to fingerprinting and other security measures.

In addition, custodial stablecoin issuers are subject to the states’ various consumer protection laws, which generally outlaw deceptive and unfair trade practices. Some issuers have also obtained trust or similar charters, which subject them to more rigorous oversight by state banking and financial services regulators.

At the federal level, custodial stablecoin issuers generally qualify as money services businesses under the Bank Secrecy Act (“BSA”) and therefore must register with the Financial Crimes Enforcement Network and implement BSA-compliant anti-money laundering programs. Some issuers have sought or received a national trust charter, which places them under the regulatory authority of the Office of the Comptroller of the Currency (“OCC”).

Given stablecoins’ economic and geopolitical importance, the Association believes Congress must adopt a comprehensive federal framework governing firms that issue, maintain, and redeem these assets. Our recommendation is aligned with those of current leaders in government. In November 2021, the President’s Working Group on Financial Markets (“PWG”) published a report recommending that “Congress act promptly to enact legislation to ensure that [stablecoins] are subject to a federal framework on a consistent and comprehensive basis.”⁴ In May 2022, Treasury Secretary Janet Yellen reiterated this recommendation during testimony before this Committee, stating that she was “eager to work with [Congress]” on legislation through “a bipartisan effort.”⁵

3. Stablecoins Offer a Revolutionary Upgrade on Traditional Payment Systems.

Stablecoins represent a categorical improvement on legacy payment infrastructure, allowing users to transfer any amount of value to any person anywhere in the world nearly instantly and at nearly zero cost. Unlike traditional payment methods, stablecoins are accessible to all, enabling billions of people around the world who lack financial services to join the global economy for the first time. In that way, stablecoins reinforce the dominance of the U.S. dollar as the global reserve currency at a time when that status is under threat by foreign adversaries like China and Russia.

⁴ Press Release, U.S. Dep’t of the Treasury, President’s Working Group on Financial Markets Releases Report and Recommendations on Stablecoins (Nov. 1, 2021), <https://home.treasury.gov/news/press-releases/jy0454>.

⁵ *The Annual Report of the Financial Stability Oversight Council: Hearing Before the H. Comm. on Fin. Servs.*, 117th Cong. 6-7 (2022) (statement of Janet Yellen, Sec’y, U.S. Dep’t of the Treasury), <https://www.congress.gov/117/chrq/CHRG-117hhrq47651/CHRG-117hhrq47651.pdf>.

Because stablecoins are powered by public blockchains, they are able to outperform existing payment rails that are slower, more expensive, and exclusive to incumbent financial institutions. In fact, the public nature of blockchains means they are more secure than proprietary infrastructure built and maintained by large institutions, since a successful cyberattack requires attacking thousands of computers running shared code rather than one single database. Blockchains are also more accessible, since they can be used by anyone with access to the internet. And they are more resilient, since their decentralized nature means they suffer virtually no outages compared to systems with single points of failure.

a. Stablecoins are actively improving cross-border transactions and empowering economically disadvantaged individuals around the world.

Although stablecoins have only existed for a short time, they have already shown a significant positive impact on the global stage. Stablecoins provide a meaningful alternative to the traditional payment system for disadvantaged individuals, particularly those who otherwise lack access to the U.S. dollar or who can only access inefficient payment systems that charge exorbitant fees and take days to process transfers.

Today, stablecoins are used by the United Nations Refugee Agency to distribute dollars to internally displaced persons and other war-affected people in Ukraine;⁶ for cross-border remittances between family members working and living abroad;⁷ by citizens in countries ravaged by inflation like Argentina, Turkey, and Zimbabwe;⁸ and to fight for the health and safety of people suffering under authoritarian regimes like that of Nicolás Maduro in Venezuela.⁹

Because stablecoins do not rely on intermediaries, they offer a viable payment method and value storage option for individuals living under authoritarian governments where access to U.S. dollars may be curtailed or restricted, and where local currencies often experience hyperinflation. For example, if a person is paid in an unstable national currency, such as the Venezuelan bolivar or Argentine peso, they can protect themselves by exchanging their inflationary currency for a U.S. dollar stablecoin that will not depreciate overnight and cannot easily be confiscated.

⁶ Michael Bodley, *Can Stablecoins Revolutionize Foreign Aid? The UN Thinks So.*, Blockworks (Dec. 16, 2022), <https://blockworks.co/news/un-stablecoins-revolutionize-foreign-aid>.

⁷ Austin Adams et al., *On-chain Foreign Exchange and Cross-border Payments* (Jan. 18, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4328948.

⁸ Sam Lyman, *Stablecoins as Statecraft: How Uncle Sam Could Replace Satoshi as the King of Digital Currency*, Fortune: Crypto (Feb. 26, 2023), <https://fortune.com/crypto/2023/02/26/stablecoins-statecraft-uncle-sam-satoshi-digital-currency/>.

⁹ Gideon Long, *Digital Scheme Pays Venezuela Health Workers from Frozen Funds*, Financial Times (Dec. 9, 2021), <https://www.ft.com/content/2a271032-35b4-4969-a4bf-488d4e9e3d18>.

Examples of expanding access to financial services through stablecoins are plentiful. Leaf Global Fintech enables central African refugees without bank accounts to securely store, send, and receive digital cash without bank fees from low-tech feature phones.¹⁰ Similarly, two licensed money transmitters, US-based FinClusive¹¹ and Mexico-based Pago Biccós,¹² have teamed up to help migrant day laborers safely and inexpensively send their U.S. earnings home to Mexico.¹³ By converting their earnings into U.S. dollar stablecoins, these laborers avoid the risk of theft and assault that comes with carrying hard currency across the U.S. border. In addition, Circle and AirTM leveraged U.S. dollar stablecoins to bypass the repressive Maduro regime and distribute aid directly to front-line medical workers battling the coronavirus in Venezuela.¹⁴ Stablecoins can enable similar gains in payment system competition, optionality, and cost reduction in the United States, where millions of households are on the margins of the banking system.¹⁵

b. U.S. dollar stablecoins support the role of the U.S. dollar as global reserve currency.

U.S. dollar stablecoins can help ensure the primacy of the dollar and support the critical role that the U.S. financial system plays in the global economy. As explained by Christopher J. Waller, Governor of the Federal Reserve System (“Fed”): “stablecoins pegged to the U.S. dollar act as conduits for U.S. monetary policy and amplify policy actions. So, if anything, private stablecoins pegged to the dollar broaden the reach of U.S. monetary policy rather than diminish it.”¹⁶

Indeed, the global reach of stablecoins makes it easier than ever for people all over the world to opt into the U.S. dollar as their currency of choice. As of March 2023, over 80 percent of global digital asset trading volume was denominated in U.S. dollar stablecoins.¹⁷ With time and the benefit of regulatory clarity, stablecoins are likely to dominate markets unrelated to digital assets as well, amplifying U.S. economic and monetary policy around the world.

¹⁰ Nat Robinson & Tori Samples, *Leaf Wallet: Digital Financial Services for Refugees and Under-Resourced Communities*, UNICEF Innovation Fund (June 8, 2021), <https://www.unicefinnovationfund.org/broadcast/updates/leaf-wallet-digital-financial-services-refugees-and-under-resourced-communities>.

¹¹ FinClusive, <https://finclusive.com/> (last visited Apr. 16, 2023).

¹² Pago Biccós, <https://pagobiccós.com/> (last visited Apr. 16, 2023).

¹³ See *ExpertEASE: FinClusive CEO Amit Sharma on Financial Compliance*, NGOsOURCE (Sept. 14, 2022), <https://www.ngosource.org/blog/expertease-finclusive-ceo-amit-sharma-on-financial-compliance>; *Use Cases: Pago Biccós*, FinClusive, <https://finclusive.com/use-cases#PagoBiccós> (last visited Apr. 16, 2023).

¹⁴ Nikhilesh De, *US Government Enlists USDC for 'Global Foreign Policy Objective' in Venezuela*: Circle CEO, CoinDesk (Nov. 20, 2020), <https://www.circle.com/blog/circle-partners-with-bolivarian-republic-of-venezuela-and-airtm-to-deliver-aid-to-venezuelans-using-usdc>.

¹⁵ Dante Disparte, *Could Digital Currencies Make Being Poor Less Costly?*, Harv. Bus. Rev. (Aug. 5, 2020), <https://hbr.org/2020/08/could-digital-currencies-make-being-poor-less-costly>

¹⁶ Christopher J. Waller, Governor, Bd. of Governors of the Fed. Reserve Sys., *Speech at the American Enterprise Institute: CBDC: A Solution in Search of a Problem?* (Aug. 5, 2021) <https://www.federalreserve.gov/newsevents/speech/waller20210805a.htm>.

¹⁷ *Share Trade Volume by Pair Denomination*, The Block (Apr. 14, 2023), <https://www.theblock.co/data/crypto-markets/spot/share-of-trade-volume-by-pair-denomination>.

4. The United States Should Support Stablecoins Instead of Creating a CBDC.

As technology allows for the digitization of money, the policy decisions that Congress must make will dramatically impact privacy, security, and the preservation of Americans' constitutional rights. The question of how best to implement digital cash in our society largely revolves around the choice between using U.S. dollar stablecoins or a central bank digital currency ("CBDC"), meaning a digital dollar issued by the Fed and made available to the general public.

Proponents of a CBDC may argue that, as a liability of the Fed, a U.S. CBDC would be the safest possible digital representation of the dollar. Yet, a CBDC is the wrong way to maintain U.S. dollar dominance in the digital era, for at least three reasons.

First, to strengthen the dollar's dominance as the global reserve currency, our main priority should be to spread dollars far and wide—to make them available to anyone and everyone around the world. Privately-issued stablecoins have already made a huge impact in global digital asset markets by adding to the competition in the payments landscape and serving as a faster, cheaper, and more flexible means of sending dollar-denominated payments internationally. Stablecoins have already achieved practically all of what a hypothetical CBDC might do. Rather than reinvent the wheel, the United States should support the growth of existing stablecoins.

Second, we should seek to maximize the contribution of our vibrant and experienced private sector, not sideline it in favor of a centrally-planned government project. While other nations like China might give their central governments total control over emerging industries and technologies, that is decidedly not the American way. As Randal Quarles, former Vice Chair for Supervision of the Fed, explained: "[a] global U.S. dollar stablecoin network could encourage use of the dollar by making cross-border payments faster and cheaper, and it potentially could be deployed much faster and with fewer downsides than a CBDC."¹⁸

Third, the fundamental right to privacy is a prized American civil liberty and an essential feature of a functioning free society that could be jeopardized if the United States were to create a CBDC. Challenges to Americans' rights to financial freedom and privacy have come to the forefront in recent years due to the increasing frequency of cybersecurity breaches and reliance by some companies on a business model of surveillance capitalism. This is an issue of constitutional import, given the Bill of Rights' guarantee of financial privacy. Thus, it is imperative that we separate the United States, which respects its citizens' autonomy and dignity, from countries like China, which has exploited technology to create a surveillance state.

¹⁸ Randal K. Quarles, Vice Chair for Supervision, Bd. of Governors of the Fed. Reserve Sys., Speech at the 113th Annual Utah Bankers Association Convention: Parachute Pants and Central Bank Money (Jun. 28, 2020), <https://www.federalreserve.gov/newsevents/speech/quarles20210628a.htm>.

Importantly, neither the Fed nor the U.S. Department of the Treasury (“Treasury”) can issue a CBDC without Congressional action.¹⁹ The Fed acknowledged as much in a March 2023 House Financial Services Committee hearing and in a recent post on its website, stating, “The Federal Reserve . . . would only proceed with the issuance of a CBDC with an authorizing law. Testifying before the House Financial Services Committee in March 2023, Chair Powell said a central bank digital currency is, ‘something we would certainly need Congressional approval for.’”²⁰

The Fed’s lack of authority stems from the Federal Reserve Act of 1913’s limited grant of authority to issue one form of U.S. currency: “Federal reserve notes.” The context surrounding the Act makes clear that this term includes only paper currency. The Act defines “Federal reserve notes” based on characteristics that don’t apply to digital currency, such as requiring “a distinctive letter and serial numbers,” providing for a process by which to cancel or destroy notes deemed “unfit for circulation,” and setting forth details for the plates and dyes used to manufacture notes. These references make clear that the statute does not contemplate digital currency.²¹

Similarly, although the Treasury has the authority to mint and issue coins, the types of coins that it is authorized to mint are specifically defined by statute and do not include CBDCs.²² Absent further action from Congress, the Treasury does not have the authority to issue a digital currency. For the reasons stated above, Congress should exercise extreme caution before granting such authority to either the Fed or the Treasury.

5. The SEC and CFTC Lack Authority to Comprehensively Regulate Stablecoins.

Deciding how U.S. dollar stablecoins should be regulated is a major question that only Congress, not the federal agencies, can address. Some commentators may suggest that agencies like the SEC and CFTC already have authority to regulate stablecoins, thereby implying that Congress need not act. Yet, without further congressional authorization in the form of legislation, neither the SEC nor the CFTC has authority to comprehensively regulate stablecoins under current law.

The SEC would only have regulatory authority over stablecoins if they were “securities” under the federal securities laws. They are not. The two primary tests for analyzing whether stablecoins are securities are the *Howey*²³ and *Reves*²⁴ tests. The touchstone question for whether a financial

¹⁹ Paige Paridon, *Legal Authority to Issue a U.S. Central Bank Digital Currency*, Bank Pol’y Inst. (Jun. 9, 2021), <https://bpi.com/wp-content/uploads/2021/06/Legal-Authority-to-Issue-a-U.S.-Central-Bank-Digital-Currency.pdf>.

²⁰ Board of Governors of the Federal Reserve System, *Is FedNow replacing cash? Is it a central bank digital currency?*, FAQs (April 2023), <https://www.federalreserve.gov/faqs/is-fednow-replacing-cash-is-it-a-central-bank-digital-currency.htm>.

²¹ 12 U.S.C. § 411, *et seq.*

²² 31 U.S.C. §§ 5103; 5111(a)(1); 5112(h).

²³ *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

²⁴ *Reves v. Ernst & Young*, 494 U.S. 56, 65 (1990).

instrument represents an “investment contract” under *Howey* is whether the instrument can be expected to return a profit to its holders. For stablecoins, the answer is decidedly “no.” By definition, stablecoin holders expect stablecoins to maintain *stable* value, not to increase in value or yield profit in any way. Further, in *Reves*, the Supreme Court held that an instrument is not a security if it bears a “strong resemblance” to one of the types of “notes” that courts have determined are not securities, considering factors such as the motivations of the seller and buyer, and the reasonable expectation of the public. Because stablecoins hold no profit potential, they cannot be considered securities under this test either.

In the past, SEC Chair Gary Gensler has also suggested that a stablecoin is subject to regulation by the SEC if it “provides synthetic exposure to underlying securities.”²⁵ However, where a stablecoin is backed in full or in large part by non-securities — cash, Treasury bills, or the like — then this definition does not fit. Finally, while the SEC has jurisdiction to regulate security-based swaps, stablecoins do not fit that category either. A swap is a financial contract in which two counterparties agree to exchange payments with each other as a result of such things as changes in a stock price, interest rate, or commodity price.²⁶ Stablecoins do not involve a swap of payment streams — neither the currency used to purchase the stablecoin nor the stablecoin itself have payment streams or other fluctuating measures of value to swap.

The CFTC also lacks general jurisdiction to regulate stablecoin markets. While stablecoins are likely considered commodities under the broad definitions of the Commodities Exchange Act, and the CFTC has broad regulatory authority over commodity futures, derivatives, swaps, and options, its regulatory authority over spot trading in commodities markets is limited to fraud and price manipulation — and even then, only in certain circumstances.²⁷ Accordingly, absent fraud or manipulation, the CFTC lacks authority to regulate stablecoin markets as well.

The conclusion that the SEC and CFTC lack authority over stablecoins is justified not only as a matter of law, but also as a matter of good policy and common sense. The SEC and CFTC are financial markets regulators with specific remits, neither of which touches on payment systems. As Congress considers a proper regulator for stablecoins, it should look to the Fed and the OCC.

6. Congress Must Pass Stablecoin Legislation.

Since the PWG published its report, Congress has made great strides toward well-tailored legislation that maximizes the benefits and mitigates the risks of stablecoins. These extensive

²⁵ Gary Gensler, Chair, U.S. Sec. and Exch. Comm’n, Prepared Remarks of Gary Gensler, Chair of the Securities and Exchange Commission, Before the American Bar Association Derivatives and Futures Law Committee Virtual Mid-Year Program (Jul. 21, 2021), <https://www.sec.gov/news/speech/gensler-remarks-aba-derivatives-futures-law-committee-virtual-mid-year-program-072121>.

²⁶ See 7 USC § 1a(47)(A) (defining “swap”).

²⁷ See 7 U.S.C. § 9; 17 C.F.R. § 180.1; 17 C.F.R. § 180.2.

efforts have received bipartisan, bicameral support. Last February, Rep. Josh Gottheimer released a discussion draft of the Stablecoin Innovation and Protection Act of 2022.²⁸ Last April, Sen. Patrick Toomey released a discussion draft of the Stablecoin TRUST Act of 2022.²⁹ Last fall, the blockchain industry was excited to hear about the progress that this Committee made on stablecoin legislation under the Committee’s leadership. These recent efforts speak to how ripe stablecoins are for tailored legislation.

Effective stablecoin legislation must protect consumers and promote financial innovation. To achieve that goal, stablecoin legislation should account for the risks associated with these assets while also providing a clear path for stablecoin issuers to operate in the United States. Further, legislation should be technology-neutral and focus on the underlying activities and risks of a given stablecoin.

Below, I outline five principles for your consideration that the Association believes are essential components of a balanced bill:

a. Legislation should focus on custodial stablecoins.

Congress should apply tailored regulatory standards to custodial stablecoins, meaning those issued, maintained, and redeemed by a firm responsible for holding assets backing the stablecoins in a bank or other financial institution. Other types of stablecoins, like decentralized and algorithmic stablecoins, function in materially different ways that warrant further study and thoughtful analysis before they are ready to be addressed in legislation.

At present, over 90% of the market capitalization for all stablecoins comes from just five custodial stablecoins, all of which are denominated in U.S. dollars.³⁰ Moreover, custodial stablecoins present risks that are well-understood, and effective regulatory responses to mitigate those risks are likewise well-understood. On the other hand, the novel functionality of other stablecoin models present novel opportunities and risks, and their nascence means that effective policy and regulatory responses are under development. Thus, Congress should focus its efforts on establishing a legislative framework with proper standards for custodial stablecoin issuers.

²⁸ Press Release, Rep. Josh Gottheimer, Release: Gottheimer Announces “Stablecoin Innovation and Protection Act,” Critical New Cryptocurrency Legislation (Feb. 15, 2022), <https://gottheimer.house.gov/posts/release-gottheimer-announces-stablecoin-innovation-and-protection-act-critical-new-cryptocurrency-legislation>.

²⁹ Press Release, Sen. Comm. on Banking, Hous., and Urb. Aff. Minority Staff, Toomey Announces Legislation to Create Responsible Regulatory Framework for Stablecoins (Apr. 6, 2022), <https://www.banking.senate.gov/newsroom/minority/toomey-announces-legislation-to-create-responsible-regulatory-framework-for-stablecoins>.

³⁰ *Top Stablecoin Tokens by Market Capitalization*, CoinMarketCap, <https://coinmarketcap.com/view/stablecoin/> (last visited, Apr. 15, 2023).

b. Legislation should provide a regulated path for both banks and non-banks.

Both insured depository institutions and non-bank firms should be allowed to issue stablecoins, subject to regulatory compliance obligations tailored for each category of issuer. Forcing all stablecoin issuers to obtain bank charters would severely restrict innovation without any attendant regulatory benefit, since stablecoins issued by properly-regulated non-bank firms will be equally safe and sound as those issued by banks.

c. Legislation should address the quality of stablecoin reserves.

Assets held by stablecoin issuers as backing for stablecoins should be limited to specified, high-quality, liquid assets that meet a minimum standard of safety and soundness. The federal regulator authorized to oversee stablecoin issuers should also be allowed to approve other assets at their discretion.

d. Legislation should set forth operational requirements to protect consumers.

Stablecoin issuers should be subject to reasonable, risk-based operational requirements, such as making public disclosures regarding assets held as backing for stablecoins, segregating those assets from corporate funds, ensuring that those assets are bankruptcy-remote, implementing clear policies and procedures regarding issuance and redemption of stablecoins, and conducting routine audits or evaluations by registered public accounting firms.

e. Legislation should clearly delineate regulatory authority on the federal level.

At the federal level, stablecoins should be overseen by a prudential regulator such as the Fed or the OCC, regardless of whether there is a separate path for issuance by state-chartered and state-regulated entities. Stablecoins should also be exempt from overlapping federal regulation by the SEC or the CFTC, so as to provide regulatory clarity and clear delineation of responsibility between agencies.