September 20, 2021

Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Comments in Response to the Consultative Document on the Prudential Treatment of Cryptoasset Exposures

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to respond to the Basel Committee on Banking Supervision's ("Basel Committee") consultative document on the "Prudential treatment of cryptoasset exposures" (the "consultation"). As the U.S. regional member of the Global Financial Markets Association, we have joined with the Chamber of Digital Commerce, the Financial Services Forum, the Futures Industry Association, the Institute of International Finance and the International Swaps and Derivatives Association in a more detailed joint letter (the "Joint Trade Letter").

We fully agree with and support all of the comments in that letter. We write separately to underscore the need and urgency for regulators to develop in the near term a clear regulatory framework for cryptoasset markets that strikes the right balance among innovation, growth and regulatory conservatism. We believe regulatory coordination—not only among prudential regulators but also between prudential and market regulators—is necessary to achieve this balance, to minimize market fragmentation and to help ensure bank uptake and competitive equity across the financial services marketplace. Ultimately, a properly

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

balanced framework will help to ensure the capital markets will be able to continue to serve the needs of businesses and households as efficiently and comprehensively as possible.

Principles to guide development of a prudential framework. We encourage the Basel Committee to design an appropriately calibrated prudential framework that:

- applies a practical degree of conservatism, but is not overly punitive such that banks are effectively precluded from meaningful involvement in the cryptoasset space;
- is technology neutral and designed to reflect the underlying risk of cryptoasset exposures;
- allows for effective hedging to reduce risks, costs and volatility;
- differentiates between cryptoassets held in the banking book versus the trading book;
- provides for capital treatment of Group 2 cryptoassets that is tied to the risks of the assets (not their accounting treatment); and
- works within and updates the existing Basel framework to develop standards that are agile by design.

The taxonomy and associated classification criteria of the Joint Trade Letter, including its explanation of the type of assets that should be out of scope of the consultation, particularly further these principles.

Banks are well placed to provide cryptoasset-related services and ensure that consumers receive their benefits. Meaningful bank involvement in the cryptoasset space is of particular importance to SIFMA and its members as cryptoassets have the potential to make it possible to deliver financial services more efficiently (*i.e.*, more quickly and at lower cost). And, banks are well placed to provide cryptoasset-related services to a broad range of businesses and households and to safely and soundly pass along such benefits to consumers. For this reason, SIFMA has for some time engaged in work to help understand and develop effective regulation of digital asset securities and security tokens, such as registered securities which are natively digital assets using blockchain infrastructure.[2]

As the Bank of International Settlements recently noted, money and its institutional foundations have evolved in parallel with technology; for example, many recent payment innovations, such as real-time retail settlement, have built on improvements to underlying infrastructures that were many years in the making.[3] Along these lines, cryptoassets and their underlying technology provide opportunities for further advancements. Specifically, distributed ledger and blockchain technologies make it possible to deliver

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[2] SIFMA recommends that regulators look across the lifecycle of cryptoassets as well as digital asset securities to understand how each can be incorporated into existing regulatory and operational frameworks, with the expectation that in certain areas limited regulatory change may be needed to accommodate them, as was the case in prior waves of technological change in the securities industry. *See* SIFMA, *Comment Letter on the Securities and Exchange Commission's Statement on Custody of Digital Asset Securities by Special Purpose Broker-Dealers* (May 20, 2021), https://www.sifma.org/wp-content/uploads/2021/05/Digital-Asset-Security-Custody-SIFMA-Comment-Letter.pdf; SIFMA and PwC, *Security Tokens: Current Regulatory and Operational Considerations for Broker-Dealers and a Look Towards the Future* (Nov. 23, 2020), https://www.sifma.org/wp-content/uploads/2020/11/Securitytokens-Paper.pdf.

[3] *Annual Economic Report 2021* (*Chapter III. CBDCs: an opportunity for the monetary system*), Bank for International Settlements (June 2021).

financial services in a broad array of banking and capital markets activities more quickly, securely and at a lower cost. The speed by and transparency with which transactions can be recorded on a distributed ledger combined with the ability to swap and record assets / cash simultaneously, allow for efficiencies in collateral management, help mitigate counterparty, liquidity and settlement risk, and more generally allow transactions to settle, and funds and assets to reach their intended recipient, more quickly. These efficiencies should translate to lower transactions costs, ultimately benefitting end users, facilitating a more competitive marketplace and—as a result of the lower transaction costs—helping to increase access to and inclusivity of financial services. Banks have a proven track record of bringing expertise, consumer protection standards and strong risk management practices to nascent technologies (*e.g.*, mobile banking and remote capture for retail banking customers) and can do so for cryptoassets as well.

A clear regulatory framework is important for meaningful bank involvement. SIFMA supports the development of a regulated ecosystem for cryptoassets, which have the potential to serve an important role in the financial system.

One necessary aspect of a comprehensive regulatory approach is clarity regarding the permissibility of cryptoasset-related activities for banks and bank holding companies. Only one U.S. federal banking agency has sought to provide comprehensive guidance and such guidance is being reconsidered.[4] U.S. market regulators similarly appear to be developing their respective policy views, with principals of U.S. market regulators recently opining on the potential application of market regulation to stablecoins and other cryptoassets, cryptoasset trading platforms and decentralized finance platforms.[5] Banking organizations and other market participants would benefit from clear rules of the road regarding which regulatory structures apply to which activities and entities as well as the applicable requirements.

Thus, another necessary aspect of a comprehensive regulatory approach is that it be consistent and coherent. Overlapping or inconsistent requirements among regulators will impede the ability of regulated institutions to actively participate in cryptoasset activities and responsible innovation, whereas a clearly defined and internally consistent regulatory framework would enable banking organizations and others to participate in technological innovation, help ensure a level playing field and enable cryptoasset-related products to be offered more widely and in a safe and sound manner. Banking and market regulators, both in the United States and internationally, should work collaboratively to establish such a framework.

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[4] *See, e.g.*, OCC Interpretive Letter 1174 (Jan. 4, 2021) ("OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Use Independent Node Verification Networks and Stablecoins for Payment Activities"); OCC Interpretive Letter 1172 (Sept. 21, 2020) ("OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves"); OCC Interpretive Letter 1170 (July 22, 2020) ("Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers").

[5] *See, e.g.,* Gary Gensler, Chair, Securities and Exchange Commission, Speech at the Aspen Security Forum (August 3, 2021); Dan Berkovitz, Commissioner, Commodity Futures Trading Commission, Keynote Address at the Asset Management Derivatives Forum 2021 (June 8, 2021).

Taking one example, stablecoins are rapidly developing and have been a particular focus of regulators.[6] Such cryptoassets tie their value in some way to a traditional asset pool, such as a fiat currency, often on a 1:1 basis, in contrast with cryptoassets such as Bitcoin which create value through other means, such as scarcity.[7] Stablecoins, in turn, create the opportunity for important efficiencies; for instance, a stablecoin network based on the U.S. dollar could make it possible to deliver payments, including cross-border payments, at a much higher speed and lower cost than can be done today.[8] Such economic efficiencies created by stablecoins and other, regulated cryptoassets could increase access to, and inclusiveness of, financial services for businesses and households around the world.

Without the development of a robust regulatory framework—one that encourages innovation and bank involvement while maintaining regulatory conservatism—cryptoassets may not provide the same level of consumer protection as traditional products and services. Further, as regulators have noted,[9] the possibility of nonbank technology companies—which have active, large global user populations—issuing their own cryptoassets and/or providing exchange or other cryptoasset-related services makes the need to develop a comprehensive, consistent and coherent regulatory approach more urgent. For all of these reasons, clarifying the overall regulatory framework in which banks and nonbanks may operate is critical.

Conclusion. SIFMA encourages the Basel Committee and regulators around the world to act collaboratively and expeditiously to develop a comprehensive regulatory framework for cryptoassets. In the meanwhile, there is a need for interim guidance to facilitate bank involvement in cryptoasset markets. Markets and customer demand are growing quickly and there is a need for banks to have clear rules of the road today that would facilitate involvement in cryptoasset markets.[10] The ultimate framework would include the prudential treatment of cryptoassets, in addition to bank permissibility and an overall regulatory approach for cryptoassets (including stablecoins). This framework and interim guidance are necessary to facilitate bank involvement, which in turn will help deliver the benefits of innovation and related economic efficiencies to businesses and households. We are encouraged that the Basel Committee is moving forward to develop a prudential framework and that regulators in the United States and around the world are turning their attention to these issues.[11] We encourage regulators—including

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[6] *See, e.g., id.* (the OCC's Interpretive Letters related to cryptoassets have particularly focused on bank involvement in stablecoins).
[7] *See* Randal K. Quarles, Vice Chair, Federal Reserve Board, Speech at the 113th Annual Utah Bankers Association Convention: Parachute Pants and Central Bank Money (June 28, 2021) (contrasting the global economic benefits of stablecoins with Bitcoin).
[8] *See id.* ("In my judgment, we do not need to fear stablecoins. . . . I believe that we must take strong account of the potential benefits of stablecoins, including the possibility that a U.S. dollar stablecoin might *support* the role of the dollar in the global economy.").
[9] *See* Lael Brainard, Governor, Federal Reserve Board, Speech at the Symposium on the Future of Payments: The Digitalization of Payments and Currency: Some Issues for Consideration (Feb. 5, 2020).
[10] For example, in addition to addressing permissibility, interim guidance could permit banks to follow the Fundamental Review of the Trading Book Standardized Approach to capitalize cryptoasset exposures.
[11] For example, in the United States: (1) the Federal Reserve is studying central bank digital currencies, stablecoins and other cryptoassets; (2) the Office of the Comptroller of the Currency is reviewing its policy positions regarding various innovation issues; (3) the federal banking agencies are engaged in an interagency "sprint" process regarding cryptoassets and related issues; and (4) the President's Working Group on Financial Markets expects to issue a report on stablecoins in the near future.

prudential and market regulators—to act collaboratively to develop this new regulatory framework.[12] SIFMA stands ready to engage with, and act as a resource for, the regulators as these processes unfold.

Sincerely,

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President & CEO

cc: Carter McDowell
Managing Director, Associate General Counsel

Peter J. Ryan
Managing Director, Head of International Capital Markets and Prudential Policy

[12] In the United States, the banking regulators and Securities and Exchange Commission have, for example, already coalesced on the definition of a term—"two-way market" / "ready market"—that could be used to differentiate the underlying risks of certain cryptoasset classes. *See, e.g.*, 12 CFR 217.2 (defining "two-way market"); 17 CFR 240.15c3-1(c)(11)(i) (defining "ready market" in substantially similar terms).