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**Re: Docket No. OP-1747, Proposed Guidelines to Evaluate Requests for Accounts and Services at Federal Reserve Banks**

The Blockchain Association (the “Association”) appreciates the opportunity to share its views regarding the Board of Governors of the Federal Reserve System’s (the “Board”) request for comment (the “RFC”) on proposed guidelines (“Account Access Guidelines”) to evaluate requests for accounts and services at Federal Reserve Banks (“Reserve Banks”).<sup>1</sup>

**1. Introduction**

The Blockchain Association is a not-for-profit organization dedicated to improving the public policy environment for public blockchain networks in a way that will allow them to develop and prosper in the United States. The Association works to educate policymakers, courts, law enforcement, and the public about distributed ledgers and the need for regulatory clarity to allow for a more secure, competitive, and innovative digital marketplace. The Association is comprised of industry leaders who are committed to responsibly developing and supporting public blockchain networks fueled by cryptocurrencies. Its diverse membership reflects the range of this dynamic market and includes projects that contribute to distributed networks, cryptocurrency exchanges, and early stage investors that support the entire ecosystem. Given this diverse membership, which includes state and federally chartered financial institutions, the Blockchain Association is well positioned to provide the Board with practical perspectives about how the Account Access Guidelines will be implemented within and applied to the cryptocurrency and blockchain industry.

**2. Overall, the goals of the proposed Account Access Guidelines are laudable in that they attempt to promote innovation, certainty, and safety in the ever-changing U.S banking system by outlining principles-based standards for the review of access requests.**

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<sup>1</sup> Board of Governors of the Federal Reserve System, “Proposed Guidelines for Evaluating Account and Services Requests,” *Federal Register* Vol. 86, No. 89 (May 11, 2021): 25865, <https://www.govinfo.gov/content/pkg/FR-2021-05-11/pdf/2021-09873.pdf>.

As the request for comment notes, “the payments landscape is evolving rapidly as technological progress and other factors are leading to both the introduction of new financial products and services and to different ways of providing traditional banking services (i.e., payments, deposit-taking, and lending). Relatedly, there has been a recent uptick in novel charter types being authorized or considered across the country...,”<sup>2</sup> reflecting a new stage in banking innovation that is driven by digitization.

Cryptocurrencies and blockchains—and the “tokenization” of assets and value more broadly—are driving the new stage of innovation in the financial and technology sectors. As the United States’ competitors embrace efforts to capitalize on this burst of technological innovation, it is critical that the United States keep pace. In other words, the Blockchain Association believes that the U.S. banking system must prioritize innovation so that it can ensure the dominance of the U.S. dollar while strengthening the transparency and security of financial services. In this manner, the United States’ banking system must be adjusted to be more responsive to the changing technological landscape.

The Board’s proposed adoption of guidelines for access to master accounts and related services represents an important step forward in this wider effort. The Association fully supports the principles of the Board’s proposed adoption of the Account Access Guidelines, which would establish a “transparent and consistent set of factors when reviewing requests for [Reserve Bank] accounts and services.”<sup>3</sup> Setting clear and reasonable criteria for the evaluation of access requests will facilitate “...equitable treatment across institutions”<sup>4</sup> of all types, including institutions with novel charters and/or with services involving cryptocurrencies and other digital assets. Therefore, the Association welcomes the Board’s effort to establish a clear framework for the review of access requests. Such a framework will help ensure the Board can continue to fortify the safety and soundness of the U.S. banking system while providing institutions of all varieties the regulatory certainty, the flexible framework, and the oversight necessary to evolve and capitalize on technology and innovation, which will ultimately allow the Board to deliver products and services that are more effective, operate more efficiently, and reduce risk in the system.

**3. While the proposed Account Access Guidelines attempt to promote innovation in the banking system, the broad nature of the outlined principles does not arm regulators or applicants with the information necessary to determine exactly what the application process will look like and how the applicants will be evaluated.**

The Association recognizes and commends the Federal Reserve’s attempt to foster innovation in the payments landscape through the principles-based criteria set forth in the proposed Account Access Guidelines. While these guidelines represent a positive step in the regulation of banking services, including those related to cryptocurrencies and blockchain

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<sup>2</sup> “Proposed Guidelines for Evaluating Account and Services Requests,” 25866.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

technology, the Association believes that a few additional considerations should be incorporated into the guidelines. Specifically, the Association believes that banks should be subjected to a regulatory framework that is aligned with the risks that their services pose. Additionally, the Association requests that the Account Access Guidelines establish a timeline for the review process, so that both the Federal Reserve and the institution applying for master account access have a better idea of the resources and time needed for the application process.

- a. Application of the Account Access Guidelines should be tailored to reflect the unique activities and risk profile of banks that have or are eligible for depository insurance seeking access to master accounts and/or access to Federal Reserve Bank financial services (“accounts and services”).*

In the United States, both state and federally chartered financial institutions conduct a range of activities carrying distinct types of risks to the banking system. In general, prudential regulatory frameworks for banks and other financial institutions respond to this diversity of risks by tailoring regulatory responsibilities to an institution’s specific activities or business model. For example, the Board’s supervision framework for large institutions endeavors to create “a tailored supervisory approach that accounts for the unique risk characteristics of each firm, including the nature and degree of potential systemic risks inherent in a firm’s activities and operations, as well as broader trends across firms.”<sup>5</sup> The Board’s proposed Account Access Guidelines should similarly recognize that not all banks that have or are eligible for depository insurance create the same risks to financial stability and integrity. In fact, predicated master account access on the discrete activities and risks precipitated by differing business models and/or charters aligns with the longstanding regulatory tenet of “same business; same risks; same rules.”

While some may argue that granting master account access to banks that have or are eligible for depository insurance with novel charters or activities would give these firms an unfair advantage, where businesses and risks differ, so should concomitant regulatory requirements. Indeed, the presence of a novel bank charter implies that traditional regulation applied to traditionally chartered banks must be updated to account for the different risks posed by new institutions. Predicating account access on uniform regulatory requirements inherently assumes that every state or federally chartered institution exposes the Federal Reserve and banking systems to the same type or level of risk, which is inaccurate. As other commentators on the Board’s Account Access Guidelines argue, in its pursuit of limiting “...risks to the Reserve Banks, to the payment system, to the financial system, and to the effective implementation of monetary policy,”<sup>6</sup> “the Board should ask not whether the holder of a special purpose charter [or a ‘traditionally’ chartered institution conducting novel activities] has as much capital as ordinary banks must have, or whether it is otherwise held to the same regulatory standards, such as

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<sup>5</sup> Large Financial Institutions. “Board of Governors of the Federal Reserve System,” December 18, 2020. <https://www.federalreserve.gov/supervisionreg/large-financial-institutions.htm>.

<sup>6</sup> “Proposed Guidelines for Evaluating Account and Services Requests,” 25866.

having to be insured by the FDIC, but whether the standards it does meet are adequate to sufficiently limit risks associated with its particular business plans.”<sup>7</sup>

Indeed, predicated master account access on an institution obtaining FDIC depository insurance would not only ignore the unique risks presented by each bank but also may run contrary to long-standing precedent and statute.<sup>8</sup> The Office of the Comptroller of the Currency (OCC) has granted national trust charters for over a century,<sup>9</sup> and it recently began granting charters to trusts whose activities involve cryptocurrencies and other digital assets.<sup>10</sup> National trusts have long been included in the membership of the Federal Reserve system, making them eligible for master accounts. However, these banks have no requirement to obtain FDIC insurance because their business models do not create the risks that FDIC insurance addresses, and moreover, institutions with national trust charters without FDIC insurance have received master accounts in the past.<sup>11</sup> The same flexible, principles-based approach to reviewing account access requests based on the risks created by an institution’s discrete business model should be adopted by the Board and reflected in the Account Access Guidelines and their implementation.

*b. The Account Access Guidelines should include a timeline for the review of access requests.*

In its Account Access Guidelines, the Board maintains that one of its policy goals is to “promot[e] a safe, efficient, inclusive, and innovative payment system.”<sup>12</sup> While implementation of the Account Access Guidelines would advance the creation of a “safe, inclusive, and innovative payment system,” the Guidelines should include more specific recommendations for ensuring the efficiency and certainty of this process. Specifically, the proposed Account Access Guidelines do

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<sup>7</sup> George Selgin. “Proposed Guidelines to Evaluate Requests for Accounts and Services at Federal Reserve Banks.” The Cato Institute, May 19, 2020.

[https://www.federalreserve.gov/SECRS/2021/May/20210521/OP-1747/OP-1747\\_051921\\_138125\\_431924082571\\_1.pdf](https://www.federalreserve.gov/SECRS/2021/May/20210521/OP-1747/OP-1747_051921_138125_431924082571_1.pdf).

<sup>8</sup> Section 11A of the Federal Reserve Act, which was added to the Federal Reserve Act by Section 105 of the the Depository Institutions Deregulation and Monetary Control Act of 1980 (“DIDMCA”) states that all payment and settlement services listed on the Federal Reserve fee schedule (“covered services”) “shall be available to nonmember depository institutions” and priced the same as for member banks. Section 103 of the DIDMCA added the definition of “depository institution” as used in both Section 13 and Section 11A of the Federal Reserve Act as, in relevant part, “any insured bank as defined in Section 3 of the Federal Deposit Insurance Act or any bank which is eligible to make application [sic] to become an insured bank.” 12 U.S.C. § 461(b); DIDMCA Section 103.

<sup>9</sup> “The Civil War: The Senate’s Story,” U.S. Senate: The Civil War: The Senate’s Story, April 25, 2018, [https://www.senate.gov/artandhistory/history/common/civil\\_war/NationalBankActs.htm](https://www.senate.gov/artandhistory/history/common/civil_war/NationalBankActs.htm).

<sup>10</sup> “Interpretive Letter #1170: Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers,” Office of the Comptroller of the Currency, July 22, 2020, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf>, 1.

<sup>11</sup> Office of the Comptroller of the Currency’s Final Rule titled “Receiverships for Uninsured National Banks.” 81 Fed. Reg. 92594 (Dec. 20, 2016) (to be codified at 12 CFR Part 51.) <https://www.govinfo.gov/content/pkg/FR-2016-12-20/pdf/2016-30666.pdf>.

<sup>12</sup> “Proposed Guidelines for Evaluating Account and Services Requests,” 25866.

not address the process through which Reserve Banks should review access requests, including requests from novel institutions.

Industry participants underscore the lack of efficiency in the review process for master accounts at the Federal Reserve, claiming that “under the current master account review procedures, the time Reserve Banks may take to reach their decisions is left entirely to their discretion. Consequently, an applicant cannot rule out being kept waiting, not just for many months, but indefinitely, for a decision.”<sup>13</sup> To address this gap, the Blockchain Association respectfully requests the Board consider adding specific criteria for the review of access requests, including setting a defined review period for them. Recent experience suggests that the issuance of clarifying guidance in principle does not always lead to clarity in effect, especially when it comes to issues involving novel institutions. For example, notwithstanding the fact that the Securities and Exchange Commission (SEC) has issued several statements and rulemakings germane to the Financial Industry Regulatory Authority’s (FINRA) review of broker-dealer applications that would involve the custody of digital assets and/or digital asset securities, dozens of such applications have remained in limbo at FINRA for years.<sup>14</sup>

**4. The Account Access Guidelines should prepare and allow for potential access requests from institutions with to-be-created novel charters.**

The creation and issuance of novel charters and the granting of traditional charters to banks that provide novel services evidence the broad modernization of financial services in the United States. The business of banking is not static, and innovations in technology and regulation have made banking more efficient and accessible throughout the banking system’s history. Today, the vast majority of transactions are completed digitally, and the mass adoption of internet and mobile banking has fundamentally changed how banks interact with their customers. Millions of consumers have “digitally native” relationships with their banks—a situation unimaginable when the Federal Reserve System was established over 100 years ago.<sup>15</sup> Who is to say what the financial system will look like in 2121?

As the payments landscape continually and increasingly evolves and develops, it is imperative that the proposed Account Access Guidelines are devised in a way that can account for any charters or technological innovations that occur in the future. The RFC acknowledges this phenomenon claiming that “...Reserve Banks are receiving an increasing number of inquiries and

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<sup>13</sup> George Selgin. “Proposed Guidelines to Evaluate Requests for Accounts and Services at Federal Reserve Banks.” The Cato Institute, May 19, 2020.

[https://www.federalreserve.gov/SECRS/2021/May/20210521/OP-1747/OP-1747\\_051921\\_138125\\_431924082571\\_1.pdf](https://www.federalreserve.gov/SECRS/2021/May/20210521/OP-1747/OP-1747_051921_138125_431924082571_1.pdf).

<sup>14</sup> Nikhilesh De, “Stonewalled by FINRA, Up to 40 Crypto Securities Wait in Limbo for Launch,” CoinDesk, June 17, 2019,

<https://www.coindesk.com/stonewalled-by-finra-up-to-40-crypto-securities-wait-in-limbo-for-launch>.

<sup>15</sup> “The Structure and Functions of the Federal Reserve System,” The Structure and Functions of the Federal Reserve System, accessed July 12, 2021,

<https://www.federalreserveeducation.org/about-the-fed/structure-and-functions>.

requests for access to accounts and services from novel institutions,”<sup>16</sup> while they “...received such inquiries on an exceptional basis in the past....”<sup>17</sup> The proposed Account Access Guidelines and their implementation should be crafted to reflect this trend and prepare for it to continue. Implementing future-focused principles will ensure the guidelines are sufficiently flexible to remain relevant and applicable long into the future.

## **5. Conclusion**

The Board’s request for comment on its proposed guidelines to evaluate requests for accounts and services at Federal Reserve Banks represents a good faith effort on behalf of United States’ regulators to provide the cryptocurrency and blockchain industry with the regulatory clarity that so many within industry have been advocating for. Regulation of this kind will provide current and future industry participants with a much needed and much appreciated roadmap for the regulatory demands of the space. With the incorporation of a designated timeline for the review process, as well as a standard that appropriately accounts for the risk model of the applying institution, the Account Access Guidelines will be better positioned to help foster technological innovation while prioritizing the safety and soundness of its payments system.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristin Smith".

Kristin Smith  
Executive Director

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<sup>16</sup> “Proposed Guidelines for Evaluating Account and Services Requests,” 25866.

<sup>17</sup> Ibid.