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Response to the Request for Public Comment Regarding the "Proposed Guidelines for Evaluating Account and Services Requests"

The Global Digital Asset & Cryptocurrency Association ("GDCA") welcomes the opportunity to offer its comment on the "Proposed Guidelines for Evaluating Account and Services Requests" ("Proposed Guidelines") as published by the Board of Governors of the Federal Reserve System ("Board").[1]

GDCA is a global self-regulatory association for the digital asset and cryptocurrency industry. It was established to guide the evolution of digital assets, cryptocurrencies, and the underlying blockchain technology within a regulatory framework designed to build public trust, foster market integrity and maximize economic opportunity for all participants. Our broad-based membership includes spot and derivative exchanges, proprietary trading firms, traders, investors, asset managers, brokerage firms, futures commissions merchants, custodians, decentralized technology organizations, banks, legal firms, audit firms, insurance professionals, academics, consultants, and media. GDCA is now made up of 25 such entities[2] from around the world.

To fulfill its mission, the GDCA devises standards and consensus-based solutions designed to address the major challenges facing the digital asset and cryptocurrency industry. The GDCA collaborates with stakeholders around the world, industry leaders and policymakers to support the growth of the global digital economy. We:

- Advocate for a regulatory environment that facilitates innovation and protects consumers, stakeholders, and the broader public interest world-wide;

[1] 86 Fed. Reg. 25865 (Fed. Res. Sys. May 11, 2021) (the "Proposing Release").
[2] To view a listing of GDCA Members, please click here: https://global-dca.org/membership/.

- Provide education, training, certification, and other resources to build human and technical capacity; and
- Provide thought leadership and facilitate industry engagement.

GDCA employs a self-regulatory mechanism that is guided by principles of accountability, integrity, and transparency to promote the highest professional and ethical standards for its members by developing a Code of Conduct and best practices, and holding members accountable via enforcement mechanisms such as surveillance and a legally binding dispute resolution forum. https://global-dca.org.

After consulting with its members, and in keeping with its mission to advance the industry, protect consumers, and the promote public interest, GDCA offers the following comments to the Board for consideration:

Many of GDCA's members are seeking to build innovative companies at the intersection of traditional finance and the cryptocurrency and digital assets industry (the "Digital Assets Industry"). Firms in the Digital Assets Industry need access to master accounts ("Accounts") and Federal Reserve Financial Services ("Services") in order to break down barriers to growth and better serve their customers. GDCA welcomes the fact that the Board is proposing to formally recognize that nontraditional financial institutions, like many in our Industry, can be eligible for Accounts and Services. The Proposed Guidelines are a step towards more clarity, transparency, and consistency, which the GDCA believes will foster growth and innovation in the Industry. Firms in the Digital Assets Industry fully embrace fit-for-purpose regulation and recognize that reasonable regulation will be a necessary part of the process of the Digital Assets Industry's integration into the broader financial system, and the broader United States and world economies.

However, if adopted, the Proposed Guidelines would unnecessarily stymie innovation, provide an unfair advantage to incumbents, and slow down the integration of fintechs and innovative firms in the Digital Assets Industry into the traditional (and aging) US payments system. Any final guidelines adopted by the Board can and should provide ready access to innovative financial institutions without increasing risk to the financial system or undermining the Board's policy goals. Most significantly, the Board should take this opportunity to consider a tiered approach to access that would permit newer firms with fewer resources to gain access to certain services concomitant with the level of risk they pose.

I. Importance of Access to Accounts and Services

As the Board recognizes, the payments and financial services landscape is evolving rapidly. Many firms in the fintech and Digital Assets Industry are seeking to provide services utilizing blockchain technology to drive access, inclusion, and efficiency, offering financial products and services in innovative ways through new applications and approaches while preserving market integrity. Not only are these firms unlocking new value and efficiency, they are also offering the potential to significantly increase access to finance for the traditionally unbanked and underbanked populations.[3]

The innovation in the Fintech and Digital Assets Industry is intended to remove both friction and costs from the overall, end-to-end payment processes for both professional and retail users. The benefits to consumers, especially underserved consumers including those without access to banking or in developing countries, from such innovation are significant. This innovation is not something that should be feared. New entrants are using tools different from traditional tools, and these new tools can both increase speed and lower costs dramatically. The Board should not attempt to restrict or limit these trends. Instead the Board should view them through the lens of consumer choice.

Many of these firms depend on access to the Federal Reserve's wholesale settlement services, but for now must rely on arrangements with traditional banks for access to those services. The need to transact through another party - who may indeed be a potential competitor - adds a layer of cost, delay, and complexity to settlement of transactions. Ultimately, without access, these new entrants will not be able to grow and become fully integrated into the U.S. financial system.

II. A Tiered Access Model

The stated purpose of the Proposed Guidelines is to create one uniform set of neutral standards that would be utilized to consider all applicants, from new fintech startups seeking access for the first time to traditional banks seeking to maintain their access after a change to their risk profile.[4] The Proposed Guidelines appropriately set a high bar for applicants, requiring them to prove that

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[3] *See, e.g.* Marco Lichtfous, Vivek Yadav & Valentina Fratino, *Can Blockchain Accelerate Financial Inclusion Globally?*, **Inside Magazine**, Nov. 2018 pt. 2, https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/technology/lu-blockchain-accelerate-financial-inclusion.pdf.

[4] *See* 86 Fed. Reg. at 25866 ("while the guidelines are designed primarily for new access requests, Reserve Banks should also apply the guidelines to existing account and services relationships [,,,]").

they have developed a mature and effective risk management framework and the resources to implement it in order to access the full suite of Fed services. Therefore, as written, the Proposed Guidelines would create a "one-size-fits-all" approach: new entrants to the market would need to meet the same minimum standards as well-established traditional banks.

GDCA believes that this approach will unnecessarily limit new entrants and ultimately throttle innovation and growth in the Digital Assets Industry. Instead, the Board should consider a tiered or phased access model: firms with novel banking charters that only provide a subset of services performed by traditional banks, and thus present fewer risks, should be permitted strictly defined or limited access to Federal Reserve Accounts and Services.

For example, one example of a "novel charter type" that the Federal Reserve has confronted is Wyoming's Special Purpose Depository Institution ("SPDI") charter. SPDIs are "banks that receive deposits and conduct other activity incidental to the business of banking, including custody, asset servicing, fiduciary asset management, and related activities."[5] However, SPDIs are unlike traditional banks that offer the full bundle of banking services. They will be predominantly engaged in custody, safekeeping, and asset servicing activities, focused on safekeeping assets, fiduciary management, transaction processing and settlement, and providing an "on/off" ramp to securities markets, commodities markets, and customer bank accounts.[6] They are "generally prohibited from making loans with customer deposits of fiat currency and they must at all times maintain unencumbered level 1 high-quality liquid assets valued at 100% or more of their depository liabilities."[7]

The Texas Department of Banking has recently authorized state-chartered banks to offer custody service for virtual currencies to its customers with the proviso that they manage the risks and follow the applicable laws, using the existing finance code that already enable such services. [8]

With the backing of the Illinois Bankers Association, the Chicagoland Chamber of Commerce, the Illinois Department of Financial & Professional Regulation, the Community Bankers Association of Illinois, Burling Bank, CoinFlip and other industry players, the Illinois House Committee on

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[5] **Special Purpose Depository Institutions - Department of Audit - Division of Banking**, http://wyomingbankingdivision.wyo.gov/home/areas-of-regulation/laws-and-regulation/special-purpose-depository-institution (last visited June 10, 2021).

[6] *Id.*

[7] *Id.*; H.B. 0074, 65 Leg., Gen., Sess. § 13-12-105 (Wyo. 2019), https://www.wyoleg.gov/Legislation/2019/hb0074.

[8] Authority of Texas State-Chartered Banks to Provide Virtual Currency Custody Services to Customers: https://www.dob.texas.gov/sites/default/files/files/news/Industrynotices/in2021-03.pdf

Financial Institutions unanimously passed a bill to create a banking charter for a Special Purpose Trust company for custody of digital assets in April.[9] The bill is expected to pass the full Senate in the next session. Along with Nebraska and others, this is but the first wave of legislation that will promote broad adoption of digital assets by the states, and will help set the direction for more inclusive national banking regulations.

Other examples of "novel" charters include the Office of the Comptroller of the Currency's ("OCC") proposed special-purpose national bank charter, which would provide a national bank charter for nondepository fintech companies engaged in the business of banking, also expecting such institutions to demonstrate a commitment to financial inclusion similar to requirements for depository institutions under the Community Reinvestment Act.[10] According to its guidelines, OCC SPNB charters are only available to fintechs that "have nontraditional or limited business models, do not take deposits, and rely on funding sources different from those relied on by insured banks."[11]

The hallmark of such entities is the diversity of their business models and the services they offer. Some of these firms are primarily "custodial," taking no retail deposits and extending no credit. Others, like cryptocurrency exchanges, may hold dollar deposits but do not make traditional loans. Still others act only as payment processors. In each case, these nontraditional chartered firms are not engaged in the full suite of services that traditional banks provide, meaning that granting them access to Federal Reserve Accounts and Services would not expose the U.S. financial system to the same level of risks. Because non-depository institutions pose far less risk to customers and to the Deposit Insurance Fund, it appears the FRB is trying to solve for a problem which does not exist and may never exist. The Proposed Guidelines do not make sufficient accommodations for these distinct business models, instead asking all applicants to meet the same "one-size-fits-all" set of standards. This "one-size-fits-all" approach would diminish the authority of the OCC, the

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[9] Illinois Bill HB3968: SPECIAL PURPOSE TRUST COMPANY: https://www.ilga.gov/legislation/BillStatus.asp?GAID=16&GA=102&DocNum=3968&DocTypeID=HB&SessionID=110&LegID=133083&SpecSess=&Session=

[10] Policy Statement on Financial Technology Companies' Eligibility to Apply for National Bank Charters (2018), https://www.occ.gov/news-issuances/news-releases/2018/pub-other-occ-policy-statement-fintech.pdf; Comptroller's Licensing Manual Supplement: Considering Charter Applications From Financial Technology Companies (2018), https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/considering-charter-apps-from-fin-tech-companies.html; *Lacewell v. Off. of Comptroller of Currency*, No. 19-4271, 2021 WL 2232109 (2d Cir. June 3, 2021).

[11] Comptroller's Licensing Manual Supplement: Considering Charter Applications From Financial Technology Companies (2018), https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/considering-charter-apps-from-fin-tech-companies.html.

state regulators and the Federal Reserve Banks themselves to craft nuanced regulatory approaches to new, innovative business models tailored to the risk involved.

When faced with similar issues, other regulators have taken a different approach. For example, the Bank of England Prudential Regulatory Authority ("PRA") has set out a policy that adopts a phased approach to regulation of new and growing non-systemic UK banks, which went into effect in April 2021.[12] The BOE has already created a pathway to provide access to non-bank payment services to UK payment schemes.[13]

What could such an approach look like in the United States?

- The Board could create a phased approach, whereby provisional access is granted so long as a firm meets a set of minimum standards. The purpose of the provisional access would be to allow the applicant to develop and grow while maintaining access to an Account and Services.
- The level of access could be limited for each phase, either by types of services allowed, transaction volume, size, or other metrics.
- The Board could propose a principles-based analysis to assess the level of risk posed by each applicant, and give Federal Reserve Banks the discretion to limit access based on the results of that analysis.
- The period of provisional access could be limited in time (perhaps 2-3 years), to give firms time to build the systems and controls needed for full-fledged access.

Such an approach would be consistent with language that already appears in the Proposed Guidelines. The Board recognizes in the Proposed Guidelines that:

> "If the Reserve Bank decides to grant an access request, it may impose (at the time of account opening, granting access to service, or any time thereafter) obligations relating to, or conditions or limitations on, use of the account or services as necessary to limit operational, credit, legal, or other risks posed to the Reserve Banks, the payment system, financial stability or the implementation of monetary

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[12] **Bank of Eng., PS8/21 | CP9/20 Non-Systemic UK Banks: The Prudential Regulation Authority's Approach to New and Growing Banks** (2021), https://www.bankofengland.co.uk/prudential-regulation/publication/2020/new-and-growing-banks.

[13] **Bank of Eng., Access to UK Payment Schemes for Non-Bank Payment Service Providers** (2019), https://www.bankofengland.co.uk/-/media/boe/files/markets/other-market-operations/accessfornonbankpaymentserviceproviders.pdf.

> policy or to address other considerations. [5] The conditions imposed could include, but are not limited to, paying a different rate of interest on balances held in the account, limiting the amount of balances on which interest is paid, or establishing a cap on the amount of balances held in the account."[14]

In general, the GDCA strongly believes that regulators should create pathways to safely develop and mature fintechs and emerging firms in the Digital Assets Industry. Government agencies around the world, including here in the U.S., are recognizing that well-constructed regulatory sandboxes can drive innovation, facilitate market entry of firms, improve access to capital, and strengthen competition, among other benefits.[15] Allowing tiered or phased access to Accounts and Services could share some aspects of a sandbox; specifically by allowing the regulatory requirements to flex along with the size, maturity, and level of risk each applicant poses. The sandbox model is a proven approach to foster inclusion of 'new' banks and Fintech firms, allowing for ease of access, and an iterative approach to shaping the rules as the industry evolves.

Such an approach would have the benefit of building capacity and expertise about the Digital Assets Industry within the Federal Reserve system, allowing the Board to gain insight into and a closer view of this emerging area. Federal Reserve Banks today have limited visibility of many fintechs and Digital Asset firms. That could change if more firms maintain direct accounts with the Fed and are subject to their approval and ongoing oversight. According to the World Bank, fintech sandboxes can help regulators by providing "an evidence base from which to make policy decisions; influence future supervisory methodology; [and] help to define, create, or amend regulation."[16]

If the Board rejects this approach, it should certainly not give a leg up to incumbents. The Proposed Guidelines suggest that "non-federally-insured institutions" may require more due diligence than federally-insured institutions which would, in comparison, "be fairly straightforward."[17] It is not clear what the basis is for this assumption. Each should be based on an analysis of the institution's business model, and non-traditional institutions should not be relegated to a separate track merely

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[14] 86 Fed. Reg. at 25867.

[15] *See generally* Cornelli et al., *Inside the Regulatory Sandbox: Effects on Fintech Funding*, (Bank for Int'l Settlements, Working Paper No. 901, 2020), https://www.bis.org/publ/work901.pdf; **The World Bank, Global Experiences from Regulatory Sandboxes** (2020), https://documents1.worldbank.org/curated/en/912001605241080935/pdf/Global-Experiences-from-Regulatory-Sandboxes.pdf.

[16] **The World Bank**, *supra* note 15, at 28.

[17] 86 Fed. Reg. at 25866.

by virtue of their innovativeness and the length of time they have been in the market. By the same token, the same standards applied to applicants with novel charters should be applied to incumbent financial institutions expanding into digital asset services for their customers.[18]

III. Comments on the Six Principles

In addition to the above, GDCA offers the following comments on the principles outlined in the Proposed Guidelines.

A. Proposed Guideline 1: Legal Eligibility

The first principle specifies that only institutions legally eligible for Fed Accounts and Services should have Fed access. The Proposed Guidelines' insistence on complying with existing federal laws regarding institutions' eligibility for access to Accounts and Services is both expected and reasonable.

However, the Board indicates that it is "considering whether it may in the future be useful to clarify the interpretation of legal eligibility under the Federal Reserve Act for a Federal Reserve account and services." GDCA believes that additional clarity is needed now given the growth of the industry and the increasing levels of participation by investors at all levels. Firms should be reasonably assured ex ante whether they could qualify for access, so they can plan their business models and legal structures accordingly.[19] This will provide the incentive for firms of all sizes to create products and services that will benefit businesses and consumers. By providing a greater level of assurance, they will encourage smaller businesses with lower starting capital to participate, which ultimately will help advance the Board's goal of innovation. Ad hoc regulation through approval or denial of specific requests would not provide the same level of clarity to the market.[20] Indeed, one of the dangers with respect to ad hoc decision making is that certain decisions may be confidential and therefore provide no guidance to the market whatsoever.

To be eligible to open an account or receive services from the Federal Reserve, financial institutions typically must meet the definition of a depository institution, as defined in Section

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[18] *See, e.g.*, P. Crossman, *Inside State Street's new digital asset unit* (Am. Bankr. June 11, 2021) available at: https://www.americanbanker.com/news/inside-state-streets-new-digital-asset-unit.

[19] *Cf.* 86 Fed. Reg. at 25867 (the Guidelines "are not intended to provide assurance that *any specific institution* will be granted an account and services") (emphasis added).

[20] Such an approach may also be inconsistent with the requirements for rulemaking based on notice and public comment set forth in the Administrative Procedure Act. 5 U.S.C. §§ 551 *et seq.*

19(b) of the Federal Reserve Act. Section 19(b) defines "depository institution" to include "any insured bank" and "any bank which is eligible to make application to become an insured bank under section 5" of the Federal Deposit Insurance Act. It defines the term "bank" as "any insured or non-insured bank, as defined in section 3 of the Federal Deposit Insurance Act, other than a mutual savings bank or a savings bank as defined in such section." In turn, Section 3 of the Federal Deposit Insurance Act defines "bank" to include "any national bank and State bank," the latter of which includes state-chartered banking institutions that are engaged in the business of receiving deposits other than trust funds.

As the Board recognizes, there is significant space for interpretation in these definitions. Interpreting legal eligibility broadly, while remaining consistent with the statutory mandate, would give more firms in the Digital Assets Industry an opportunity to participate fully in the U.S. and global financial system and prove that they are meritorious of an account with a Reserve Bank.

Further, the first principle calls for the Reserve Bank to assess the "consistency of the institution's activities and services with applicable laws and regulations,"[21] including Article 4a of the UCC, the Electronic Funds Transfer Act, compliance with U.S. sanctions, and the Bank Secrecy Act. GDCA fully agrees with this approach. GDCA and its members are committed to full regulatory compliance in an effort to establish trust in our industry.

However, GDCA encourages the Board to ensure that Reserve Banks take account of the fact that certain regulations that are applicable to most banks may not apply to certain activities in the Digital Asset Industry. For example, institutions which have traditionally had access to Accounts and Services operate under such statutes as the Electronic Funds Transfer Act; certain cryptocurrency systems, for example, may not be subject to the Act because the "financial institutions" and "accounts" which it assumes are not constructs in these novel systems. While many institutions share significant traits and fall under the same federal regulations, others, particularly novel institutions such as cryptocurrency companies, break from the traditional mold with which Reserve Banks have dealt in the past. This should not affect a firm's ability to be eligible for Accounts and Services.

Thus, GDCA recommends that any final guidelines recognize that there are many bank regulations that either do not apply at all to the Digital Asset Industry, or have little to do with safety or soundness, which should be the focus of the guidelines. Thus, the Board should specify which

[21] 86 Fed. Reg. at 25867.

"applicable laws and regulations" will be assessed, and should not take an overly broad approach to deciding which laws should go into the basket. A better construct might be "applicable laws and regulations germane to the Digital Assets Industry, and which are related to the safety and soundness of the institution."

B. Proposed Guidelines 2, 3, & 4: Risks to the Federal Reserve Bank, the Payment System, and the Stability of the U.S. Financial System

GDCA agrees that the Proposed Guidelines must allow Reserve Banks to appropriately manage risk, both to themselves, established account holders, and the financial system at large. The standards set forth in principles 2, 3, and 4 of the Proposed Guidelines would accomplish these goals. However, as set forth above, GDCA emphasizes that each Reserve Bank should consider, as a part of its risk assessment, the *weighted* risk posed by applicants. The size and kind of institution are both meaningful factors in assessing relative risk and should not be ignored. Paying due consideration to the weighted risk applicants pose will foster new entrants and support innovation.

The GDCA asks that the Board in the future recognize applicants' compliance with self-adopted industry rules as a key factor in the risk analysis. Institutions that are regulated by a system of industry-adopted rules, enforced by an empowered self-regulatory organization ("SRO"), would necessarily pose a lower risk than those that are not so regulated. Regulation by an SRO (like FINRA or NFA today, for example) comes with a system of oversight and rule compliance that regulators understand.[22] GDCA seeks to become an SRO for the Digital Assets Industry. In the design of its governance structure and function, the GDCA has sought to model itself in alignment with the International Organization for Securities Commission (IOSCO) Model for Self-Regulation[23] as well as the IOSCO Objectives and Principles of Securities Regulation.[24] Today, all full members must sign on to a Code of Conduct prior to joining the GDCA membership that requires, among other things, ethics and conflict-of-interest policies and a commitment to good

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[22] *See generally* Saule T. Omarova, Rethinking the Future of Self-Regulation in the Financial Industry, 35 Brook. J. Int'l L. 665, 695 (2010). (arguing that SROs are in the best position to address the two principal regulatory challenges currently facing governments around the globe: the increasing complexity and global nature of financial transactions and instruments).

[23] Report of the SRO Consultative Committee of the International Organization of Securities Commissions. Model for Effective Self-Regulation. (2000). https://www.google.com/search?q=IOSCO+framework+for+self+regulation&oq=IOSCO+framework+for+self+regulation&aqs=chrome..69i57.7985j1j7&sourceid=chrome&ie=UTF-8

[24] IOSCO Objectives and Principles of Securities Regulation. Principles for Self-Regulation. 3,5 (2017). https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf

business practices and compliance.[25] Over time, GDCA seeks to evolve into a more empowered and comprehensive organization that promulgates rules and practices for its members to mutually agree to. As a first step, the GDCA has developed a nascent "Conduct and Discipline Committee" as part of its foundational structure as well as approved rules for the functioning of a system of global commercial arbitration. GDCA hopes that the Board will, in the future, see GDCA membership as a stamp of approval that signals lower risk.

In order to effectively regulate the emerging Digital Asset Industry, the regulating entity must have up-to-date expertise and understanding as well as Staff with close proximity to the industry as the pace of evolution and change is unparalleled. Further, the regulating entity must have a high degree of responsiveness and ability to flexibly and nimbly respond to changes in the global marketplace as new products, services and technologies are evolving daily. Finally, given the inherent cross-border nature of the Digital Asset Industry, the regulating entity needs to be intrinsically global - able to engage and cooperate with global jurisdictional and international peers rapidly, efficiently, and effectively. Simply put, it is going to be extremely challenging for U.S. financial regulatory agencies to (a) attract and retain sufficiently qualified personnel; (b) maintain the flexibility and responsiveness to ensure that regulatory oversight keeps pace with the ever-evolving landscape of the Digital Asset Industry; and (c) maintain the high level of global communication, coordination and engagement necessary to appropriately monitor and regulate this space. For these reasons, U.S. financial regulatory agencies may wish to make use of an SRO to best protect consumers, ensure the fairness, efficiency and transparency of digital asset markets, and reduce systemic risk. Such an SRO should operate under the oversight of regulator(s) and should observe standards of fairness and confidentiality when exercising its powers and delegated responsibilities.

Proposed Guideline 4 provides that:

> "[t]he Reserve Bank should determine, in coordination with the other Reserve Banks and Board, whether the access to an account and services by an institution itself or a group of like institutions could introduce financial stability risk to the U.S. financial system."[26]

GDCA believes that institutions should be assessed on the risk that each applicant institution presents, and not on the collective risk presented by their peer entities.

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[25] https://global-dca.org/code-of-conduct/.
[26] 86 Fed. Reg. at 25869.

An institution cannot reasonably be held to account for the activities of its "like institutions." Even as some institutions are similar in kind or industry, each has its own profile in terms of its various business endeavors and the frequency and depth with which it participates in these, and its own compliance activities and controls. Accordingly, each has its own risk profile and set of predictable effects it may have, if any, on the risk of providing it access to Fed Accounts and Services. A well-managed, compliance-focused firm should not suffer the sins of its "like institutions."

Proposed Guideline 4 also presupposes a theoretical risk, that in times of financial or economic stress, market participants that otherwise provide funding to nonfinancial firms, financial firms, and state and local governments could withdraw such funding in a flight to the safety of a deposit with institutions holding central bank balances. It further posits if non-traditional firms not subject to capital requirements similar to federally-insured-institutions, "the potential for sudden and significant deposit inflows into [such firms] is particularly large, which could disintermediate other parts of the financial system, greatly amplifying stress."[27] Putting aside questions over whether there is an empirical basis for such a concern, it misses the point that many of the "novel charter types" are either non-deposit-taking or only take deposits on a limited basis.

C. Proposed Guideline 5: Prevention of Financial Crimes

The fifth principle specifies that the "[p]rovision of an account and services to an institution should not create undue risk to the overall economy by facilitating activities such as money laundering, terrorism financing, fraud, cybercrimes, or other illicit activity." GDCA wholeheartedly supports this principle, and is committed to helping the Industry stamp out crime, better engage with law enforcement, and create new best practices to prevent illegal activities in the Digital Assets Industry.[28]

However, in evaluating any applicant under the Proposed Guidelines, Federal Reserve Banks should not unfairly and incorrectly associate fintechs and cryptocurrency firms with illicit activities. Indeed, in many cases cryptocurrencies actually make investigation of crimes and money laundering easier and more effective than current technologies, as many create an immutable trail in the public blockchain that investigators can utilize. As just one recent example, the FBI was able to seize bitcoins paid as ransom in the Colonial Pipeline attack.[29]

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[27] *Id.*

[28] *See* https://global-dca.org/code-of-conduct/.

[29] *See* https://www.justice.gov/opa/pr/department-justice-seizes-23-million-cryptocurrency-paid-ransomware-extortionists-darkside.

Simply put, having more members of the Digital Assets Industry "inside the tent" of U.S. financial regulation will lead to less crime. As U.S. Senate Banking Committee Ranking Member Pat Toomey recently said in response to FINCEN's recent proposal related to the regulation and oversight of cryptocurrencies:

> "[FinCEN's proposed rule] could cause illicit transactions to become less traceable than they otherwise would be. By limiting individual privacy and the ability to transact with financial institutions, the rule would likely push bad actors to utilize methods that do not interface with financial institutions. As a result, such cryptocurrency transactions would be less susceptible to appropriate government oversight and detection."

D. Proposed Guideline 6: Implementation of Monetary Policy

Guideline 6 provides that permitting account access "should not adversely affect the Federal Reserve's ability to implement monetary policy." While growing, the market capitalization of digital currencies, even at its peak of $2 trillion in April 2021,[30] was only roughly a third of the U.S. monetary base of $6 trillion. Unlike the monetary base, the digital currencies worth some $2 trillion in April 2021 were largely not being used in payments but rather as an alternative investment asset. Even at their peak valuation of $2 trillion, digital currencies were dwarfed by the M1 money supply of $19 trillion in April 2021. Thus, at least at present it seems unlikely that fintech "novel charters" will handicap the Federal Reserve's ability to implement monetary policy. "At present, it is unclear how fintech firms could impede the US Federal Reserve's implementation of monetary policy. As such, it may be unnecessarily speculative to include this element in the final guidelines."

IV. Competitiveness of the U.S. Financial System

Finally, there is a glaring omission in the Proposed Guidelines. The Board does not take into consideration the impact of its proposal on the global competitiveness of the U.S. financial system. For the U.S. to stay competitive, it must remain a center for innovation and new technologies.

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[30] A. Kharpal, *Cryptocurrency market value tops $2 trillion for the first time as ethereum hits record high* (CNBC Apr. 6, 2021) available at: https://www.cnbc.com/2021/04/06/cryptocurrency-market-cap-tops-2-trillion-for-the-first-time.html.

Our financial system is sadly falling behind financial systems in other parts of the world. In the United Kingdom and the European Union, for instance, instantaneous bank-to-bank payments have been the norm for payments for years.[31] In 2009, the UK Payments Council decided to phase out their check clearing system by October 2018.[32] Yet, here in the U.S., as of 2018 (the latest data available from the Federal Reserve's Triennial Payments study), some 14 billion payments were by paper check representing $26.77 trillion in notional value. The U.S.'s continued reliance on a technology largely unchanged since Roman times shows that the U.S. simply is not keeping up with the rest of the world.[33] Even if the Federal Reserve's FedNow real time gross settlement system launches as currently scheduled in 2023, the U.S. will be six years behind the EU and their implementation of the SEPA system for instantaneous payments.

Other countries are similarly outpacing the United States in developing, testing and launching central bank digital currencies, with some sixty percent of world central banks "working on 'proof of concept' testing."[34] China launched a pilot scheme in February 2021 involving 50,000 residents in Beijing.[35] The Banque de France is extending its wholesale CBDC experiment which has shown

[31] For example, the pan-European SEPA Instant Transfer system, which enables electronic transfers of Euros 24 hours per day, seven days per week and 365 days per year ***in ten seconds***, has been operational since November 2017. *What are Instant Payments?* (ECB Website 2021) available at: https://www.ecb.europa.eu/paym/integration/retail/instant_payments/html/index.en.html.

[32] S. Barth, *No Checks Please, We're British: UK Banks Vote to Phase Out Paper Checks – Will the US Follow?* (MintLife Blog Dec. 17, 2009) available at: https://mint.intuit.com/blog/trends/british-banks-end-checks/.

[33] *Id.* ("Like letters of credit, demands for payment and bills of exchange, bank drafts can trace their history to Roman times, when checks were known as 'praescriptiones.' Paper drafts analogous to today's checks were in use in the Islamic world in the 9th century and as early as the 12th century Templars honored pilgrims' checks from one chapter house to the next.").

[34] J. Cox, *Wall Street banks brace for digital dollars as the next big disruptive force* (CNBC Apr. 19, 2021) available at: https://www.cnbc.com/2021/04/19/central-bank-digital-currency-is-the-next-major-financial-disruptor.html.

[35] S. Mellor, *Sweden pushes ahead with a digital currency rollout—just don't call it a 'crypto asset'* (Fortune Apr. 7, 2021) available at: https://fortune.com/2021/04/07/sweden-pushes-ahead-with-digital-currency-roll-outjust-dont-call-it-crypto-asset/?queryly=related_article.

how a CBDC could be used for instantaneous settlement of securities transactions.[36] The Bank of Israel has tested a digital shekel.[37] The Bahamas has launched its "sand dollar" CBDC in 2020.[38]

Providing account access to "novel charter types" in a balanced and risk weighted manner would expose Federal Reserve staff to innovative technologies that could help the U.S. catch up with the rest of the world. As currently regulated, the Federal Reserve System is not exposed to the engine of innovation at the heart of the new fintech industry. Opening itself to this engine of innovation will help the Federal Reserve to best tackle the challenges the U.S. faces abroad in the financial services arena.

We appreciate the opportunity to provide comments on the Proposed Guidelines and look forward to continued collaboration to mature and strengthen the Digital Asset Industry to advance inclusion and maximize legitimate economic opportunity while protecting the public interest.

Respectfully submitted,

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[36] J. Crawley, *Banque de France Extends Wholesale CBDC Experiment* (Coindesk June 21, 2021) available at: https://www.coindesk.com/banque-de-france-extends-wholesale-cbdc-experiment.

[37] J. Crawley, *Bank of Israel Has Already Tested a Digital Shekel* (Coindesk June 21, 2021) available at: https://www.coindesk.com/bank-of-israel-cbdc-test.

[38] J. Wyss, *How the Tiny Bahamas Beat Global Giants in the E-Currency Race* (Bloomberg May 20, 2021) available at: https://www.bloomberg.com/news/articles/2021-05-20/the-bahamas-central-banker-explains-why-its-sand-dollar-led-the-way?sref=zeAYY7dB.