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Exploring Bipartisan Legislative Frameworks for Digital Assets
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This written statement represents my own view, not those of Lightspark or any other organization with which I am affiliated.

Introduction

Bitcoin—the first cryptocurrency—set out a radical, new vision for financial infrastructure. It created the technological foundation for real-time, trustless transfers of value directly among participants on a global, open network. A network that can be used securely by anyone who downloads and runs Bitcoin's open-source software. This new type of financial infrastructure does not observe banking hours, is resilient without being centrally operated, and is inherently global. It was designed for our modern world.

When I began advising crypto projects a decade ago, after the typical initial skepticism, I came to understand and be inspired by Bitcoin's promise of better, faster, open financial infrastructure, which in turn could lead to better financial services. As a financial regulatory lawyer then working with large banks, asset managers, and other similar financial institutions, it seemed clear that an infrastructure upgrade was due—particularly in payments. And today, my work at Lightspark, which is building modern payment technology and services on Bitcoin, reflects my belief that modern payments must be built upon upgraded infrastructure.

Building new, global financial infrastructure is an enormous undertaking that cannot and should not happen overnight. The industry has made important progress over the past decade. Bitcoin has been operating for more than 15 years without major disruption. Consumers and businesses worldwide can access and use cryptocurrencies for onchain transactions, with choices for how they do so. Stablecoins have grown steadily, with new issuers and use cases coming to market with increasing frequency. A proliferation of regulated financial market products, from ETFs to derivatives, provide needed depth and liquidity to the markets. There is strong financial markets expertise and competition among exchanges, prime brokers, dealers, and wallet providers. And of course, companies like Lightspark are building payments infrastructure and services from these building blocks, so that the ultimate vision of Bitcoin—as an open global payment system—can be realized.

At the same time, the industry has created and experienced some remarkable and terrible detours from this vision. While it is natural for well-intended experiments to fail, we also have seen the absolute worst types of scams, frauds, and grifts carried out using cryptocurrencies, often with little regulator or law enforcement attention until it is too late.[1] Unfortunately, regulatory responses and enforcement actions seem to have been focused on ring-fencing cryptocurrencies and blockchain technology from traditional financial services, rather than bringing crypto activities within the regulatory perimeter. This approach ostensibly was meant to protect consumers, businesses, and the U.S. capital markets. Instead, it has reduced the regulatory and legal protections available for Americans, driven innovation outside the United States, reduced competition, and protected powerful incumbents. Consumers have been hurt.

[1] As an example, U.S. regulators and law enforcement agencies took action against FTX, Terra/Luna, Voyager, and Celsius only after each of them failed, all in very public ways. Bringing enforcement actions with fines levied against their bankruptcy estates did little to protect consumers whose assets were caught up in the failures.

Trust in the industry has faltered. And our regulatory policy is in need of a fresh and balanced approach.

The Subcommittee now has a chance to set us on a better path. One that brings sensible and appropriate regulation to stablecoins and crypto markets, better protecting consumers and markets while also spurring innovation.

We must be careful, however, not to enshrine in law the crypto industry as it is today, without also having a clear vision for how the industry can and should evolve. Yes, new laws are needed to provide clarity and a clear and safe path for builders and companies. But innovation inevitably will center around the path prescribed by those laws—because it is clear and safe. New laws should not only provide clarity; they should also be sufficiently flexible to accommodate rapidly evolving technology and businesses.

This flexibility will come from grounding new laws in strong fundamentals that reflect our best views about the benefits and risks of stablecoins and crypto markets as they can and should exist. My testimony today reflects my own views about how stablecoins and crypto markets should be regulated to achieve the goal of an open, more modern financial infrastructure.

Payment Stablecoins[2]

Historically, stablecoin use cases have largely centered on facilitating crypto trading, DeFi activities, and making dollar-based money available to those who cannot otherwise access it. More recently, we have seen stablecoins being used as fast and efficient tools for corporate treasury management. We are starting to see how stablecoins can lower payment frictions and transaction costs, spur new kinds of payments, and, crucially, unlock new kinds of economic activity. We expect access to instant, secure, interoperable communications like email and messaging globally; we should demand the same from payments. Stablecoins can drive new use cases uniquely suited for open, online commerce.

For stablecoins to support more mainstream payments use cases, users must be able to think of stablecoins as digital cash. This requires users having confidence that stablecoins are protected by a strong legal framework and operational infrastructure so they will be widely accepted by the public as payment instruments without question. Stablecoin issuers must have clear regulatory requirements tailored to stablecoin issuance, both to provide legal certainty and also to compete on a level playing field. Only then will issuers focus on building utility and users benefit from new use cases driving new economic activity.

[2] My comments focus on what are commonly referred to as "payment stablecoins," which are national currency-denominated stablecoins issued by a legal entity issuer, backed by safe and liquid assets denominated in the same currency as the stablecoin, and issued and redeemed for national currency to maintain a peg to a national currency face value. Other types of stablecoins should be subject to different rules because they will have different uses and are subject to different risks.

1. The stablecoin innovation: digital, always-on, non-credit money.

Stablecoins promise the same functionality as cash, in native digital form. The potential for inherent fungibility, interoperability between wallets, and real-time actual settlement make stablecoins different from other readily available forms of electronic money—namely, commercial bank deposits and stored value instruments. When stablecoins are properly regulated, these features, together with programmability and composability, form an essential foundation for modern payments infrastructure.

We have recently seen a proliferation of stablecoins. These stablecoins are issued by many different entities, which take many corporate forms, are formed under a variety of different laws, and today have a variety of approaches to reserve design and redemption rights for holders. As a result, users correctly do not, and cannot, treat different stablecoins as fungible for payments. Users and the market today distinguish between even non-yield-bearing stablecoins such as USDT, USDC, USDP, USDG, and so on.

Yet if stablecoins are to function as digital cash, they will need to be fungible across issuers. That is, users should be able to view a USD stablecoin from one issuer as economically indistinguishable from that of any other issuer—without the need for deposit insurance or central bank clearing. Someone using a stablecoin to pay, or accepting a stablecoin for payment, should not care which stablecoins are being used. A digital wallet could contain stablecoins from many different issuers, displayed as an undifferentiated USD balance available for fast onchain transactions. A user should be able to identify the issuers of different stablecoins held in their wallet, but this information would not be important or necessary for day-to-day transactions.

Fungibility across stablecoins for payments will make them ideally suited for onchain transactions. Without this, stablecoins will fail to fully utilize the core innovation of blockchains as open settlement systems, available to anyone, with real-time actual value settlement, 24/7, and globally. Delivery of any stablecoin onchain should be the only mechanism necessary to complete a payment. No complex system that runs only during bank hours is needed to clear and settle stablecoin payments, regardless of which stablecoin is used. No connectivity between local, national, or regional systems must be built.

In contrast, deposits issued by one commercial bank are not fungible with those of other commercial banks, except to the extent that the holders' accounts are FDIC-insured. Deposits that exceed the FDIC insurance limit are mere unsecured claims on the bank, which are not fungible with either FDIC-insured deposits or uninsured deposits at another bank. They are made interoperable only by central bank money and clearing services, which are available directly only to some banks and financial infrastructure providers. And unlike stablecoins, they are not "always on"—we rely on complex correspondent banking networks to make international

payments, by debiting and crediting the accounts of intermediary banks during bank hours, which slows payment settlement times and increases costs.

For stablecoins to operate as digital cash, legislation must focus on providing a framework that supports their fungibility for payments. The money value, quality, and reliability of a stablecoin should be independent of the creditworthiness of the issuer. This can be accomplished by three mechanisms.

First, stablecoin issuers must back stablecoins one-to-one (plus a tailored capital buffer) with reserves of high-quality liquid assets in the same denomination as the face value of the stablecoin they back, that can be easily liquidated in times of stress. Stablecoin issuers should be allowed a mix of safe assets, from the usual categories of US treasuries, commercial bank deposits, Treasury repos, and similar instruments, with capital buffers and liquidity requirements calibrated based on the market and credit risks of the reserves–not leverage requirements that are appropriate for banks.

Second, issuers must always be available to redeem the stablecoin at face value (e.g., $1). This could be done directly by an issuer or through intermediary arrangements with market makers or dealers. This is how a stablecoin maintains its peg to its USD face value and its fungibility with other stablecoins.

Third, in the resolution or bankruptcy of a stablecoin issuer, reserve assets should be segregated and beneficially owned by stablecoin holders, so that reserve assets can be quickly liquidated and paid out to these holders in an orderly manner. This fosters confidence in stablecoins as cash equivalents.

2. Competition should be encouraged on complementary use cases, not on reserve design.

Stablecoin issuers' business models today largely revolve around revenues from returns on stablecoin reserves.[3] Particularly in high interest rate environments and at scale, this business model can be extremely lucrative.[4] But it incentivizes a stablecoin issuer to maximize the interest and other returns on its reserve assets rather than minimize their credit and liquidity risks. The natural result is that stablecoin issuers will build their reserves with the riskiest allowable assets, deploy these returns to increase distribution of the stablecoin and, in turn, increase reserve size. Competition on reserve design among issuers does not promote innovation in stablecoin use cases and, absent strong guardrails, risks undermining the public confidence in stablecoins as high-quality, digital cash.

[3] See, e.g., Governor Waller, Reflections on a Maturing Stablecoin Market https://www.federalreserve.gov/newsevents/speech/waller20250212a.htm (Feb. 12, 2025).
[4] Tether Reports $13B Profit for 2024, With Rising Bitcoin, Gold Prices Contributing, https://www.coindesk.com/business/2025/01/30/tether-reports-usd13b-profit-for-2024-with-rising-bitcoin-gold-prices-contributing (Jan. 31, 2025).

There are also potential anti-competitive effects for stablecoin reserve requirements that are overly conservative. Some legislative proposals, particularly outside the United States, have suggested limiting stablecoin reserve composition to central bank money with no interest paid on balances held at the central bank.[5] Others would impose liquidity requirements on stablecoin issuers in line with those for deposit-taking banks, whose core business involves liquidity and maturity transformation. These approaches risk making stablecoin issuance attractive only for the largest market participants because at-scale reserve returns are sufficient to satisfy investors, or for those that can subsidize stablecoin issuance with other business. At worst, they can make stablecoin issuance uneconomical altogether.

Stablecoin legislation must envision and provide viable paths for different types and sizes of stablecoin issuers, who are all incentivized to develop new and better payment solutions that use stablecoins. This should include stablecoin issuers that take different organizational forms and that have different charters, so long as they are subject to common, baseline regulatory, compliance, operational, and reserve requirements. We should also encourage issuers across different types of corporate organizations—banking organizations, payment services firms, and, yes, even technology firms.

Well regulated stablecoin issuance is less risky in terms of run risk and contagion compared to traditional bank deposit-taking and lending because it does not involve money creation through maturity and liquidity transformation. And in a strongly competitive environment, the usual rationale behind our banking-commerce divide is less compelling, particularly when applied to stablecoin issuers. Absent a clear reason to restrict a stablecoin issuer's corporate affiliations, we should not do so, as this would limit competition and hamper innovation. Potential conflicts of interest and concerns about self-dealing and data privacy can be addressed through more specific, tailored means. A thoughtful and targeted approach on affiliate activities will lead to a more competitive, innovative stablecoin landscape. Today's dynamic, with an issuance duopoly held by Tether and Circle, is much less likely to deliver new, open, and modern payments.

One key way to foster competition is to have sensible, consistent, and clear reserve requirements, as described above. Another is to limit risks in stablecoin reserves and, at the same time, enable stablecoin issuers to be economically viable without having to rely on subsidies from other activities or support from affiliates. It may be premature, and perhaps counterproductive, to regulate or restrict the activities of a stablecoin issuer's affiliates. Instead, limits on amounts and types of affiliate transactions and restrictions on self-dealing could address potential conflicts of interest or other concerns about the relationship between a stablecoin issuer and an affiliate. Stablecoin legislation should also allow for issuers of different types with different kinds of business models. Access to Federal Reserve payment

[5] Bank of England, Regulatory regime for systemic payment systems using stablecoins and related service providers, https://www.bankofengland.co.uk/paper/2023/dp/regulatory-regime-for-systemic-payment-systems-using-stablecoins-and-related-service-providers (Nov. 6, 2023).

systems and master accounts for a stablecoin issuer could be conditioned on additional regulatory and supervisory requirements. And legislation that sets minimum reserve, operational, and compliance requirements across all issuer types should be sufficient to establish a level playing field while incentivizing the right kind of competition among these issuers.

3. Stablecoin legislation is a way to level up our approach to financial crimes and privacy.

The potential for stablecoins to be used in illicit finance or to evade economic sanctions is a threat to the viability of stablecoins in modern payments. Recognizing this, U.S. regulators have long applied the Bank Secrecy Act to stablecoin issuance and to crypto exchange and money transmission services involving stablecoins.

In response, the industry has built new compliance tools to help meet these requirements. The most common are analytics tools that trace onchain transactions to help identify and report illicit activity. Stablecoin issuers have also developed technology to freeze or block stablecoin transactions upon direction from law enforcement or regulators. And they are working to develop digital identity and verified credentialing services that can provide privacy-protecting ways to better identify and verify customers. These tools are good examples of how regulation can spur industry innovation to build compliance approaches that address regulatory requirements and policy concerns in new ways.

Onchain stablecoin transactions also raise privacy considerations for stablecoin users. Payments made using credit cards or banks are not made public, pseudonymously or otherwise. Nor would we want them to be. Financial services firms and regulators, across payments, banking and financial markets, take great care to protect nonpublic information, particularly in real time. Despite their pseudonymity, onchain stablecoin transactions reveal the existence and amount of stablecoin transactions between wallets. This information can be tied to real-world users, particularly with the help of advanced blockchain analytics tools. In turn, this puts user privacy at risk and can reveal sensitive information about consumer and business payments.

As before, the industry is developing new tools to address these questions. For example, zero knowledge proof solutions can protect user privacy while enabling regulated institutions to meet their compliance obligations under the BSA. And companies like Lightspark are building on systems like the Bitcoin Lightning Network that inherently protect the privacy of individual payment transactions, using messaging protocols to enable regulated institutions to obtain and exchange the information they need to meet their legal and compliance obligations.

This dynamic, with the industry having time, flexibility, and the right incentives to develop new and better ways to address regulatory requirements, creates an opportunity to improve the overall ability of regulated institutions to identify and report illicit finance and potential

sanctions violations. These developments can be useful not only in the context of stablecoins and crypto, but also can help positively shape the future of traditional financial services. These improvements are needed to reduce the significant costs borne by regulated institutions and, importantly, improve the quality of information being reported to regulators and law enforcement.

Stablecoin legislation should direct regulators to set out clearly the illicit finance and sanctions compliance expectations for firms issuing or providing services involving stablecoins. This legislation must also provide these institutions with the flexibility to address those requirements in new and better ways.

Market structure

I will briefly comment on one keystone aspect of crypto market structure regulation. As with the substance of my stablecoin comments above, my focus is on observing fundamentals about how we want the industry to evolve, as it seeks to build modern financial infrastructure.

Congress has put in significant effort to get us to where we are today, with several comprehensive and detailed bills under consideration. These bills make important strides in defining regulations for crypto markets based on their unique characteristics.

In one aspect, however, we should look to traditional financial markets as our guide: any crypto-asset market regulatory regime must provide clear and *ex ante* legal certainty for which tokens are securities and which are not. This status, for any token, should be based on the legal and economic characteristics intrinsic to the token, which should be publicly disclosed.[6] This status should not change over time unless the characteristics of the token itself fundamentally change—not activity on the blockchain on which the token was issued.

Fundamentally, no market can develop, let alone thrive, without certainty about the legal status of the assets traded in the market. In this regard, the application of the *Howey* test to crypto assets is an ill fit. *Howey* and its progeny were always meant to be applied to commercial transactions that—in retrospect—should have been conducted as securities offerings. It was never meant as a design template for a whole asset category that needs certainty upfront.

Many have been working on different approaches to this tricky problem and have made progress. It is a problem well worth the effort of solving, for the good of those who participate in crypto markets as well as for regulators who must regulate and oversee those markets.

[6] Jai Massari, Why Cryptoassets Are Not Securities, HLS Blog on Corporate Governance, https://corpgov.law.harvard.edu/2022/12/06/why-cryptoassets-are-not-securities/ (Dec. 2022).