



December 22, 2020

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220-0002

Re: Request for Extension of Time: FinCEN Docket Number FINCEN-2020-0020; RIN 1506-AB47; Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets

Dear Secretary Mnuchin:

The Chamber of Digital Commerce (the “Chamber”)¹ writes this letter with respect to the Financial Crimes Enforcement Network (“FinCEN”) Notice of Proposed Rulemaking related to the “Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets” (the “NPRM”), to request that you extend the comment period by 90 days to allow for full participation of affected parties and to better permit FinCEN to gauge the impact and any concerns with the proposed rule. Absent this extension, the proposed rule risks lacking legitimacy under the Administrative Procedure Act (“APA”).

The proposed rule, which has yet to be published in the Federal Register, provides only 15 days for affected parties to provide comment. Those fifteen days, which fall over the Christmas and New Year’s federal holidays as well as two weekends, provide a mere 8 business days to comment. This truncated time frame makes it impossible to fully evaluate the effect of the rule, identify any problems of compliance and unforeseen

¹ The Chamber is the world’s largest blockchain trade association. Our mission is to promote the acceptance and use of digital assets and blockchain technology, and we are supported by a diverse membership that represents the blockchain industry globally. Through education, advocacy, and close coordination with policymakers, regulatory agencies, and industry across various jurisdictions, our goal is to develop a pro-growth legal environment that fosters innovation, job creation, and investment. We represent the world’s leading innovators, operators, and investors in the blockchain ecosystem, including leading edge startups, software companies, global IT consultancies, financial institutions, insurance companies, law firms, and investment firms. Consequently, the Chamber and its members have a significant interest in blockchain and distributed ledger technology.

consequences of the proposed regulation, and decide how to respond to two dozen questions raised for public comment.

Given the significant impact of the proposed rule, the 15-day comment period is wholly inadequate and raises serious process concerns under the APA. Having subjected the rule to notice and comment procedures, the agency has an obligation not to act in arbitrary or capricious manner. Courts have interpreted the APA to provide that an “exceedingly short” comment period does not “provide a meaningful opportunity for comment.” *N. Carolina Growers’ Ass’n, Inc. v. United Farm Workers*, 702 F.3d 755, 770 (4th Cir. 2012).

Only “rare” instances “actually warranting” a shortened comment period will a comment period as short as this one be permitted. Those rare situations “are generally characterized by the presence of exigent circumstances in which agency action was required in a mere matter of days.” *Id.* The need to rush this rule out before the expiration of this Administration is not one of them. Courts regularly conclude that an “emergency of the [government’s] own making” does not constitute good cause. *NRDC v. Abraham*, 355 F.3d 179, 205 (2d Cir. 2004); *see also Levesque v. Block*, 723 F.2d 175, 184 (1st Cir. 1983) (concluding imminence of self-imposed deadline did not qualify as good cause to dispense with notice-and-comment before issuing final rule).

Nor do we believe that the agency could, as it claims, satisfy the “good cause” standard or foreign affairs function exceptions to dispense with notice and comment procedures. Indeed, by providing notice and comment (albeit insufficient notice and comment), the NPRM undermines its own claims that these exceptions are applicable, as they generally relate to the impracticability of notice and comment and/or harm to foreign affairs or the public interest that might stem from providing public notice and comment. In any event, the national security exigencies identified in the NPRM are not sufficient to dispense with an adequate period for comment. For instance, the risk of malign actors taking action to circumvent the rule, assuming it exists, arose the moment the agency decided to go the NPRM route—it is not substantially increased by permitting a longer comment period, since the transactions that the agency fears will occur take mere minutes, not weeks, to complete. Nor is there reason to believe that bad actors utilizing banks and money services businesses in light of existing regulatory requirements, such as the reporting of suspicious activity, will be so alarmed by the publication of this NPRM as to flee such platforms in mass, and, indeed, none of our members have reported any such exodus of funds or users. A longer comment period may allow the agency to better calibrate its rule to reduce such risks in the future.

These are significant risks to the legitimacy of the proposed rule within the current truncated process. An extension to provide a fuller study of the proposed rule and its implications is not only consistent with prior practice in similar FinCEN rules, but also will allow us to work cooperatively with FinCEN to meet law enforcement objectives while serving to allow this industry to grow responsibly.

We thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink that reads "Perianne Boring". The signature is fluid and cursive, with the first name "Perianne" and last name "Boring" clearly distinguishable.

Perianne Boring
Founder and President

A handwritten signature in blue ink that reads "Amy Davine Kim". The signature is fluid and cursive, with the first name "Amy", middle name "Davine", and last name "Kim" clearly distinguishable.

Amy Davine Kim
Chief Policy Officer