CHAMBER OF DIGITAL COMMERCE

July 15, 2020

Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Submitted via Email: fsb@fsb.org

Re: Addressing the Regulatory, Supervisory, and Oversight Challenges Raised by Global Stablecoin Arrangements

Dear Secretariat:

The Chamber of Digital Commerce (the "**Chamber**") appreciates the opportunity to comment on the Financial Stability Board (the "**FSB**") consultative document regarding the regulatory, supervisory, and oversight challenges of global stablecoin arrangements (the "**Report**").[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. In the broadest definition of the term, the Chamber counts over a dozen members who have been considered "stablecoin" projects (depending on how that term is defined).

Blockchain technology offers immense possibilities for business, government, and consumers. These include the opportunity for extraordinary economic growth and a safer and more secure Internet. Its ability to improve processes, increase cost-

[1] *Addressing the Regulatory, Supervisory and Oversight Challenges Raised by "Global Stablecoin" Arrangements: Consultative Document*, FIN. STABILITY BOARD (Apr. 14, 2020), https://www.fsb.org/wp-content/uploads/P140420-1.pdf.

efficiency, and promote transparency in numerous industries is reforming the ways in which companies conduct business. For example, it can provide financial services and access to those that currently do not have them – the unbanked and underbanked – through faster and cheaper remittances and digital identity solutions. Its potential is being felt in many industries beyond financial services, such as healthcare, supply chain management, energy, transportation, insurance, voting, and many others. "Stablecoins" are one example of how this technology can bring increasing access to and use of financial services.

I. Executive Summary

Broadly, the marketplace uses the term "stablecoin" to refer to a type of digital asset incorporating a mechanism by which fluctuations in the price of the stablecoin are intended to be managed or minimized. To properly determine the extent of potential risks that may be unique to and associated with so-called stablecoins, we agree with the Report that a common taxonomy as to how stablecoins are defined should be the starting point. We believe that the FSB should, first, determine the appropriate universe of tokens issued using blockchain or distributed ledger technology (for purposes of this paper, collectively, "**DLT**") that may and should appropriately fall within the category of stablecoin, as the term "stablecoin" has been used inaccurately in numerous places.[2]

As noted in the Report, stablecoins can be categorized according to the methodology used to achieve price stability. Stabilization mechanisms include, among other things, linking or backing a stablecoin to a currency, a commodity, other crypto-assets, or a basket of actively managed assets. As a result, and as discussed below, stablecoins may resemble and may be no different than other crypto-assets or other existing financial instruments constituting currencies, commodities, or securities. Within this context, the FSB should first acknowledge those stablecoins that would likely already be subject to existing regulation under the *same activity, same risk, same regulation* principle as applied to existing crypto-assets or to equivalent financial instruments.

Following such an approach, the FSB should identify those unaddressed risks, if any, that may be unique to certain stablecoins. This would allow the FSB to better target the triggers that could give rise to a need for new or different regulation or oversight for one or more subsets of stablecoins based on the unique characteristics of or risks arising from such stablecoins.

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[2] In fact, on July 7, 2020, the Financial Action Task Force ("**FATF**") issued a report on "so called stablecoins," (the "**FATF Report**") noting "that the term 'stablecoin' is not a clear legal or technical category but is primarily a marketing term used by promoters of such coins." *FATF Report to the G20 Finance Ministers and Central Bank Governors on So-called Stablecoins* (June 2020), *http://www.fatf-gafi.org/publications/virtualassets/documents/report-g20-so-called-stablecoins-june-2020.html?hf=10&b=0&s=desc(fatf_releasedate)*. Thus, we do not believe that the term "stablecoin" should indicate any particular type of regulatory treatment and, instead, the structure, issuance, governance, and use of the token, among other factors, should determine whether it be treated and regulated as a currency, commodity, security, or some other financial instrument.

Finally, the FSB should develop guiding principles with objective measures for determining those types of stablecoins that become important enough that they present a systemic risk to the financial system, using objective metrics to determine such risk.

We further believe that considerations as to the regulation of stablecoins should be subject to the following guiding principles:

- Rather than distinguish between stablecoins and "global" stablecoin arrangements, given that digital assets are seldom confined by jurisdictional boundaries, it is preferable to consider the systemic importance of particular stablecoin arrangements and the associated types of users, activities, and underlying infrastructure to determine whether new or additional regulation is warranted. We would recommend the FSB outline a transparent and robust process for when to consider a stablecoin arrangement system. For example, as we discuss below, stablecoins that reach some objectively identifiable transaction, amount, or volume level may warrant a regulatory framework (if not already applicable) that addresses potential systemic risks.

- Technology, in and of itself, should not be regulated, as stated in the Report. Instead, the activity or financial instrument facilitated by the technology may give rise to specific policy considerations. This means any regulatory approach ultimately adopted should not prohibit or limit decentralization where decentralization is part of the underlying structure of the stablecoin mechanism. Moreover, in line with the technological neutrality principle, which is already supported in the Report, any policy or regulatory recommendations should not be overly prescriptive in terms of favoring certain technologies over others.

- Similar activities or financial instruments with comparable risks should lead to the same or comparable regulation, as stated in the Report. Consequently, stablecoins generally would be subject to the same regulatory principles applicable to crypto-assets generally and to equivalent categories of financial instruments, and new or different regulatory treatment should only be considered where necessary to mitigate unique risks outside of the scope of existing regulatory regimes. Also, it should be expected that different stablecoin models, which pose different risks, are subject to appropriate requirements which respond to those specific risks.

- Further, financial instruments that are issued in digital form and that may include price stability elements, but that are otherwise subject to appropriate regulation, should not automatically be folded into the definition of stablecoins.

- Ultimately, prior to authorities creating any new legislation or regulation to address potential gaps in regulatory and/or supervisory regimes, authorities

should first work with the public and industry to evaluate, identify, and provide clarity on any equivocal laws and regulations that may otherwise provide appropriate and proportionate regulatory and/or supervisory structure to stablecoin arrangements. Only after this evaluation should authorities attempt to identify and address gaps through new legislative changes or other bespoke rulemaking.

- Always when imposing regulations, a careful cost-benefit analysis is important. Considerations as to the level of regulation, and on developing guidance and frameworks, should reflect the volume and usage of a stablecoin, should be principles-based, and should be technology agnostic while encouraging innovation.

- In all cases, it is paramount to have comparable regulations globally. We encourage regulators to work on a cross-border basis to harmonize any regulatory treatment of stablecoins and other digital assets.

II. Discussion

As a general matter, the Chamber agrees with the descriptions of the characteristics of stablecoins, their governance and structure, and potential risks. We note, however, that this is a rapidly evolving subset of the digital asset industry. Thus, any frameworks should endeavor to allow such innovation to continue while articulating principles-based oversight to ensure that regimes are flexible to encounter new evolutions in technology.[3]

A. The Term "Stablecoin" Is not Well-defined nor Used Consistently[4]

The FSB denotes stablecoins as a crypto-asset, or more broadly, a digital asset, "that aims to maintain a stable value relative to a specified asset, or a pool or basket of assets," currently typically used for the facilitation of payments or as a store of value.[5] This is similar to how the Chamber has defined the term in our report *Understanding Digital Tokens: Market Overviews and Guidelines for Policymakers and Practitioners*, as follows:

> A digital token intended to be used as a store of value, a means of exchange, or both, and designed to manage and limit price volatility either

[3] *See, e.g.,* Heath P. Tarbert, *Rules for Principles and Principles for Rules: Tools for Crafting Sound Financial Regulation*, HARV. BUS. L. REV. (June 15, 2020), https://www.hblr.org/wp-content/uploads/sites/18/2020/05/Tarbert_Final_Draft_vFINAL-1.pdf.

[4] We note that the concept of stablecoins and stablecoin arrangements may raise other policy and regulatory questions, but those should be addressed through other risk-specific venues, such as the FATF for anti-money laundering risk, the International Organization of Securities Commissions ("**IOSCO**") for securities considerations, and others. These considerations should be outside the scope of this consultation and will be treated as outside the scope of this letter.

[5] Report, *supra* note 1, at 5-6.

by being pegged to or backed by an external asset such as a fiat currency, cryptocurrency, commodity or other asset, or a combination of the foregoing, or by applying additionally, or in lieu thereof, an algorithmic mechanism to address price volatility.[6]

Other commenters have similar definitions and further delineated the category of stablecoins. For example, the Global Financial Markets Association ("**GFMA**") in its *Consultation Response Basel Committee on Banking Supervision - Designing a Prudential Treatment for Crypto-Assets*[7] (the "**GMFA Taxonomy**") categorizes crypto-assets as follows:

A. Cryptocurrencies:

Digital representations of value with no redemption rights against a central party and may function within the community (enabled through peer-to-peer networks) of its users as a medium of exchange, unit of account or store of value, without having legal tender status. They may also act as an incentive mechanism and/or facilitate functions performed on the network they are created in; their value is driven by market supply/demand therein

B. Value-Stable Crypto-Assets including:

1. Central Bank Digital Currencies ("**CBDC**"):

   Digital form of money that represents a liability of a central bank in a single fiat sovereign currency that may or may not pay interest

2. Financial Market Infrastructure ("**FMI**") Tokens:

   Digital form of money representing claims on an FMI and reflecting deposits held at a central or commercial bank in a single fiat currency that may or may not pay interest

3. Tokenized Commercial Bank Money:

   Digital form of money that represents single fiat currency

[6] CHAMBER OF DIGITAL COMMERCE, UNDERSTANDING DIGITAL TOKENS: MARKET OVERVIEWS AND GUIDELINES FOR POLICY MAKERS AND PRACTITIONERS, 22 (2d ed. 2019), https://digitalchamber.org/wp-content/uploads/2020/02/Understanding-Digital-Tokens.pdf.

[7] *Consultation Response Basel Committee on Banking Supervision - Designing a Prudential Treatment for Crypto-Assets*, GFMA (Mar. 2020), https://www.gfma.org/wp-content/uploads/2020/04/gfma-bcbs-prudential-crypto-assets-final-consolidated-version-20200427.pdf.

and is issued by/structured as a claim on a bank, credit institution or other similarly highly regulated depository institution. It may or may not pay interest

4. Stablecoins: Tokens designed to minimize/eliminate price fluctuations relative or in reference to other asset(s) which are not issued by a central bank, FMI, bank, credit institution or highly-regulated depository institution. May represent a claim on the issuing entity, if any, and/or the underlying assets.

    a. Asset Linked Crypto-Asset: Value may be fixed or variable and in reference to individual structures or include a combination of:

        - Fiat currency linked
        - Other real asset linked
        - Crypto-asset linked

    b. Algorithmic Crypto-Asset: Typically, not linked to any underlying assets and each token can be pegged to a price level or a unit maintained through buying, selling or exchange among assets or some other pre-determined mechanism. [8]

Despite definitional differences, in this context, stablecoins should not include: (i) digital representations of fiat currency, such as government or central bank-issued digital currencies, (ii) money digitized by appropriately regulated financial market infrastructures, banks, credit institutions, or depository institutions, and (iii) security,[9] settlement,[10] or utility tokens.[11]

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[8] Note that for purposes of this discussion, we have removed examples of specific digital tokens and omitted internal citations and notes that were included in the GFMA Taxonomy.

[9] The Chamber defines the term "securities token" as "a cryptographic token which represents or symbolizes an instrument that meets the definition of a 'security'." Chamber of Digital Commerce, *supra* note 6, at 15.

[10] The GFMA defines the term "settlement token" as a "representation on DLT of underlying traditional securities/financial instruments issued on a different platform (*e.g.*, a traditional central securities depository, registrar, *etc.*) where such representation itself does not satisfy the definition of a security or financial instrument under local law and is used solely to transfer or record ownership or perform other mid/back-office functions (*e.g.*, collateral transfer, recording of ownership)." GFMA Taxonomy, *supra* note 7, at 12.

[11] The Chamber defines the term "utility token" as "a token that allows a holder to consume or redeem the token for a good or service in a functioning system, or a cryptocurrency token on a blockchain network." Chamber of Digital Commerce, *supra* note 6, at 15.

It may be impossible to define stablecoins in a way that does not inadvertently encompass other similar financial assets that should not be subject to a "stablecoin-specific" regulatory regime. Such a problem can be illustrated by the following example using a money market fund. A money market fund aims to maintain a stable value relative to a pool of assets. Similar to a stablecoin, a money market fund can function as a store of value, however, it is not typically meant to serve as a method of payment as well. Instead, it is seen as a passive investment that is more appropriately regulated as a security and investment vehicle. Therefore, even if the shares of the money market fund were to be sold in digital, tokenized form, we would not expect such digital shares to be treated as stablecoins – if an additional stablecoin framework were to be developed – where the existing, applicable regulatory regime would continue to be appropriate and suitable.[12]

B. What It Means to Be "Global"

The Chamber believes it is imperative that the reference to "stablecoins" in this Report should consider oversight for only those stablecoins that rise to an objectively measurable level of systemic risk.

Consistent with the concept of *same activity, same risk, same regulation*, we believe that different regulation for stablecoins is appropriate only if the stablecoin activity gives rise to unique risks or vulnerabilities that are not otherwise appropriately regulated. In other words, if stablecoins are identical with respect to activity and potential risks to other similar financial assets that are already subject to regulatory oversight, there is no justification for differing regulations.

In our view, rather than distinguish stablecoin arrangements on whether or not they are "global," it is critical to consider the systemic importance of a stablecoin arrangement to determine the level of regulatory oversight needed. As many crypto-assets have proven, distributed ledger and other similar technologies do not have jurisdictional boundaries. Even if a stablecoin were to be designed to be used in only one jurisdiction, it would likely be accessible from and potentially used by holders in other jurisdictions as a method of payment or otherwise. As a result, simply being used or offered "globally" should not trigger systemic risk.

Rather, we suggest that the FSB look to other established methods for identifying those financial services actors that are so systemically important to the financial system that they merit increased oversight consistent with approaches previously used by the FSB. For example, the FSB, in identifying systemically important financial institutions, looks at factors such as size, cross-jurisdictional activity, interconnectedness, substitutability or

[12] On the other hand, a stablecoin backed by an underlying basket of assets that is intended to be used as a cross-border means of payment comparable to a fiat currency, may indeed be more appropriately categorized as something other than a collective investment vehicle or security for regulatory purposes. Existing regulatory regimes that did not contemplate financial instruments that are being used in a way vastly different from the uses contemplated by such regulations may need to be modified.

financial institution infrastructure, and complexity.[13] The Bank for International Settlement ("**BIS**") and the IOSCO use a particularly apt and similar approach for payment systems.[14] Accordingly, factors such as transaction values, levels, or volumes, measured objectively, are a more appropriate determinant as to whether a level of risk exists that could justify new or different regulatory treatment.

We further note that while the Report does not address important issues such as monetary policy, monetary sovereignty, currency substitution, and other macroeconomic concerns, these issues nevertheless also have a significant effect on determining whether certain stablecoin arrangements rise to the level of being systemically important. We encourage governments to work collaboratively on a global approach to such concerns.

C. Additional Regulatory Considerations

We appreciate the detailed review of this new technological development and its impact on financial services and, potentially at some point, financial stability.

Systemic Importance & Risk Considerations

The risks identified in the Report, on their own, do not necessarily justify regulating stablecoins separately or differently from existing regulatory frameworks for other comparable financial assets. A potential determinant for whether stablecoins may or may not pose a material risk to financial stability is analyzing the potential substitution effect that a particular stablecoin arrangement may have on existing means of payment and stores of value in a particular economy. Accordingly, if adoption and substitution give rise to systemically important stablecoin arrangements, potential risks may

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[13] *See FSB Discussion on Global Systemically Important Financial Institutions,* FSB, *https://www.fsb.org/work-of-the-fsb/policy-development/addressing-sifis/global-systemically-important-financial-institutions-g-sifis/ (*last visited July 10, 2020).

[14] *See* BIS Committee on Payment and Settlement Systems and IOSCO Technical Committee*, Principles for Financial Market Infrastructures,* 8 *(*Apr. 2001), https://www.bis.org/cpmi/publ/d101a.pdf ("A payment system is systemically important if it has the potential to trigger or transmit systemic disruptions; this includes, among other things, systems that are the sole payment system in a country or the principal system in terms of the aggregate value of payments; systems that mainly handle time-critical, high-value payments; and systems that settle payments used to effect settlement in other systemically important financial market infrastructures."). *See also* BIS Committee on Payment and Settlement Systems, *Core Principles for Systemically Important Payment Systems,* 5 (Jan. 2001), https://www.bis.org/cpmi/publ/d43.pdf ("A payment system is systemically important where, if the system were insufficiently protected against risk, disruption within it could trigger or transmit further disruptions amongst participants or systemic disruptions in the financial area more widely. The initial disruption might, for example, be caused by the insolvency of a participant. Systemic importance is determined mainly by the size or nature of the individual payments or their aggregate value. Systems handling specifically large-value payments would normally be considered systemically important. A systemically important system does not necessarily handle only high-value payments; the term can include a system which handles payments of various values, but which has the capacity to trigger or transmit systemic disruption by virtue of certain segments of its traffic. In practice the boundary between payment systems which are systemically important and those which are not is not always clear cut . . . .").

materialize and justify a commensurate regulatory framework, either through leveraging existing frameworks or expanding existing frameworks where gaps exist, *if* such stablecoin arrangement would otherwise be beyond the scope of appropriate regulation. We believe adopting an objective approach as discussed above should be used with respect to such considerations as to systemic importance.

In connection with the foregoing, we also note that stablecoins used for wholesale purposes versus retail may pose different risks, have potentially differentiating arrangements, and address different use cases and, therefore, should be evaluated differently. Similarly, to the extent stablecoins are different and pose different risks than other types of crypto-assets, the regulatory approach may appropriately need to differ.

Stabilization Mechanisms

We do not believe that the existence of a stabilization mechanism alone justifies a different regulatory treatment for stablecoins as compared to other crypto-assets (or comparable financial assets). However, we acknowledge that particular stablecoin arrangements could give rise to specific, unique regulatory concerns different from those that apply to the universe of crypto-assets generally or to already-regulated financial products.

While we believe that the Report adequately identifies existing stabilization mechanisms, we expect that, over time, additional stabilization mechanisms may arise. However, unless future stabilization mechanisms give rise to unique risks that are otherwise beyond the scope of existing regulatory regimes and considerations, we do not believe that it is necessary to exhaustively identify every type of stabilization mechanism that may be used in order to develop appropriate regulatory principles.

Decentralized Structures

We appreciate the concerns noted by the FSB arising from crypto-asset decentralized structures. However, we do not believe it would be appropriate, beneficial, or practical to prohibit decentralized stablecoin arrangements. First, decentralization of any system can reduce the level of dependency on, and therefore risk of abuse from, any single party in an end-to-end transaction that is processed by that system. The introduction of DLT to such a system may also reduce other risks outlined in Section 2 of the Report, such as financial exposures giving rise to market, liquidity, and credit risks. Second, it is possible to have a fully decentralized software that still requires appropriately regulated participants to be designated to assume certain legal oversight and responsibility in relation to their specific roles in the stablecoin arrangement.

For example, oversight could be implemented at the asset level (*e.g.*, within the smart contract) that is functioning within a decentralized network and potentially still align with regulatory requirements, especially if the creator of the asset is a centralized body that represents a single point of failure for the stabilization of the asset. Additionally, regulatory regimes would benefit from the transparency inherent in a decentralized

system, enabling accurate identification of the appropriate participants with governance oversight responsibilities, such as stablecoin on-ramps and off-ramps. Therefore, even a fully decentralized system can identify parties that must assume appropriate legal responsibilities so long as those responsibilities are appropriately and carefully calibrated to roles of such parties within the ecosystem, utilizing the *same activity, same risk, same regulation* principle.[15]

Vulnerabilities

We note that a number of the vulnerabilities described in the Report relate to all crypto-assets or other financial assets and are not unique to stablecoins. For example, the vulnerability identified in the Report that relates to the applications and components on which users rely to store private keys and exchange coins is shared among all crypto-assets and is equally not unique to stablecoins. Accordingly, where appropriate solutions with respect to such vulnerabilities already exist generally, such as those applicable to exchanges or custodians, we do not believe it would be appropriate to create a new approach solely for the universe of stablecoins.

We believe that Annex 2 of the Report identifies a number of authorities and tools for addressing vulnerabilities that are not appropriate for other than the subset of stablecoins deemed to be systemically important utilizing the criteria we have suggested above. While we believe stablecoins should fit within a regulatory framework, many of the suggested authorities and tools are derived from the universe of large, highly regulated global financial institutions and would neither be necessary or implementable for the vast majority of stablecoin arrangements.

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We appreciate the opportunity to provide these comments to the FSB through this consultation and would be pleased to serve as a resource as it continues its review of this innovative new technology.

Very truly yours,

Perianne Boring
Founder and President

[15] This approach is supported by the FATF Report which found that central developers and governance bodies "will have AML/CFT obligations under the revised FATF standards" in certain circumstances and, "even in a decentralised structure, there could also be a range of entities with AML/CFT obligations, including customer-facing exchanges and transfer services and custodial wallet providers." FATF Report, *supra* note 2, at paras. 8-10.