

April 7, 2023

BY E-MAIL

James P. Sheesley
Assistant Executive Secretary
Attention: Comments—RIN 3064-AF26
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Re: Federal Deposit Insurance Corporation; Request for Comment (RIN 3064-AF26)

Dear Mr. Sheesley,

Andreessen Horowitz (“a16z”) welcomes the opportunity to reply to the Request for Comment, entitled “FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo” (the “Request”), issued by the Federal Deposit Insurance Corporation (the “FDIC”) on December 20, 2022.¹ We commend the FDIC for initiating a transparent process to amend and update part 328 of its regulations, and we appreciate the chance to provide input on how to integrate blockchain technology into the FDIC’s regulatory framework.

At a16z, we believe that blockchain technology is a momentous achievement in the development of the Internet. Since it was first developed in 2008, the blockchain ecosystem has grown rapidly, and our firm has been at the forefront of advancing the industry through investments in web3 companies relating to identity management, enterprise solutions, content creation, environmental protection, data storage, and many other sectors. At the same time, a central aspect of our role as an industry leader is working closely with regulators and lawmakers to raise awareness of the unique attributes of decentralized systems and to develop clear and robust regulatory frameworks that are appropriately calibrated to those attributes. Consistent with this approach, we hope to provide helpful feedback to the FDIC’s Request.

¹ Fed. Deposit Ins. Corp., *FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo*, 87 FR 78017 (Dec. 21, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-12-21/pdf/2022-27349.pdf>.

Our comment letter is divided into three parts: **First**, we explain our support for the FDIC’s efforts to amend and update part 328 of its regulations and how the agency’s proposal will benefit the blockchain ecosystem broadly. **Second**, we address question 14 of the Request regarding the definition of “crypto-asset,” and we suggest possible modifications to the definition. **Lastly**, we discuss the importance of positive engagement between the blockchain ecosystem and the FDIC, and our belief that the banking regulators will play an increasingly important role in the development of blockchain technology.

A. About a16z

Andreessen Horowitz, also referred to as a16z, is a venture capital firm that backs entrepreneurs building the future through technology. We invest in seed, venture, and late-stage technology companies, focused on bio/healthcare, consumer, crypto, enterprise, fintech, and games. The firm currently has \$35 billion in committed capital under management across multiple funds.

A16z aims to connect entrepreneurs, investors, executives, engineers, academics, industry experts, and others in the technology ecosystem. We have built a network of experts, including technical and executive talent, top media and marketing resources, Fortune 500/Global 2000 companies, as well as other technology decision makers, influencers, and key opinion leaders. A16z uses this network to help our portfolio companies grow their businesses.

At a16z, we believe we need an Internet that can help the United States retain leadership in a world of increasing competition, unlock opportunity for the millions on the margins of the innovation economy, and enable people to take control of their digital information. The solution is web3 — the third generation of the Internet — a group of technologies that encompasses digital assets, decentralized applications and finance, blockchains, tokens, and decentralized autonomous organizations. Together, these tools enable new forms of human collaboration. They can break through the stalemates that define too many aspects of public life and help communities make better collective decisions about critical issues, such as how networks will evolve and how economic benefits will be distributed. We are radically optimistic about the potential of web3 to restore trust in institutions and expand access to opportunity.

I. Including “Crypto-Assets” in Part 328 of the FDIC Regulations Will Strengthen Consumer Protection and Confidence

Robust regulatory frameworks for advertising are essential for strengthening consumer protection and confidence in markets. This is no less true in the crypto markets, and two recent developments suggest that the market’s need for advertising regulation relating to federal deposit insurance is growing. First, there appears to be an uptick of crypto entities using false and misleading communications with respect to federal deposit insurance to take advantage of consumers.² And second, the significant growth of retail in the crypto markets has potentially increased the number of unsophisticated consumers who are susceptible to scams and fraud.³ For these reasons, we wholeheartedly support the FDIC’s efforts to decrease the risk of false advertising relating to federal deposit insurance in the crypto markets and more broadly.

We agree that the FDIC’s proposal — to list “crypto-assets” as a specific category of “Non-Deposit Product” and “Uninsured Financial Product” — is an effective way to decrease the risk of false advertising in regard to federal deposit insurance claims. For one, accurate information regarding whether an asset is federally insured could be a material consideration for prospective consumers in the digital asset markets, especially in light of recent market turmoil, so robust disclosure requirements relating to this issue are appropriate. In addition, digital assets are a permanent new asset class, with growing demand from consumers and investors, and regulations should evolve to recognize them. Amending part 328 of the FDIC regulations is a modest, but important, step for the banking regulators to continue integrating digital assets into their frameworks.

We also support the FDIC’s proposed amendments because false and misleading communications undermine trust in all financial transactions — a state of affairs that both the

² Fed. Deposit Ins. Corp., *FDIC Demands Four Entities Cease Making False or Misleading Representations about Deposit Insurance* (Feb. 15, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23009.html>; Fed. Deposit Ins. Corp., *FDIC and Federal Reserve Issue Letter Demanding Voyager Digital Cease and Desist from Making False or Misleading Representations of Deposit Insurance Status* (July 28, 2022), <https://www.fdic.gov/news/press-releases/2022/pr22056.html>; Fed. Deposit Ins. Corp., *FDIC Issues Cease and Desist Letters to Five Companies For Making Crypto-Related False or Misleading Representations about Deposit Insurance* (Aug. 19, 2022), <https://www.fdic.gov/news/press-releases/2022/pr22060.html>.

³ eToro, *Retail Investor Beat* (Jan. 2023), <https://www.etoro.com/wp-content/uploads/2023/01/ETORO-RIB-JANUARY.pdf>.

FDIC and crypto were designed to protect against.⁴ More specifically, the FDIC and crypto were both conceived as solutions to crises of confidence in traditional banking, the former in the Great Depression and latter in the Great Recession. While important aspects of the FDIC and crypto differ — i.e., the public sector chartered the FDIC to restore confidence in a banking system suffering from bank runs, while the private sector developed crypto as a secure means of transacting and storing value outside of the banking system — they shared the same fundamental purpose: enabling trust. Crypto market participants are, therefore, particularly sympathetic to regulatory action aimed at strengthening trust, and we applaud the FDIC for its continued efforts in that respect.

II. Defining “Crypto-Assets”

While we support the FDIC’s efforts to amend part 328 of its regulations, we suggest that the FDIC consider modifying its definition of “crypto-asset,” which it currently defines as “any digital asset implemented using cryptographic techniques.”⁵ For the reasons discussed below, we believe that this proposed definition could create significant ambiguities for market participants, and that instead, the FDIC should consider adopting a definition of “crypto-asset” that resembles recent legislative proposals from Congress.

Our main concern with the FDIC’s proposed definition is that the terms “cryptographic techniques,” “implemented,” and “digital asset” are overinclusive and vague without further description. For example, the term “cryptographic techniques” may not solely refer to distributed ledgers, blockchains, or other technologies associated with the crypto ecosystem; it could also refer to tools like end-to-end encryption, a “cryptographic technique” that secures communications applications, like iMessage and Signal. Because the broader context of the FDIC’s proposed amendment does not indicate that such techniques are meant to be captured, the scope of “cryptographic techniques” requires clarification. In addition, the word

⁴ See Anchorage Digital, Response to the FDIC’s Request for Information and Comment on Digital Assets, RIN 3064–ZA25 (July 16, 2021), <https://www.fdic.gov/resources/regulations/federal-register-publications/2021/2021-rfi-digital-assets-3064-za25-c-038.pdf>. a16z crypto is an investor in Anchorage Digital. See Josh Constine, *Anchorage emerges with \$17M from a16z for ‘omnimetric’ crypto security*, TechCrunch (Jan. 23, 2019), <https://techcrunch.com/2019/01/23/anchorage-security/>. A list of investments made by a16z managed funds is available at <https://a16z.com/investments/>.

⁵ See *supra* note 1.

“implemented” is not the best fit for this definition, as digital assets are more precisely “stored,” “secured,” or “recorded” on blockchains. Lastly, the FDIC’s proposed definition of a “crypto-asset” as a “digital asset” is circular if it does not include more specific details.

A more precise definition of “crypto-asset” will solve these issues. One proposed option is to define “crypto-asset” as “a natively electronic asset that — (i) confers economic, proprietary, or access rights or powers; and (ii) is recorded using cryptographically secured distributed ledger technology, or any similar analogue...” The main advantage to this definition is that it is restricted to “distributed ledger technology, or any similar analogue.” This limitation recognizes two important points, i.e., distributed ledgers, in general, should be the main focus of blockchain-related crypto regulation, while at the same time, there could be certain instances in which digital assets exist on “similar,” but distinct, cryptographic tools. Because the latter point is narrow and restricted to cryptographic tools that are “similar” to distributed ledgers, it does not present the same ambiguities as the much broader “cryptographic techniques” in the FDIC’s proposal. Moreover, this definition describes crypto-assets as “recorded” on blockchains, which is more accurate than the FDIC’s proposal of “implemented.” And it defines “crypto-asset” as “a natively electronic asset that...confers economic, proprietary, or access rights or powers,” which is clear, succinct, and non-circular. We believe that the FDIC’s amendment to part 328 would be much more practicable with these terms.

One more benefit of adopting this definition, aside from the terms that it uses, is that doing so would promote a consistent approach to the definition of “crypto-asset” or “digital asset” across legislation and regulation. As a general matter, we have observed that legislators and regulators have had difficulties with defining these terms. While we recognize that the focus of different legislation and regulation could, at times, necessitate diverging and more specific definitions, having a consistent approach as often as possible is preferable, and the broader context of part 328 of the FDIC’s regulations does not indicate a need for a bespoke definition.

III. Banking Regulators and Market Participants in the Blockchain Ecosystem Must Maintain an Ongoing Dialogue

We strongly agree with the policies outlined in President Biden’s Executive Order on Digital Assets calling for the United States to maintain “technological leadership” in the digital

asset space.⁶ As mentioned above, a robust regulatory framework is essential to that goal, and we believe that the FDIC and its fellow banking regulators will be increasingly relevant to its development. That said, while we commend the FDIC staff's initiative in amending part 328, we urge the banking regulators to be even more proactive, and we offer the following considerations to encourage prioritization of a regulatory framework.

As a threshold matter, an uncertain regulatory environment makes it difficult for well-intentioned crypto companies to receive essential banking resources, i.e., custodial products and services and other technology solutions, from the traditional financial sector.⁷ Importantly, this lack of access to traditional banking results in perverse incentives for the blockchain ecosystem, as market participants that cannot obtain traditional banking resources sometimes turn to non-traditional, less compliant, and often offshore entities for the same resources. This is the exact opposite state of affairs that regulations should incentivize, especially considering that keeping crypto firms within the U.S.'s highly regulated banking system would subject them to the banks' deep experience in money laundering, consumer protection, and other laws. For that reason, a more effective way to increase compliance in the crypto industry would be to encourage more access to the traditional financial system, but in a safe and regulated manner.

The opposite regulatory approach — i.e., endorsing crypto's exclusion from traditional banking — would result in severe negative consequences for the U.S., and we are deeply discouraged by recent statements from the banking regulators adopting that position. Arguably the most important negative consequence relates to our country's national security.⁸ Many of our adversaries, including Russia and China, are developing government-backed blockchain protocols that could provide the associated foreign government with access to personally identifiable information, sensitive financial data, and data on shipping and cargo flows (for enterprise blockchains and, potentially, payment blockchains). In addition, the development of other national and regional central bank digital currency projects could threaten American

⁶ Exec. Order No. 14067 of Mar. 9, 2022, 87 Fed. Reg. 14143 (Mar. 14, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>.

⁷ Daniel Kuhn, *How Policy Shaped Crypto's Banking Prospects*, CoinDesk (Jan. 24, 2023), <https://www.coindesk.com/consensus-magazine/2023/01/24/how-policy-shaped-cryptos-banking-prospects/>.

⁸ Faryar Shirzad, *National Security in the Age of Digital Innovation: The Critical Role of Crypto*, Coinbase (Jan. 20, 2023), <https://www.coinbase.com/blog/national-security-in-the-age-of-digital-innovation-the-critical-role-of-crypto>.

leadership in the economic sector.⁹ In order to retain its technological edge in the world, the United States must actively engage with the crypto industry, not push it offshore.

There are also important negative consequences for American democracy and government accountability that would arise from regulators' exclusion of crypto from traditional banking. Specifically, opaque regulatory actions that affect broad swaths of legal economic activity, like de-risking industries from the banking system, operate outside of the bounds of the formal rulemaking and administrative process and undermine faith in due process. While we appreciate the government's interest in protecting market participants from risks in the crypto markets, the proper way forward is a transparent regime with neutral requirements that ensure the safety, soundness, and security of all market participants, regardless of whether such entities are engaged in crypto activities or not.

In sum, we hope that the FDIC and its fellow banking regulators will prioritize development of a blockchain regulatory framework, and we welcome a continued dialogue with the agencies.

⁹ Georgia Quinn, *How Washington can protect U.S. dollar hegemony with stablecoins*, American Banker (Aug. 8, 2022), <https://www.americanbanker.com/opinion/how-washington-can-protect-u-s-dollar-hegemony-with-stablecoins>.

IV. Conclusion

It is critically important that regulators and policy leaders thoughtfully regulate blockchain technology, as it is rapidly becoming a key pillar of the financial system, and we greatly appreciate the opportunity to provide comments on these important matters. We look forward to continued engagement on these issues.

Respectfully submitted,

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