Square Financial Services   Square

Via Electronic Mail

James P. Sheesley
Assistant Executive Secretary
Attention: Comments-RIN 3064-ZA25
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429

Re: Request for Information and Comment on Digital Assets (RIN 3064-ZA25)

To Whom It May Concern:

Square, Inc. and Square Financial Services, Inc. ("SFS" and, together with Square, Inc., "Square") appreciate the opportunity to respond to the request for information and comment (the "RFI") of the Federal Deposit Insurance Corporation (the "FDIC") regarding current and potential digital asset use cases involving insured depository institutions and their affiliates.

Square is a technology company founded in 2009 to expand economic access for individuals and small businesses underserved by the existing financial system. Since that time, Square has developed products to help millions of entrepreneurs and individuals run their small businesses, manage their finances and grow in the economy. In 2021, Square opened SFS, an industrial loan corporation chartered by the Utah Department of Financial Institutions with deposits insured by the FDIC. SFS originates commercial loans to merchants that process card transactions through Square's Seller ecosystem. Since June 2021, SFS has been the primary provider of financing for Square's U.S. sellers. The launch of SFS deepens Square's ability to expand access to loans and banking tools to underserved and underbanked small businesses.

Square's products and services are designed to ensure easy and equitable access to the financial system. We believe that digital assets, including bitcoin, can help lower the barriers, costs and complexity of access to financial markets, create a fairer financial system and provide significant benefits to small business customers and consumers. In line with this belief, we integrated bitcoin into our Cash App ecosystem, where we provide customers the ability to buy, sell and transfer bitcoin. We also launched Square Crypto, an initiative led by an independent team dedicated to contributing to the bitcoin community and improving the open-source ecosystem. Square is a founding member of the Cryptocurrency Open Patent Alliance, a non-profit that encourages the adoption and advancement of cryptocurrency technologies and the removal of patents as threats to growth and innovation. Digital assets have a growing presence in the global financial system, and as their adoption increases, Square intends to learn and participate in a disciplined way in developing use cases for depository institutions in collaboration with market participants and U.S. banking and financial regulators.[1]

In this letter, we address, first, the promise of digital assets and their benefits; second, the potential roles of depository institutions in enabling customers to benefit from digital assets; third, the importance of applying regulation to digital assets in a manner that mitigates risk while enabling innovation to continue to flourish and treats digital assets no less favorably than non-digital assets used for similar activities; and fourth, the importance of interagency coordination and harmonization, in collaboration with the private sector, in designing consistent, effective regulation with respect to digital assets.

I. The Promise of Digital Assets

We believe digital assets, including cryptocurrencies, are among the most important technological developments of our lifetimes. Bitcoin, like other digital assets, has the potential to facilitate economic empowerment and inclusion, support the U.S. financial system and the mission of the FDIC and catalyze the strength and competitiveness of the U.S. economy through gross domestic product growth and job creation. Square encourages legislative or regulatory action for digital assets when necessary, but any such action should foster financial innovation while appropriately mitigating relevant risks.

A. Bitcoin can improve economic empowerment and inclusion.

In the United States, according to data from 2019, approximately 5.4%, or 7.1 million, American households do not have a checking, savings or money market account.[2] In the year immediately prior, an additional 16% of American adults had turned to an alternative, often more expensive—and at times exploitative—financial service product within the prior year, such as a money order, check cashing service, pawn shop loan, auto title loan, payday loan, paycheck advance or tax refund advance.[3] Consumers often use these alternative services in situations where they need funds more quickly than established funding channels can provide. In our current financial system, where real-time settlement, access to earned wages and instant money transfer are not the default, predatory products can thrive. The quick, cheap, easy and accessible nature of transferring value through bitcoin can reduce consumer dependency on predatory products and meaningfully increase access of these populations to low-cost, high-quality financial services.

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1 We note that Square does not currently engage in any activities in respect of bitcoin or any digital assets through SFS in accordance with SFS's business plan.

2 *See* "Report on the Economic Well-Being of U.S. Households in 2018 – May 2019," *Board of Governors of the Federal Reserve System* (May 2019), available at https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm; *see also* "How America Banks: Household Use of Banking and Financial Services," *FDIC*, at 1 (Oct. 19, 2020), available at https://www.fdic.gov/analysis/household-survey/index.html.

3 *See* "Report on the Economic Well-Being of U.S. Households," *supra* note 2; *see also* "How America Banks," *supra* note 2.

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Bitcoin, invented in 2008 as the first cryptocurrency, created an entirely new way to transact and store value. Federal Reserve Board Governor Lael Brainard recognized bitcoin and other cryptocurrencies as having the potential to "reduce or eliminate operational and financial inefficiencies, or other frictions, in payments, clearing and settlement."[4] The efficiencies generated through the use of bitcoin have the potential to radically alter payment systems in the United States and globally, including by extending access to the financial system to underserved and underbanked populations. Opening an account and making payments becomes considerably easier when accounts can be accessed remotely or via third-party agents and when value transfers, historically taking several days, can be completed in a few seconds. Speedier, more cost-effective payments are especially important to individuals and businesses who currently experience high levels of friction due to the complexity of payment systems that are too costly and slow.

The benefits of bitcoin align with FDIC initiatives, including FDiTech where the FDIC has demonstrated its commitment to the use of technology to drive economic inclusion and the Mission-Driven Bank Fund, which will provide support to "mission-driven banks" that serve minority, low- and moderate-income and rural communities at higher rates than mainstream banks.[5] These initiatives will help underserved communities by improving access to financial services, such as mortgages, small business development, community development and affordable housing. Digital assets such as bitcoin have the potential to further expand access to safe, quick and inexpensive payments nationwide and globally.

B. Bitcoin can support the U.S. financial system and the mission of the FDIC.

Digital assets such as bitcoin and other cryptocurrencies have the potential to catalyze and promote the growth, stability and integrity of the U.S. financial system by providing transparency in financial transactions, creating immutable financial records and reducing transactional costs. These benefits fit squarely with the FDIC's mission, which includes public confidence in the U.S. financial system, safety and soundness, consumer and investor protection and financial empowerment and engagement. Further, they align with the objectives, articulated by FDIC Chair Jelena McWilliams, of "encouraging innovation that meets consumer demand, promotes community banking, reduces compliance burdens and modernizes [FDIC] supervision."[6]

1. Transparency in the financial system

Digital assets such as bitcoin operate on blockchain ledger technology where all transactions are traceable and, in many cases (including bitcoin), public, which can help prevent and detect financial crime and

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4 Governor Lael Brainard, "Private Money and Central Bank Money as Payments Go Digital: An Update on CBDCs," *Board of Governors of the Federal Reserve System* (May 24, 2021), available at https://www.federalreserve.gov/newsevents/speech/brainard20210524a.htm.

5 *See* "FDiTech," *FDIC,* available at https://www.fdic.gov/fditech/index.html; "The Mission-Driven Bank Fund," *FDIC*, available at https://www.fdic.gov/missiondrivenfund/.

6 Chairman Jelena McWilliams, "Keynote Remarks by FDIC Chairman Jelena McWilliams on 'The Future of Banking' at The Federal Reserve Bank of St. Louis; St. Louis, Missouri," *FDIC* (Oct. 1, 2019), available at https://www.fdic.gov/news/speeches/2019/spoct0119.html.

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fraud. Former Acting Director, Deputy Director and Director of Intelligence at the Central Intelligence Agency Michael Morell recently noted that "[t]he blockchain ledger on which bitcoin transactions are recorded is an underutilized forensic tool that can be used more widely by law enforcement and the intelligence community to identify and disrupt illicit activities. Put simply, blockchain analysis is a highly effective crime-fighting and intelligence-gathering tool."[7] Bitcoin's properties may aid in the prevention of money laundering and illicit finance and the capture of crime proceeds and illicit financial flows as bitcoin allows law enforcement and institutions to utilize—as Square does today—open-source traceability and accountability for each transaction to identify signals of unlawful activity that would not be detectable for other types of transactions.[8]

2. Immutable and transparent record of transactions; Protection of personal data

Further, in addition to transparency, bitcoin's feature of operating on blockchain ledger technology also produces an immutable record of transactions. This capability of a complete and indisputable digital record enhances consumer confidence, trust and integrity by allowing for the indisputable accounting of transactions across the financial system. Recent events, such as the tracing of ransomware payments made following the Colonial Pipeline cyberattack, have demonstrated the usefulness of these properties of digital assets. As a result, payments involving digital assets may be "more transparent than most other forms of value transfer."[9] Additionally, use of blockchain technology has the added benefit that it does not require consumers to provide personally identifiable information in order to enter into transactions, which, in turn, limits the opportunity for threats against consumer personal data.

3. Cost-effective payments

Lastly, digital assets such as bitcoin provide benefits to consumers and institutions in lower costs and higher speeds of payments. Digital payment technologies generally allow consumers to "use efficient, faster and more convenient payment instruments."[10] Bitcoin and other cryptocurrencies will, in particular, enhance the ability of business and consumers, including the world's unbanked and underbanked populations, to use quick, efficient and cost-effective payment systems, which will further increase access to the financial system by limiting the need for financial intermediaries. Obstacles to accessing financial systems include the current costs of opening bank accounts as well as the speed of payments, which affects usability. Bitcoin and other digital assets address these challenges by making it

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7 Michael Morell, Josh Kirshner & Thomas Schoenberger, "An Analysis of Bitcoin's Use in Illicit Finance," *Crypto Council for Innovation* (Apr. 6, 2021), available at https://cryptoforinnovation.org/resources/Analysis_of_bitcoin_in_Illicit_Finance.pdf.

8 *See* Katie Benner, Erin Griffith & Nicole Perlroth, "Pipeline Investigation Upends Idea that Bitcoin Is Untraceable," *New York Times* (June 9, 2021), available at https://www.nytimes.com/2021/06/09/technology/bitcoin-untraceable-pipeline-ransomware.html.

9 *See* "Pipeline Investigation," *supra* note 8.

10 Codruta Boar & Robert Szemere, "Payments Go (Even More) Digital," *Bank for International Settlements*, available at https://www.bis.org/statistics/payment_stats/commentary2011.htm.

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easier to open and use an account and by allowing for "near instantaneous" value transfer.[11] Further, because digital asset payments can be processed without going through national payment systems, the cost of transferring funds via digital assets will be lower for financial institutions.[12]

C. Bitcoin and other digital assets can catalyze the overall U.S. economy.

Bitcoin and other digital assets lower the barrier to entry into the U.S. financial system and have the potential to facilitate a stronger U.S. economy that benefits all Americans, including those who may have previously been left behind and suffered as a result of growing income disparity and other inequalities. Square believes that positive innovation of this sort should be encouraged here in the United States.

As of July 2021, bitcoin's market capitalization was approximately U.S.$600 billion.[13] The market has grown exponentially since bitcoin's inception in 2009. The value of the total cryptocurrency market surpassed U.S.$2 trillion for the first time this year and bitcoin was a significant driver of this growth.

Other countries are fostering the use of bitcoin and the development of other digital assets, with at least one adopting bitcoin as legal tender.[14] As some commentators (including a former Assistant Secretary of Defense) have urged, it is vital that the United States adapt to the coming era of digital currencies and "act now to protect its economic advantage," or otherwise risk being left behind in the face of new developments.[15] The United States has an opportunity to lead in the future of digital assets. While acknowledging the need for regulation to mitigate risk, unnecessary or unduly burdensome regulation will stifle innovation and allow non-U.S.-based products to gain an advantage in a new and emerging financial space. Regulation of digital assets that fosters further innovation without impeding their productive use and adoption is essential to the global competitiveness of the United States.

II. The Role of Depository Institutions

As the use of and demand for bitcoin and other digital assets by retail and institutional market participants rise, we expect depository institutions will play a critical role in providing consumers and institutions with safe and secure access to digital asset products and services. We believe this role of depository

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11 "Blockchain and Financial Inclusion," *Chamber of Digital Commerce: White Paper* (Mar. 2017), available at https://digitalchamber.org/policy/chamber-reports/.

12 *Id.*

13 Raynor de Best, "Market Capitalization of Bitcoin from April 2013 to July 12, 2021," *Statista* (July 13, 2021), available at https://www.statista.com/statistics/377382/bitcoin-market-capitalization/.

14 *See* Nelson Renteria, Tom Wilson & Karin Strohecker, "In a World First, El Salvador Makes Bitcoin Legal Tender," *Reuters* (June 9, 2021), available at https://www.reuters.com/world/americas/el-salvador-approves-first-law-bitcoin-legal-tender-2021-06-09/.

15 *See* Aditi Kumar & Eric Rosenbach, "Could China's Digital Currency Unseat the Dollar?" *Foreign Affairs* (May 2020), available at https://www.foreignaffairs.com/articles/china/2020-05-20/could-chinas-digital-currency-unseat-dollar.

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institutions will be driven by continued strong and increasing customer demand, by further innovation and by the foundational role that depository institutions perform in the U.S. financial system.

The use cases for depository institutions with respect to bitcoin and other digital assets may include those described in the FDIC's RFI. Depository institutions may, among other things, provide technology solutions, asset-based, liability-based and custodial products and services involving digital assets. Essentially, we believe that depository institutions may, to serve customer needs, engage in activities with respect to bitcoin and other digital assets that are similar to activities they currently perform (or may perform in the future) with respect to other assets such as making payments, lending, maintaining value and facilitating customer-driven investment activities. Depository institutions may also engage in activities that mirror activities performed with respect to other assets but that serve purposes unique to digital assets. For example, just as depository institutions maintain ledgers today, they may seek to operate nodes for networks that maintain distributed ledgers. To this end, Square is supportive of reviewing and updating current regulatory schemes to ensure that depository institutions have a clear regulatory path for offering digital asset products and services to satisfy the commercial needs and customer demands of market participants.[16]

Square has experienced firsthand the increasing customer demand to enter the digital economy and specifically for bitcoin services. Customer use of bitcoin-related services is strong and growing: In 2020, three million people transacted in bitcoin through Cash App. These numbers surged earlier this year, with one million new users of bitcoin through Cash App in the month of January 2021 alone.

Square has experience in developing bitcoin-related products for customers through Cash App and has sought to address customer needs by providing custodial services related to bitcoin held through Cash App. Prior to commencing these services, Square invested heavily to build a cryptocurrency infrastructure that helps protect customer funds. We developed and utilize a robust approach to bitcoin cold storage (*i.e.*, completely offline) and also maintain insurance policies related to bitcoin held by Square. Further, to the extent it becomes a permissible activity for SFS, Square may develop bitcoin-related services for SFS's customers with the same level of care and diligence exercised in its offerings through Cash App. Square continues to work to identify and prioritize future digital asset-related products and services that will provide the most benefits for our customers.

III. The Importance of Technological Neutrality Between Digital and Non-Digital Assets

Digital assets, including bitcoin and the underlying blockchain technology, will only increase in importance for individuals, businesses, financial institutions and the U.S. financial system. Financial regulator acceptance of bitcoin and other digital assets is critical to maintaining stability and public confidence in what will become an increasingly large part of the U.S. financial system. However, regulation of the emerging digital asset ecosystem, including how depository institutions may engage in

16 *See, e.g.*, Statement Of Michael J. Hsu, Acting Comptroller Of The Currency, before the U.S. House of Representatives Committee on Financial Services, at 13 (May 19, 2021), available at https://www.occ.gov/news-issuances/congressional-testimony/2021/ct-occ-2021-56-written.pdf.

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related activities, must, at a minimum, not stifle development and instead enable innovation to continue to flourish.

As the FDIC considers regulation and supervision of depository institutions related to digital asset activities, a core guiding principle should be maintaining a technology-neutral approach between digital assets and non-digital assets. That is, digital assets should not be disfavored because they rely on different technology. Instead, regulation and supervision of depository institutions that engage in activities involving digital assets should be determined based on the nature of those *activities*, not the *technology* used by institutions or the underlying digital assets.

Recent interpretations published by the Office of the Comptroller of the Currency ("OCC") have largely adopted this principle of technology neutrality. In July 2020, the OCC clarified that national banks may provide custody services for cryptocurrencies on behalf of customers, including by holding the unique cryptographic keys associated with cryptocurrency.[17] The OCC recognized that banks have traditionally provided safekeeping and custody services for a wide variety of customer assets, including both physical objects and electronic assets, and that banks could provide the same services with respect to cryptocurrencies. That is, although the underlying technology used by cryptocurrencies is different—custody in this context involves holding and securing "private keys" for the digital asset, which provide the holder the right to transfer the asset and the loss of which causes the holder to forever lose access to their assets—the OCC recognized that the activity is one banks have long engaged in. As the OCC stated in its interpretive letter: "Holding the cryptographic access key to a unit of cryptocurrency is an electronic corollary of . . . traditional safekeeping activities. . . . Because national banks are authorized to perform safekeeping and custody services for physical assets, national banks are likewise permitted to provide those same services via electronic means (*i.e.*, custody of cryptocurrency)."[18]

The OCC applied the same approach in two subsequent interpretive letters published in October 2020 and January 2021. In the former, the OCC described that national banks may hold deposits that serve as reserves for stablecoins that are backed on a one-to-one basis by a single fiat currency.[19] The OCC reasoned that receiving deposits is a core banking activity and that national banks may therefore provide such permissible services "to any lawful business they choose, including cryptocurrency businesses, so long as they effectively manage the risks and comply with applicable law."[20] In the latter, the OCC agreed that national banks may use stablecoins to engage in and facilitate payment activities and may serve as nodes on independent node verification networks ("INVNs") for stablecoins.[21] Serving as a node on an INVN enables a bank to validate transactions, store transaction history and broadcast data to other nodes in connection with recording cryptocurrency (in this case, stablecoin) transactions on a distributed ledger. The OCC noted that "[b]anks may use new technologies that afford a new means of carrying out

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17 Interpretive Letter #1170, *OCC* (July 2020).

18 *Id.*

19 Interpretive Letter #1172, *OCC* (Oct. 2020).

20 *Id.*

21 Interpretive Letter #1174, *OCC* (Jan. 2021).

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permissible banking functions, such as providing payments services and facilitating payments," and "[u]sing INVNs and related stablecoins to facilitate payments is merely a new means of performing that function."

These recent OCC interpretive letters recognize the principle described above—that depository institution regulation and supervision in the context of digital assets should be focused on the activity performed, not the technology used. As the FDIC considers actions with respect to digital assets, we believe any action should be consistent with this technology-neutrality principle in order to foster innovation in this important area. Square appreciates the importance, for any institution that seeks to engage in activities related to bitcoin and other digital assets, of appropriately mitigating relevant risks and believes that regulation and supervision should enable a balance between fostering innovation and reasonable risk mitigation, a trade-off that arises with any new technology.

IV. The Need for Interagency Harmonization and Collaboration, in Consultation with the Private Sector

As the FDIC considers potential rulemaking with respect to digital assets, it is important that regulatory and supervisory activities are consistent. Activities related to digital assets implicate or have the potential to implicate, among several other topics, prudential regulation of depository institutions and their holding companies, regulation of securities and commodities activities, fair lending, privacy, other consumer protection requirements, money transmitter regulations, anti-money laundering rules and sanctions laws. In the U.S., regulations in these and other areas are administered by a large number of agencies, including the federal banking agencies, other federal financial regulators and states. Given the often overlapping jurisdiction in these areas, it is critical that the FDIC work with other relevant agencies, especially where there is shared or overlapping jurisdiction, to determine where existing regulations are appropriate and where regulatory modernization is needed. In doing so, we encourage the FDIC to maintain the necessary policy consistency to support further innovation and avoid regulatory gaps.

We welcome, for example, the "sprint" being conducted by teams from the FDIC, the Federal Reserve and the OCC to address common regulatory frameworks, capital treatment, operational treatment and any relevant "gaps" with respect to digital assets.[22] We also appreciate recently announced White House-led anti-corruption efforts that pursue an interagency approach to combat illicit finance involving cryptocurrency transactions.[23]

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[22] *See* Testimony of Randal K. Quarles, Vice Chairman for Supervision, Board of Governors of the Federal Reserve System, before the U.S. Senate Committee on Banking, Housing and Urban Affairs (video at 01:07:38-01:08:45) (May 25, 2021), available at https://www.banking.senate.gov/hearings/05/19/2021/the-semiannual-testimony-on-the-federal-reserves-supervision-and-regulation-of-the-financial-system.

[23] *See* President Joseph R. Biden, Jr., "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest" (June 3, 2021), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/; The White House, "Background Press Call by Senior Administration Officials on the Fight Against Corruption" (June 3, 2021), available at

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In addition to harmonization and collaboration among agencies, we believe that the development of effective regulation and supervision of digital asset activities requires meaningful consultation with the private sector. Square understands that the rapid pace of digital asset innovation has produced and will continue to produce questions for policymakers and regulators on how best to adapt regulatory approaches in this context. Given the private sector's role in driving digital asset innovation, we believe firms, including Square, can play a critical role in effectively bridging the gap between government, business and the digital asset community.

Digital assets have a growing presence in the global financial system and as their adoption increases Square intends to participate in the digital asset markets in a disciplined way, in collaboration with market participants and global banking and financial regulators. We continue to work to identify and prioritize digital asset and bitcoin-related products and services that will benefit our customers. We note that Square will engage in activities in respect of bitcoin or any digital asset through SFS only to the extent permissible and in accordance with SFS's business plan. SFS is inspired by the FDIC's interest in the potential use cases of digital assets for depository institutions and their affiliates and looks forward to the FDIC's future actions in outlining permissible digital asset activities.

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We thank you for your consideration of this comment and look forward to engaging with you to bring innovation to the future of banking. If you have any questions, please do not hesitate to reach out.

Sincerely,

[redacted]

Lewis Goodwin

Chief Executive Officer, Square Financial Services, Inc.

[redacted]

Sivan Whiteley

General Counsel and Corporate Secretary, Square, Inc.

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https://www.whitehouse.gov/briefing-room/press-briefings/2021/06/03/background-press-call-by-senior-administration-officials-on-the-fight-against-corruption/.