



July 16, 2021

Via Electronic Submission

James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation

Attention: Comments-RIN 3064-ZA25

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: *Request for Information and Comment on Digital Assets*
RIN 3064-ZA25

Dear Mr. Sheesley,

On behalf of Cross River Bank (“Cross River” or the “Bank”), I thank you for the opportunity to provide comments on the Federal Deposit Insurance Corporation’s (“FDIC” or the “Agency”) request for Information (“RFI”) regarding Digital Assets. Cross River applauds the FDIC’s efforts to better understand the use, potential, opportunities, and risk of this technology. The fast pace and evolving nature of digital assets is creating opportunities for financial institutions to innovate and provide services in high demand by customers. It is imperative that the regulatory framework embrace this technology and provide clear standards where necessary that will help institutions mitigate potential risks without stifling innovation. It is equally important to understand where the existing regulatory framework provides adequate protocols that simply need to be clarified and when additional, burdensome, or duplicative requirements would be unnecessary. The future regulatory framework should avoid stifling innovation and creating barriers for institutions to provide modern product offerings to consumers.

Cross River is a New Jersey State chartered, FDIC insured financial institution that merges the trust and reliability of a community bank with the innovative offerings of a technology company. Since inception, the Bank has consistently partnered with leading technology companies to offer a suite of products that empower consumers to take control of their financial health by facilitating access to affordable credit in a responsible manner. As with online lending, the Bank is consistently checking the pulse of the industry to proactively offer innovative solutions that have the potential to safely revolutionize the financial services industry, extending enhanced benefits to consumers in a safe and compliant manner.

As Cross River has demonstrated time and time again, innovation does not need to come at the cost of the principles of safety and soundness, in fact the two are consistent and complement one another helping to enforce a secure, stable, and strong financial services ecosystem. As the industry continues to undergo drastic digital transformations and evolutions, new technology solutions provide increased

opportunities, especially in the realm of digital assets. The regulatory expertise and robust compliance frameworks present within financial institutions make them the best intermediary to safely deploy solutions and mitigate potential concerns. By embracing the inevitable adaptation of solutions related to digital assets and providing unambiguous rules of the road, the Agency would help resolve many of the concerns and hesitations surrounding the implementation of digital assets. This approach would help to debunk ongoing misconceptions about the nature of these assets.

For example, there is a common misunderstanding regarding the level of volatility inherent to digital assets themselves, when the volatility is a larger reflection of a number of external factors such as uncertainty in the markets, especially in regards to regulatory regimes guiding adoption of the technologies and ability to transact in digital assets. Clear standards and the ability to offer solutions with regulatory approval will help minimize volatility as the industry would have the confidence needed to deploy solutions. As regulatory acceptance grows, and the industry continues to mature there will be more stabilization within the market and benefits for consumers will continue to rapidly grow. It is imperative that the federal prudential regulators and their state counterparts proactively work to create uniform standards that embrace the adaptation of digital assets in a safe and compliant manner. The regulators should avoid creating a fractured system that prevents financial institutions from responsibly developing solutions and creating regulation for regulation's sake. Comprehensive and thoughtful standards, coupled with appropriate existing regulations will help mitigate the concerns and risks that have been expressed about the adaptation of digital assets.

Additionally, establishing standards that allow banks to provide a variety of product offerings will help to eliminate or minimize concerns over illicit activity. These concerns have been drastically misrepresented and overstated given the transparent nature of blockchain technology where transactions occur. While digital assets may provide pseudo-anonymous features for users, the technology also provides an extended level of transparency not present in fiat transactions. Permissionless blockchains, where the majority of digital asset transactions occur, establish open ecosystem public records that create an immutable ledger where anyone can see the history of transactions that have occurred. In comparison, fiat transactions are far more difficult to trace and provide far less transparency in the transaction history. While users may still maintain certain privacy aspects through transacting in digital assets, bringing the technology into the regulated fold would ensure proper BSA/AML/KYC/KYB protocols are in place and continue to minimize the already limited amounts of illicit activity that occur through transactions. Again, these risks are not inherent to digital assets themselves, but a reality that there will always be actors in the system looking to exploit opportunities to further illicit behavior.

Agencies such as FinCEN and OFAC have already released a host of FAQs and tools to assist financial institutions, including guidance on identifying digital currency addresses of individuals on OFAC's sanctions list.¹ Cross River already helps to provide a host of expertise in the BSA/AML arena to various clients to ensure the protection and integrity of the financial system. The industry does not need additional regulations surrounding BSA/AML protocols for transactions in the digital asset space, but rather requires prudential regulators to empower financial institutions to offer services in this space and leverage existing core competencies to ensure safe and responsible adaptation of this technology.

The FDIC rightfully acknowledges that offering solutions surrounding digital assets brings along novel and unique considerations, but financial institutions already possess the capabilities necessary to adequately

¹ See OFAC FAQs, "Questions on Virtual Currency", <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/topic/1626>

address many of these concerns and aspects of the existing regulatory framework provides the appropriate guidance on managing risks. The challenge for some institutions will be the implementation of business and technological solutions that support digital assets, not compliance and oversight. Further, given the existing interpretive letters issued by the Office of the Comptroller of the Currency (“OCC”)², nationally chartered institutions can confidently provide solutions to their customers regarding digital assets. State chartered, FDIC insured depository institutions have the same authority under existing regulation and the Agency should explicitly reaffirm this in order to promote responsible innovation and give institutions the surety they need to invest time and resources into new offerings.

The RFI thoughtfully addresses a number of solutions and activities financial institutions may wish to engage in as related to digital assets. Further, the RFI seeks input on important questions related to risk management and supervision. Please see below Cross River’s comments to questions 2,3,4,8,11,12,13,14 and 15.

Questions for Comment

Question 2a.: What, if any, activities or use cases related to digital assets are IDIs currently engaging in or considering? Please explain, including the nature and scope of the activity. More specifically:

What, if any, types of specific products or services related to digital assets are IDIs currently offering or considering offering to consumers?

The FDIC adequately identifies many of the types of activities financial institutions either currently engage in or plan to engage in as related to digital assets. Technology solutions relating to payment systems, such as providing ACH or wire capabilities to crypto currency exchanges, are one of the many potentials in which banks may help customers, whether consumer or commercial, dealing in digital assets safely access the financial system. Taking advantage of and utilizing these capabilities requires potential customers to submit the requisite information to confirm customer due diligence requirements, as well as other BSA/AML/KYC/KYB requirements. By creating an environment where financial institutions can confidently provide services, the FDIC would be furthering the ability and necessity to provide the appropriate safeguards to the system as well.

Further, Cross River examines if potential partners or customers in the space have the required regulatory authority and licenses to operate in states, they seek to do business such as money service business licenses. Many exchanges, if not all, are required to register with FinCEN as Money Service Businesses and have state money transmission licenses in order to offer products and services in compliance with various state laws. Confirming the proper licenses is part of a larger, robust compliance framework inherent in financial institution’s operating systems that protect the integrity of the financial system.

Additionally, some clients, such as exchanges, look to open business accounts where they are able to store fiat currency. When customers of the exchanges look to liquidate their digital asset wallets and convert their cryptocurrencies to fiat currency, the exchanges may draw on the fiat accounts held at financial institutions to complete the transaction. Again, in order to access the financial system to open these accounts and facilitate transactions, exchanges and their customers must submit all relevant information to pass the Bank’s compliance standards. A lack of clear guidance and confidence in the ability to offer

² See OCC Interpretive Letter 1170 (July 2020).

these services prevents financial institutions from working with a variety of customers and bringing these services into the regulated purview of institutions and regulatory agencies. The industry would be better served, and these technologies would more safely mature, if the regulators provided clear and unambiguous guidance on IDI's ability to provide services.

Question 2b: To what extent are IDIs engaging in or considering engaging in activities or providing services related to digital assets that are custodial in nature, and what are the scope of those activities? To what extent are such IDIs engaging in or considering secondary lending?

Cross River has both the technological and regulatory expertise to offer custodial services to customers dealing in digital assets. In order to confidently offer this service more regulatory sureties surrounding an insured depository institution's authority to custody these types of accounts are necessary. As discussed earlier, the OCC has explicitly and formally released interpretive letters that unambiguously states the authority of nationally chartered institutions to engage in this specific activity. This authority translates directly to products that state-chartered banks may choose to offer. Removing any perceived ambiguity surrounding the ability to offer these services will allow institutions to innovate in a safe and compliant manner, bringing these assets under the regulated financial fold.

Further, this supplemental clarity will encourage a wave of responsible innovation to bring these intuitions, especially smaller community banks, into the modern financial services ecosystem. Some institutions already possess the necessary capabilities and core competencies to safely offer these products and spur a wave of responsible innovation while others are contemplating in investing in the technology to do so. In providing clarity, the FDIC would simply be expanding the potential opportunities of institutions under the Agency's purview without sacrificing consumer protection or safety and soundness. Further, the FDIC would not have to undergo a formal and lengthy notice and comment period, as the authority to engage in this activity is already clearly established in existing law and the Agency could simply elaborate to reaffirm that custody offerings are well within the current authority of IDIs.

Question 3: In terms of the marketplace, where do IDIs see the greatest demand for digital asset related services, and who are the largest drivers for such services?

There are a number of services insured depository institutions are seeing demand for, which have been discussed above and throughout the RFI. Custodial accounts, payment processing services and warehouse lending are three of the most prominent services customers are seeking in relation to digital assets.

Custodial accounts allow customers to securely place funds at insured financial institutions. This provides customers with a sense of assurance as they are able to safely gain access to the financial system with a trusted third party that can protect the digital assets. As the sophistication in cybercrime continues to gain prominence, more and more customers want to be confident, they are working with intuitions that have proven track records in which they can trust. Custody accounts are amongst the oldest and most trusted services IDI's have provided to their clients. While the technology of digital assets may be a new evolution within the industry, the protocols and safeguards needed to securely custody these assets are not as novel and well within the capabilities of tech-forward institutions such as Cross River.

Payment processing capabilities, including cross border payments and faster payment options, continue to be another important service customer's dealing in digital assets seek. While digital asset exchanges provide opportunities for the general population to invest and purchase a variety of cryptocurrencies, trusted intermediaries are needed to provide access to the payments rails and networks that enable these transactions to occur. Cross River currently provides this service, which in turn subjects our customers to strict oversight and compliance protocols. A core feature of this service is ensuring all applicable laws and regulations surrounding BSA/AML are followed in order to properly know the identify of customers and customers' customers to prevent illicit activity from occurring.

As the digital asset ecosystem continues to mature, the potential opportunities and complexities of products offerings continues to grow. These projects require operating capital, as does any start-up or existing business, to grow and scale future operations. In this event many customers are seeking warehouse or other revolving credit lines to help fund ongoing projects. In the event that extending credit lines requires collateral, some clients wish to post digital assets to meet the requirement. Clearer guidance on the functionality of holding digital assets, whether in the capacity of a custodian or generally, on balance sheet for insured depository institutions will help bring this innovation into the regulated financial fold smoothly.

The lack of clear standards in this space has made financial institutions hesitant to engage in these opportunities and help to fuel decentralized finance ("DeFi") offerings that cut out trusted intermediaries from the process. Lending has become a core focus of many DeFi applications, where users can contribute, pool, or stake their own digital assets to help support the funding of projects. The regulatory framework must enable banks to provide these services to bring more activities into the supervised, regulated financial fold.

The common theme customers are truly seeking as part of these services are consumer safety, access, reliability, and trust. More than the services themselves, customers want to ensure they can conduct business in a safe and reliable manner that complies with all relevant laws and regulations. As regulated entities, insured depository institutions inherently provide all of these factors to consumers. Established track records, robust compliance frameworks and enhanced cyber security protocols are all fundamental to the operations of financial institutions and required tools to help safeguard digital asset offerings.

Customers understand that in order to empower their products and gain access to the financial system strict compliance and oversight measures must be adhered to. It is for this very reason customers seek out innovative financial institutions that are willing to reshape the financial services ecosystem while providing regulatory expertise to avoid unintended adverse impacts. These requisites are inherent in financial institutions core competencies and provide customers with the necessary assurances they need to conduct business, driving the industry forward. Financial institutions continue to be the best intermediaries to drive forward responsible innovation, ushering in a new era in financial services in a safe and compliant manner. It is imperative to create a framework which encourages financial institutions to foster this innovation as opposed to stifling it.

Question 4: To what extent are IDIs' existing risk and compliance management frameworks designed to identify, measure, monitor, and control risks associated with the various digital asset use cases? Do some use cases more easily align with existing risk and compliance management frameworks compared

to others? Do, or would, some use cases result in IDIs' developing entirely new or materially different risk and compliance management frameworks?

Many aspects of existing risk and compliance management frameworks are adequately and appropriately designed to mitigate potential risks associated with the implementation of digital asset offerings and solutions. Some of the most relevant frameworks currently in place include the appropriate Customer Due Diligence requirements and applicable BSA/AML protocols. Today, Cross River works with several cryptocurrency clients, such as certain exchanges, in order to empower innovation in a compliant manner.

In order to gain access to the requisite services, these customers must be able to ensure transactions meet KYC and other CDD requirements. Cross River's robust and innovative systems that are already in place help to mitigate any potential risks posed by offering these solutions. Other risk assessment processes including reviewing a number of weighted factors and control environments remain largely relevant and fall well within the Bank's core competencies.

Certain additional risk protocols very easily align with existing risk and compliance management framework. In addition to protocols surrounding payments, risk systems surrounding custody and lending are practically identical and already in place to mitigate risk while encouraging and embracing the deployment of these new services. More so than internal risk systems, it is unclear or ambiguous regulatory certainty that is holding back a larger adaptation and implementation of modern solutions surrounding digital assets.

Question 8: Please identify any potential benefits, and any unique risks, of particular digital asset product offerings or services to IDI customers.

One of the largest potential benefits of digital asset product offerings and services to both IDI customers and the financial services ecosystem as a whole include increased trust and transparency. The inevitable mainstream adaption of this technology and potential use cases, whether it be in transacting or lending, will only continue to grow and mature in the future. As the industry matures and the complexities of the offerings evolve there will be a continued desire and demand for increased safety and protection of the integrity of the financial system.

The inherent trust and reliability of financial institutions and their compliance frameworks will provide customers with the necessary assurances to innovate responsibly and continue to drive the growth of the industry. Financial institution's ability to unequivocally develop unique offerings, in compliance with applicable regulations, will help to promote a safe environment that continues to revolutionize the financial services industry.

Risk of potential illicit activity will remain present in this technology, as within any other activity, where there is opportunity for financial gain. This is far from a unique to digital assets and in no way a reflection of the technology or a property of the technology itself, but the reality of bad actors who will always look to exploit circumstances for their own gain. This reality creates an even more critical need for trusted intermediaries to develop solutions under appropriate circumstances with the appropriate oversight and safeguards. Cross River currently has, and will continue to, invest in the necessary compliance functions to match any potential risk posed by the development of unique solutions and offerings, whether or not tied directly to digital assets. Robust onboarding, compliance and continued oversight are built into the

Bank's DNA and are required to usher in a new wave of financial services offerings. Cross River already possess the necessary tools to safely provide the benefits of these offerings to customer's and the regulatory framework should adopt to support this.

Question 11: Are there any areas in which the FDIC should clarify or expand existing supervisory guidance to address digital asset activities?

The FDIC should expand existing supervisory guidance and the regulatory framework more generally to offer FDIC insurance on digital assets, especially those stable coins pegged to the U.S. dollar. Doing so would empower banks to securely offer a suite of products to meet the modern needs being demanded by a number of customers. Currently, consumers may enter certain "earn" programs or deposit their digital assets in liquidity pools that offer a variety of APY rates upwards of 7% or more. These DeFi and CeFi protocols offer opportunities for customers to grow their funds at competitive rates. Currently, consumers willing to engage in these earn programs understand the accounts are not FDIC insured and potential exists to lose their funds entirely, but do so anyway because of the potential upside return.

The FDIC should modernize the existing regulatory structure to account for digital assets so that trusted intermediaries such as insured depository institutions may offer similar services and safely bring this activity within the oversight of the Agency. Doing so will have the intended benefits of creating more safety and security to the digital asset ecosystem in this capacity, allowing consumers to safely access competitive and modern products. The FDIC could set maximum insurance protections on digital asset deposit accounts, similarly, as done with fiat currency, setting limitations to how much the Agency will insure per account.

Question 12: In what ways, if any, does custody of digital assets differ from custody of traditional assets?

Custody of digital assets is similar, if not virtually identical to the custody of traditional assets. Whether in a fiduciary or non-fiduciary capacity, Banks have long been trusted to safekeep assets on behalf of their clients. The demand for customers looking to securely store their digital assets continues to dramatically rise, especially for those fearing their own hot wallets may fall prey to cyberattacks or criminals. Some exchanges or wallet services that consumers currently use do not offer the same level of security protections and may be vulnerable to hacking or theft.

The threat of cybercrime in the modern digital age is something tech forward institutions such as Cross River have been preparing over the course of many years. Our modern capabilities provide a safe and secure avenue for consumers to store their assets, and consumers want institutions with track records they can trust to hold their valuable assets. Safekeeping services are amongst the most fundamental offerings financial institutions provide, with a diverse variety of assets being held. Digital assets are simply the latest evolution of assets banks are able to protect for consumers.

Custody services for digital assets are provided with hot wallets or cold wallets are slightly differences in requirements would compel financial institutions to invest in building proper technology if they do not already have the appropriate systems available. Hot wallets, or wallets that are connected to the internet require robust cybersecurity protocols to mitigate the potential of cyberattacks whereas cold wallets are completely offline, such as a piece of hardware, that can physically be stored in a vault. Today, Cross River

has the expertise and technological capabilities to meet the demands of customers, whether they want to store digital assets in a hot or cold wallet with the Bank, but requires additional regulatory clarity to confidently offer these services.

Question 13: FDIC's Part 362 application procedures may apply to certain digital asset activities or investments (See 12 C.F.R. Part 362, subpart A) Is additional clarity needed? Would any changes to FDIC's regulations or the related application filing procedures be helpful in addressing uncertainty surrounding the permissibility of particular types of digital asset-related activity, in order to support IDIs considering or engaging in such activities?

Additional clarity would be preferred in regard to the types of activities that would require an application under 12 C.F.R Part 362, subpart A. While the FDIC has not explicitly stated the Agency's position, Cross River firmly believes that state chartered insured depository institutions already have the authority under existing regulations to engage in certain digital asset activities including the custody of assets without the need for an application under 12 C.F.R. Part 362, subpart A. Part 362, implementing section 24 of the Federal Deposit Insurance Act ("FDI Act")(12 U.S.C. 1831a), restricts and prohibits state chartered insured depository institutions from engaging in activities that are not permissible for nationally chartered financial institutions. As stated previously, the OCC has released an interpretive letter which states that providing crypto custody services, including holding the unique cryptographic keys associated with cryptocurrency wallets is a modern form of traditional bank activities and is therefore a permissible activity for national banks.

The FDIC should similarly release an explicit, unambiguous statement confirming these positions to provide state chartered insured depository institutions with the necessary assurances to develop and offer these services. Perceived uncertainty in this space may be seen as an obstacle to state-chartered institutions that desire to invest in developing, or offering already existing, products and services for fear of unintentional non-compliance with applicable regulations.

Certain OCC interpretive letters and approvals³ have gone further to approve activities such as trading and staking of select cryptocurrencies. The FDIC should review the existing interpretive letters issued by the OCC and affirmatively confirm these capabilities are well within the authority of state-chartered institutions to deploy. An explicit and affirmative statement confirming this authority under existing legislation and regulation will help to promote responsible innovation in the space and bring these modern solutions under the appropriate regulatory purview of the federal agencies. Banks are well equipped with the necessary oversight protocols to ensure the development and deployment of these solutions are consistent with the principles of safety and soundness.

Question 14: Are there any steps the FDIC should consider to ensure customers can distinguish between uninsured digital asset products on the one hand, and insured deposits on the other?

The FDIC does not need to take any additional steps to ensure customers can understand and distinguish uninsured digital assets from insured deposits. The current regulatory framework and requirements

³ See, e.g., OCC Approval to a conversion application by Anchorage Trust Company (January 13, 2021) and OCC Conditional Approval to an application by Protego Trust Company (February 4, 2021).

clearly establish guidelines for how financial institutions may market or advertise products that are or are not insured. Additional requirements specifically related to digital assets would be burdensome, duplicative, and unnecessary given the current framework. If, however, the FDIC in the future wished to create a framework that insured deposits of certain digital assets, such as stable coins, additional guidance may be necessary to account for the change in policy by the Agency.

Question 15: Are there distinctions or similarities between fiat-backed stablecoins and stored value products where the underlying funds are held at IDIs and for which pass-through deposit insurance may be available?

Deposits held by a fiduciary on behalf of principals which are insured on a pass-through basis are nearly identical as the deposits of the principal (the actual owner) when FDIC requirements are met. to the same extent as If the deposits were deposited directly by the principal are nearly identical for fiat-backed stablecoins. The three requirements state:

“1. Funds must be in fact owned by the principal and not by the third party who set up the account (i.e., the fiduciary or custodian who is placing the funds). To confirm the actual ownership of the deposit funds, the FDIC may review:

- a. The agreement between the third party establishing the account and the principal;
- b. The applicable state law

2. The IDI’s account records must indicate the agency nature of the account (e.g., XYZ Company as Custodian, XYZ For the benefit of (FBO), Jane Doe UTMA John Smith, Jr.)

3. The records of the IDI, the fiduciary or a third party must indicate both the identities of the principals as well as the ownership interest in the deposit.”⁴

Fiat-backed stablecoins and stored valued products where the underlying funds are held at IDIs satisfy these requirements in their modern applications. The FDIC would be able to confirm the stablecoins are in fact owned by the principal who set up the account by reviewing the agreement between the third party establishing the account and the principal. The IDI account record would indicate the agency nature of the account for the FDIC’s review and lastly the records of the IDI would indicate both the identities of the principals as well as the ownership interest in the deposits. Although wallets provide users with certain privacy features, these features are only pseudo-anonymous and the true ownership of the wallet can be identified through the private key or required upon the opening of an account in order to gain access to services at the institution in compliance with all applicable laws and regulations.

Conclusion

Cross River appreciates and supports the FDIC’s efforts to better understand the applicability and potential of offerings related to digital assets throughout the financial services industry. Continued

⁴ See Financial Institution Employee's Guide to Deposit Insurance, https://www.fdic.gov/deposit/financial_institution_employees_guide_to_deposit_insurance.pdf

transparency and collaboration between policymakers and industry will ensure that innovation is responsibly deployed, and the integrity of the financial system is protected.

Financial institutions' regulatory and compliance core competencies make them the best candidates to oversee, monitor and deploy a variety of digital asset products. Formally bringing this technology into the industry does not mean forgoing regulatory responsibilities, contrary, it means ensuring appropriate and clear standards are in place that will assist prevent adverse outcomes. Digital assets will inevitably continue to play a larger role in the financial system. Embracing these modern solutions provides limitless potential in a safe and sound manner.

The FDIC should carefully consider where existing regulations already adequately address the framework for managing digital asset solutions and not create duplicative, overburdensome regulations that ultimately stifle innovation and dissuade institutions from offering modern products. By confirming the authority under existing legislation and guidance, the FDIC would promote innovation, encourage financial institutions to bring this technology under the regulated purview of the agencies, and automatically help address concerns over risks and consumer protections that have been articulated.

If you have any additional questions, please do not hesitate to contact agelbard@crossriverbank.com or 201-808-7189. We look forward to continuing engaging in dialogue and serving as a resource for the Agency in the future.

Best,



Aaron Iovine, Esq.
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