



July 16, 2021

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)

Dear Mr. Sheesley,

On May 17, 2021, the Federal Deposit Insurance Corporation (“FDIC”) issued a Request for Information and Comments on Digital Assets (hereinafter the “RFI”).¹ The FDIC requested information and comments from interested parties regarding insured depository institutions’ (“IDIs”) current and potential future activities involving digital assets, use cases for these assets and their underlying technology, and regulatory considerations related to their adoption.

The Securities Industry and Financial Markets Association appreciates the opportunity to provide comments on this statement.² Like many other industry participants and regulators, SIFMA recognizes the potential transformative effect of blockchain or distributed ledger technology (DLT) in the capital markets industry and welcomes the FDIC’s interest in digital assets and looks forward to future work

¹ <https://www.fdic.gov/news/press-releases/2021/pr21046a.pdf>

² SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

together to promote a regulatory environment which supports continued innovation for digital assets and for applications for distributed ledger technology more broadly.

SIFMA will focus our response on several key approaches to understanding digital asset securities and distributed ledger technology which we hope will inform the FDIC's future work on these issues. First, we believe regulation should promote and support continued innovation. Regulatory approaches to DLT should first be based on the principle of not harming continued innovation whenever possible while still meeting regulatory oversight goals.

Second, regulation should take a technology neutral approach. Regulator approaches to distributed ledger should remain focused on the activities of market participants and the markets for assets they oversee through technology neutral regulation wherever possible, not regulation of specific technologies. Any future rulemaking should take a technology neutral approach and avoid framing rulemaking in such a way that restricts a firm's ability to conduct business by virtue of the technology it wishes to implement. New regulation which could affect emerging digital asset or distributed ledger-based activities should be reviewed to ensure it is technologically neutral.

While there is a broad range of blockchain based activity being explored by capital market participants, across these diverse use cases SIFMA recommends common principles and frameworks to regulators as they approach emerging applications of this technology.

The Importance of a Technology Neutral Approach to Digital Asset Securities

As the FDIC reviews the landscape of emerging activity in blockchain-based assets, we would like to stress the importance of approaching these products through a principles-based, technologically neutral approach.

It is critical to take a technology-neutral approach to any new regulation for blockchain-based activity that focuses on the nature of the assets themselves and any relevant risks, not the specific technology used to record or transfer securities.

A principles-based, technologically neutral approach allows firms the flexibility to evaluate what digital asset securities or infrastructure they will support. Like any other technological implementation, firms will need to take into consideration their risk appetite and commercial considerations via the same framework as undertaking any new activity, in parallel to the relevant operational risks and regulatory requirements related to the unique facts and circumstances of any digital asset security.

In particular, the baseline for regulatory treatment of digital asset securities should be the same as for any other registered securities. Regulation may recognize any technology specific issues to particular assets or infrastructure configurations as appropriate, within the broader framework of a technologically neutral

approach that does not differentiate between types of registered securities, regardless of the technology they rely on.

While it may be necessary for the FDIC to distinguish between different types of digital assets, such as between those which are registered securities or commodities and those which are not, we caution against applying prescriptive frameworks in categorizing blockchain-based assets, which may combine a diverse range of assets with very different registration status, risk profiles, and infrastructure requirements together simply because they all leverage blockchain technology in some way. For example, registered digital asset securities are a fundamentally different product than cryptocurrencies across a range of dimensions (such as legal status, infrastructure requirements, interaction with custodians and service providers, data transparency, security etc.), even though both products may be based on distributed ledger platforms.

Even within the broad category of digital asset securities (as opposed to other digital asset products more broadly), focusing on the DLT based character of these assets creates an overly broad definition which aggregates a broad range of asset types with very different operational and risk characteristics. For example each of the following could be described as a digital asset security: (i) an unregistered investment contract issued on a public blockchain network, such as that described in the DAO Report;³ (ii) a registered equity security issued natively on a public blockchain network;⁴ (iii) registered equity securities reflected on the books and records of an issuer's transfer agent for which a "courtesy copy" of the transfer agent share register exists on a public blockchain;⁵ or (iv) a digital representation on a permissioned blockchain of a security entitlement to registered equity security held in an account at the Depository Trust Company.⁶ Although each such example could be interpreted as a digital asset security, there are significant operational differences and corresponding risks that firms would need to take into consideration when developing best practices to support each of these digital asset securities. This highlights the importance of taking a technology neutral approach, as opposed to prescriptive, technology specific categories.

Accordingly, SIFMA recommends that the FDIC should take a principles-based approach to regulating activities related to digital asset securities in order to allow firms the flexibility to develop best practices and comply with their existing regulatory obligations, rather than focusing on the underlying technology (i.e., distributed ledger technology). This approach is consistent with how other regulators have

³ Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207 (July 25, 2017).

⁴ See INX Limited Prospectus (Filed September 29, 2020).

⁵ See Overstock.com, Inc. Digital Voting Series A-1 Preferred Stock FAQ at <https://www.overstock.com/dividend>

⁶ SEC Division of Trading and Markets' No-action letter to Paxos Trust Company LLC (Oct. 28, 2019).

approached the oversight of new technologies.⁷ For example, the Commodity Futures Trading Commission (“CFTC”) implemented a principles-based approach when revising the recordkeeping requirements under the Commodity Exchange Act rather than proscribing specific technology requirements in a manner that allows “recordkeepers to leverage advances in information technology as a means to reduce costs associated with the retention and production of paper and electronic records and to decrease the risks of cybersecurity threats, while maintaining necessary safeguards to ensure the integrity, availability, and accessibility of records required to be kept pursuant to the Commodity Exchange Act.”⁸

Other DLT Applications beyond Digital Assets

Beyond digital assets which are based on blockchain technology, SIFMA member firms and other market participants are exploring a broad range of other applications for distributed ledger technology. These range from the potential use of DLT to support new approaches to post-trade processing, such as the clearance and settlement process, to providing information on assets and market activity through new approaches to reference data, to handling of client interaction and client services, to securities management such as corporate actions. These examples are intended to be an illustrative but by no means represent an exhaustive list, suggesting the breath of applications where DLT could potentially be used to make financial services processes and infrastructure more efficient and secure and offer new services to market participants and the broader public.

SIFMA recommends that the baseline assumption for regulators should be that DLT-based projects can operate within existing regulatory frameworks. Many applications of distributed ledger technology currently being explored by the industry are not fundamentally different from current market activity and firm operations, but are best understood as the addition of new technology to modify existing processes which are governed by an existing regulatory framework, similar to the relationship of digital asset securities vis-a-vis securities operating on more traditional market infrastructure.

We believe that this approach to understand the regulatory impact of DLT is consistent with the historical experience of the industry in recent decades, where existing regulations accommodated major transformations of industry technology and the automation of many industry processes.

Where applications of DLT occur within an existing regulatory framework, any regulatory impacts will be driven by the specific products or processes where this technology is applied. The specific features of

⁷ See Release No. 34-44238, Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f). (“[T]he Commission encourages the use of technological innovation when both broker-dealers and investors will benefit.”).

⁸ Federal Register, Volume 82 Issue 12 (Thursday, January 19, 2017) (revising 17 C.F.R. Parts 1 and 23), available at <https://www.cftc.gov/LawRegulation/FederalRegister/proposedrules/2017-01148.html>.

these markets and processes, as well as the details of regulatory requirements that currently govern them will determine the degree to which modification of existing regulations (if any) will be necessary.

Regulatory & Industry Coordination

As the industry moves forward with the exploration of distributed ledger technology and the development of markets and infrastructure to support digital assets, consistent and coordinated regulatory treatment among regulators and close dialogue with the industry will be critical to the development of this technology and its uses for capital markets purposes. Coordination among the regulatory community and regulatory agencies will be needed, including consistent views and clarity on how regulators' particular mandates align to cover the broad range of digital asset-based products and services.

Similarly, given the rapid evolution of applications of distributed ledger technology and the emerging markets for digital assets, close dialogue between regulators and the industry will be essential to any new regulatory approaches to this technology. As background to SIFMA's views on effective regulation of distributed ledger technologies, we would encourage the FDIC to review several recent SIFMA publications on digital asset securities and blockchain applications. They are: our 2021 comment letter in response to the SEC's proposed framework for the custody of digital asset securities, our 2020 white paper exploring how security tokens and digital asset securities can be incorporated into existing regulatory frameworks, across the lifecycle of a security, and our 2017 response to FINRA outlining frameworks to understand the regulatory context for applications of blockchain technology.⁹¹⁰¹¹

We appreciate the FDIC's interest in the rapidly developing applications of blockchain technology in the capital markets, and we would be happy to discuss our understanding of these issues and recommendations for effective regulation in this area more broadly. Please do not hesitate to reach out to us with any questions or to schedule a meeting with our members to discuss further.

Sincerely,



Charles De Simone
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⁹ "Custody of Digital Asset Securities by Special Purpose Broker-Dealers" available at:

<https://www.sifma.org/resources/submissions/custody-of-digital-asset-securities-by-special-purpose-broker-dealers/>

¹⁰ "Current Regulatory and Operational Considerations for Broker-Dealers and a Look Towards the Future" available at: <https://www.sifma.org/resources/submissions/security-tokens-current-regulatory-and-operational-considerations-for-broker-dealers-and-a-look-towards-the-future/>

¹¹ Re: FINRA's Report "Distributed Ledger Technology: Implications of Blockchain for the Securities Industry" available at: <https://www.finra.org/sites/default/files/Blockchain-SIFMA-Comment.pdf>