

December 16, 2021

The Honorable Janet Yellen  
Secretary of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Chair Gary Gensler  
Securities and Exchange Commission  
100 F St NE  
Washington, DC 20549

Chairman Rostin Behnam  
Commodity Futures Trading Commission  
1151 21<sup>st</sup> Street NW  
Washington, DC 20581

We urge the Financial Stability Oversight Council (FSOC), as the convening body responsible for addressing growing threats to the financial system, to urgently clarify and emphasize the existing enforcement and supervisory authorities its member agencies have to regulate stablecoins, instead of waiting for Congress to act. The urgency of immediate action by agencies such as the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) cannot be overemphasized given the rapid growth of stablecoins and the increasing threats that stablecoins pose to investor protection, financial stability, and national security.

The market capitalization for the largest stablecoins has grown 583% this year, from \$30 billion to \$175 billion,<sup>1</sup> and at the current pace is expected to reach \$1 trillion by 2025.<sup>2</sup> Despite the explosive growth of the stablecoin market, stablecoins are not used to any substantial extent to make ordinary commercial payments but are instead primarily used for speculation, tax avoidance, and evading critical safeguards for the banking system and national security. Such safeguards include Know Your Customer (KYC), anti-money laundering (AML), and Countering the Financing of Terrorism (“CFT”) regulations.

A 2019 report by R3, entitled “[Will Businesses Ever Use Stablecoins](#),” highlights this reality, stating that the principal uses of stablecoins at that time were to trade in cryptocurrency markets, to facilitate tax avoidance, and to evade compliance with KYC, AML, and CFT requirements. Concerns resulting from the widespread use of stablecoins to engage in dangerous speculation, undermine prudential banking requirements, and evade tax compliance and national security safeguards have only grown since that report was issued.

We agree with the PWG report’s recognition that the SEC, CFTC, and FinCEN have a variety of existing tools to address investor protection concerns as well as AML and CFT violations in digital asset markets. Even if stablecoins are eventually treated as deposits (e.g., under new legislation comparable to the STABLE Act that was introduced in the House of Representatives

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<sup>1</sup> Treasury Office of Financial Research. Annual Report to Congress 2021. Nov 17, 2021. <https://www.financialresearch.gov/annual-reports/files/OFR-Annual-Report-2021.pdf>

<sup>2</sup> Partz, Helen. Cointelegraph. Stablecoin market to have hit \$1T. by 2025, Unstoppable Domains CEO predicts. Aug 5, 2021. <https://cointelegraph.com/news/stablecoin-market-to-hit-1t-by-2025-unstoppable-domains-ceo-predicts>

in December 2020), the SEC clearly has existing authority, under controlling legal precedent such as *Marine Bank v. Weaver*, to treat stablecoins and other digital assets as securities under the federal securities laws *unless* those instruments are issued by FDIC-insured banks or similarly regulated foreign banks.<sup>3</sup>

After the report was published, the SEC issued a subpoena to cryptocurrency miner Marathon Digital Holdings and its data center to investigate potential violations of securities laws,<sup>4</sup> and the CFTC has brought enforcement action against Tether, the largest stablecoin issuer, for violations of the Commodity Exchange Act (CEA) and other CFTC regulations.<sup>5</sup>

Additionally, other agencies such as the Department of Justice, has the authority to consider whether or how section 21(a)(2) of the Glass-Steagall Act applies to certain stablecoin arrangements. Many advocates are particularly concerned with Facebook's new pilot service that offers customers the ability to use Facebook's Novi digital wallet together with the USDP (Pax dollar) stablecoin to transfer funds internationally. Section 21(a)(2) of the Glass-Steagall Act prohibits commercial entities and other nonbanks from offering financial products and services that are functionally equivalent to deposits (including customer balances similar to those held in Novi wallets that can be transferred by their owners to other parties using various types of payment media). We strongly encourage FSOC member agencies and the Biden Administration to work closely with the DOJ to determine where violations of section 21(a)(2) are being committed by Facebook-Novu and other stablecoin issuers or distributors.

There are significant barriers to the adoption of stablecoins as a payment mechanism, as most major businesses do not accept stablecoins for goods and services. In addition, stablecoins do not work today without cryptocurrency exchanges that are effectively free-riding alongside the existing banking system without complying with prudential banking regulations and investor protections. Retail customers must connect their bank accounts to cryptocurrency exchanges, and trade their stablecoins for U.S. dollars, in order to truly redeem stablecoins.

We strongly disagree with those in the private and public sectors who tout alleged future, hypothetical benefits of stablecoins and other cryptocurrencies but do not acknowledge the great risks posed by this "Wild West of finance" to borrow the phrase aptly used by SEC Chairman Gary Gensler, and those created by holding functionally equivalent banking services to totally different standards of regulation.

Instead of supporting an underegulated, private form of money that poses unacceptable risks and primarily benefits a small group of commercial actors, members of the Financial Stability Oversight Council (FSOC) should consider the merits of adopting the technology underpinning Central Bank Digital Currencies (CBDCs) or FedNow. CBDCs or FedNow could potentially fill the need for a faster and more efficient, payment system that would also be well regulated and accountable to the goal of advancing equity without creating a host of investor and consumer protection, financial stability, and national security risks and concerns.

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<sup>3</sup> *Marine Bank v. Weaver*. 455 U.S. 551 (1982) <https://supreme.justia.com/cases/federal/us/455/551/>

<sup>4</sup> Kim, Crystal and Green, Rick. Bloomberg News. Crypto Miner Marathon Tumbles After SEC Subpoena Disclosed. Nov 15, 2021. <https://www.bloomberg.com/news/articles/2021-11-15/crypto-miner-to-sell-500-million-of-bonds-to-buy-rigs-bitcoin?sref=f7rH2jWS>

<sup>5</sup> Commodity Futures Trading Commission. Oct 15, 2021 [CFTC Orders Tether and Bitfinex to Pay Fines Totaling \\$42.5 Million | CFTC](#)

Sincerely,

Americans for Financial Reform Education Fund

Arthur E. Wilmarth, Jr. Professor Emeritus of Law, George Washington University Law School

20/20 Vision

Better Markets

Consumer Federation of America

Public Citizen

Revolving Door Project