

April 7, 2023

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

Re: FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

Ladies and Gentlemen,

The USDF Consortium¹ appreciates the opportunity to comment on the Notice of Proposed Rulemaking on the use of the FDIC sign and advertising requirements related to deposit insurance coverage (the “Proposal”).² Our comments focus on the Proposal’s impact on banks’ adoption of blockchain technology to facilitate faster, safer, and more secure payments.

We write in support of regulations that are technology-neutral, and we stress the importance of a regulatory approach that enables banks to leverage the technology in a manner consistent with prudent risk management practices. Such an approach will help to ensure that banks can continue to play their critical role as the safe and trusted providers of modernized financial services.

Distributed ledger, or blockchain, technology holds tremendous promise to improve bank-offered products and services, offering faster, cheaper, safer services that can help to promote financial inclusion, drive economic growth, and support the role of the U.S. Dollar as the global reserve currency. We can best realize these benefits when this innovative technology is delivered responsibly and regulatory guidelines are clear, certain, and consistently applied.

To date, much of the innovation harnessing blockchain technology has occurred outside regulated banks in the novel cryptocurrency markets. These markets have been a testing ground for the efficiencies that blockchain technology might deliver. However, the volatile nature of many crypto assets, broadly defined, together with an inconsistent regulatory approach, has resulted in unacceptable risk and loss, limiting the real-world impact of this technology. We applaud the FDIC for its work to address the misrepresentations and risks that have emerged from many in these non-bank crypto markets.

¹ The USDF Consortium is a membership-based association composed primarily of insured depository institutions. Our mission is to build a network of banks to further the adoption and interoperability of a bank-minted tokenized deposit (“USDF”). We believe that blockchain technology can make payments more efficient and improve traditional banking, expanding access to safe and affordable financial services.

² FDIC, Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, 87 Fed. Reg. 78,017 (Dec. 21, 2022).

In contrast, regulated banks see the real potential of blockchain technology to improve the delivery of traditional banking products and services. We believe that the best way to leverage the strengths of blockchain as a technology is to use it to support the delivery of safe, responsible, and regulated financial services. In many cases, customers will not interface with blockchain technology that supports banking products, the same way they do not interact with cloud technology or wholesale payment systems used by banks today. Rather, banks can deploy blockchain technology as a more efficient system of record to empower banks to deliver faster, cheaper, safer financial services allowing them to expand access to such services.

At its core, blockchain technology can facilitate a number of activities, each presenting a different risk profile. The risks associated with delivering a novel crypto asset in an unregulated market are very different than the risks associated with a regulated financial institution using blockchain technology to deliver a traditional financial product or service. As the FDIC assesses how to manage the risks that have arisen in the non-bank cryptocurrency markets, we would encourage the FDIC to evaluate the use of blockchain technology in traditional banking applications separately.

Specifically, we have concerns that the Proposal, by broadly defining “crypto-asset” and including it as an “uninsured financial product,” will damage the credibility of products that must independently meet safety and soundness requirements, like USDF. After all, products like USDF already require notification to the FDIC according to its interpretative guidance.³ The impact of an overbroad definition will deter banks from leveraging blockchain technology to improve traditional bank deposit payment services.

In doing so, the Proposal would competitively disadvantage regulated financial institutions from offering blockchain-powered deposit products by equating them to crypto-currency products offered by non-banks. In addition, requiring banks, like USDF Consortium members, that may eventually offer customers access to blockchain-powered deposit payment services to disclaim them as uninsured while, at the same time, describing the deposits themselves as FDIC-insured, presents significant risk of confusing depositors.

Although we do not believe that the Proposal’s definition impacts the initial implementation of USDF, banks should be able to adopt the latest technologies without competitive disadvantage or confusing depositors. Creating different regulatory requirements for a specific technology will limit its adoption in banking.

We also believe that banks should continue to play a central role in the continuing modernization of the U.S. payments systems. As the Federal Reserve contemplates the path forward for “digital dollars,” or a central bank digital currency (“CBDC”), it is important to remember the critical role that banks play as the primary providers of digital money today.

³ FDIC, Notification of Engaging in Crypto-Related Activities, FIL-16-2022 (Apr. 7, 2022), <https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html>.

Today, bank deposits account for 73% of money in the U.S. economy.⁴ These bank deposits are a critical source of funding that allows banks to drive economic growth by providing credit to the communities that they serve.

As policymakers contemplate the implementation of a CBDC using blockchain technology, we believe it is critical that banks continue to perform this same critical function in the future. The ability of banks to represent deposits on blockchain is an important part of maintaining this two-tier banking system in a tokenized economy. Large institutions have begun testing and implementing systems to leverage blockchain technology to tokenize bank liabilities and deposits. We believe that the USDF Consortium plays an important role in ensuring that banks of all sizes can come together to access this technology.

Indeed, banks and central banks alike have long used digital currencies to transfer deposits electronically in the form of funds, movable by Fedwire, ACH, book entry, and other means of electronic payment, to achieve magnitudes of speed, security, and efficiency for businesses and consumers worldwide over decades.⁵ Like commercial banks, the Federal Reserve is now considering, among other things, whether to ledger its digital currency using blockchain technology. Whether it should do so or not is not our concern. But a CBDC that uses blockchain technology should not be considered a “crypto-asset” any more than USDF should be. Both are deposit products, regardless of the technology used on the back-end to ledger transactions in deposits.

In the remainder of our comments, we would like to convey the following points:

1. The Proposal’s broad definition of “crypto-asset” and its inclusion in the definition of “uninsured financial product” will dissuade banks’ from leveraging blockchain technology and confuse depositors.
2. We do not believe that the Proposal impacts the USDF Consortium’s initial proposed model.

1. The Proposal’s broad definition of “crypto-asset” and its inclusion in the definition of “uninsured financial product” will dissuade banks from leveraging blockchain technology and confuse depositors.

Technology has rapidly changed the way bank products and services are delivered. Today, most customers access their bank primarily through digital channels, and the branch is no longer the main way customers interact with their bank. Technology has also facilitated partnerships that allow for the delivery of banking services through non-traditional channels. With the proliferation of new options, it is more important than ever that customers clearly understand when they receive the protections associated banking regulation and FDIC insurance.

⁴ As measured by M1, 73% of money in the United States is a liability of an insured depository institution.

⁵ Randal Quarles, Vice Chair for Supervision of the Board of Governors of the Federal Reserve System, Parachute Pants and Central Bank Money, Address Before the 113th Annual Utah Bankers Association Convention (June 28, 2021), <https://www.federalreserve.gov/newsevents/speech/quarles20210628a.htm> (“[T]he dollar is already highly digitized. The Federal Reserve provides a digital dollar to commercial banks, and commercial banks provide digital dollars and other financial services to consumers and businesses.”).

This need has become particularly apparent in the non-bank cryptocurrency markets, where numerous companies have claimed to offer bank-like protections and, in some cases, falsely advertised that the FDIC insures their products. We support the FDIC's work to address these dangerous misrepresentations and ensure depositors remain protected.

Despite these risky activities, we have concerns that the Proposal as drafted, goes beyond what may have been intended and restrict banks' ability to implement blockchain technology to bring their customers responsible banking products.

The Proposal would revise the requirements on insured depository institutions ("IDIs") for the display of signage and advertising related to deposit insurance. If an IDI offers both deposits and "non-deposit products" – which include "crypto-assets" – it would be required to clearly, conspicuously, and continuously display signage indicating that the non-deposit products are: (a) not FDIC-insured; (b) not deposits; and (c) may lose value.

Because the Proposal defines "crypto-asset," as "any digital asset implemented using cryptographic techniques," traditional deposit products like USDF that leverage blockchain technology risk being captured under the overbroad definition. After all, blockchains are implemented using cryptographic techniques, and a digital asset may include USDF, which is a digital representation of value that functions as a medium of exchange and unit of account. Digital assets may also include stores of value recorded on a blockchain, as well as assets that have an equivalent value in, and are convertible into, fiat funds, or deposits, or that act as a substitute for real currency and are not legal tender.

Therefore, the Proposal's broad definition of "crypto-asset" would, by requiring banks to disclaim FDIC insurance for blockchain-powered yet traditional bank products, deter banks from innovating safely. If adopted by the FDIC as proposed, such an approach risks curbing banks' prudent deployment of new ledgering technology as they look to upgrade core systems or to implement new payments products for their customers.

Like any other technology, blockchain presents certain risks that must be managed in its implementation. These risks vary depending on the features of the particular blockchain technology being used. Existing banking rules provide for the appropriate management of these technology risks, as evidenced by the obligations established by the FDIC and other bank regulators on banks to notify their regulators prior to engaging in crypto-currency activities. When harnessed to provide better deposit products, blockchain technology does not present any unique risks that would warrant a new regulatory approach to managing this technology risk. Accordingly, we urge the FDIC to take a technology-neutral approach that addresses the risks inherent in any technology implementation, rather than an approach that dissuades banks from using blockchain technology. Given the expansive – and ambiguous – definition of "crypto-asset," it is not clear whether the Proposal would consider tokenized representations of deposits like USDF as qualifying for deposit insurance. We respectfully urge the FDIC to more precisely define "crypto-asset" to avoid capture of a digital marker, recorded on a distributed ledger, representing a bank deposit qualifies for FDIC insurance.

2. We do not believe the Proposal impacts the USDF Consortium’s initial proposed implementation.

Despite our concerns with the overbroad approach taken in the Proposal, we do not believe it would impact the initial proposed implementation of USDF. In its initial design, USDF would facilitate wholesale, bank-to-bank transactions, and USDF will not be held by any end users of members of the USDF Consortium. Despite the USDF’s Consortium’s initial limitation to wholesale payments, we believe that there is long-term value in providing end users tokenized representations of deposits.

USDF is not end user-facing.

USDF will be controlled exclusively by members of the USDF Consortium, supported by qualified service providers. USDF will help facilitate faster, cheaper, safer payments for banks, including with respect to underlying end user activity, although end users will not interface with USDF, just as they do not directly interface with other clearing or settlement rails (e.g., Fedwire). The value underlying USDF transactions ultimately will settle between USDF Consortium member banks using deposits through Fedwire or other traditional deposit transfer systems. Consequently, USDF is not used as a store of value.

In this implementation phase, USDF will function as a digital marker that facilitates the transfer of fiat currency between banks. While this may position a USDF token as a “medium of exchange,” or “unit of account,” USDF Consortium member banks should not be considered depositors since they will not hold funds in settlement of USDF transactions at other institutions. Instead, the digital maker that is USDF will record liabilities between banks to facilitate settlement in fiat funds.

We also do not believe that USDF will qualify as a “digital deposit-taking channel,” because USDF is a messaging and clearing token that merely facilitates payments, while the payments themselves are settled using deposit transfer systems. To be clear, the USDF Consortium does not accept deposits or give member banks access to insured deposits.

USDF operates on a private, permissioned chain.

USDF will operate on a private, permissioned blockchain (the “USDF Private Chain”) that is constructed and maintained based on the underlying code of the established and well-functioning Provenance Blockchain. Moreover, the USDF Private Chain will be walled off from the separate, permissionless Provenance Blockchain to help to ensure safe operation within bank regulatory compliance parameters. Using a private, permissioned chain allows banks to leverage the benefits of a shared ledger while maintaining privacy and ensuring that only IDIs can participate in USDF transactions. The USDF Consortium will contract with a pool of trusted validators to operate the permissioned chain, and USDF Consortium members will comply with applicable third-party risk management requirements in entering into their arrangements with the USDF Consortium.

Conclusion

Blockchain technology holds tremendous potential to improve financial services. When delivered responsibly, it has the potential to promote financial inclusion and ensure that the

United States remains the global leader, both in sound banking and faster payments. We believe the bank regulatory structure is well-equipped to manage the risks associated with this novel technology and that tokenized deposits are the best way to realize these benefits. We respectfully urge the FDIC to reconsider the Proposal's broad definition of "crypto-asset," and its inclusion in the definition of "uninsured financial product," which we believe will dissuade banks from leveraging blockchain technology and confuse depositors.

The USDF Consortium was created as a venue for banks and others to collaborate as they design blockchain infrastructure that will power the future of financial services. We are committed to delivering these innovations responsibly ensuring that our customers receive world-class safety and protections. We also are committed to working with regulators to help design a framework that fosters this critical innovation. We stand ready to engage with the FDIC on these issues.

Sincerely,
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