



# The Future of U.S. Crypto Legislation

—  
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# Presenters

Host: Mike Sorrell, *Deputy General Counsel, FIA*

**J. Christopher Giancarlo**, *Senior Counsel, Willkie Farr & Gallagher*

**Neal Kumar**, *Partner, Willkie Farr & Gallagher*

**Justin Browder**, *Partner, Willkie Farr & Gallagher*

**Conrad Bahlke**, *Counsel, Willkie Farr & Gallagher*

**Margo Bailey**, *Counsel, Willkie Farr & Gallagher*

**Michael Passalacqua**, *Associate, Willkie Farr & Gallagher*

**Michael Selig**, *Counsel, Willkie Farr & Gallagher*

Presentation prepared by





# Agenda

- **Introduction: What is Crypto?**
- **Regulatory Status Quo**
- **US Legislative Proposals**
- **US Central Bank Digital Currency**



# What is Crypto?

1. A new investment class
2. A faster & more efficient means of payment
3. Digital Gold
4. A scam to defraud naïve investors
5. All of the above





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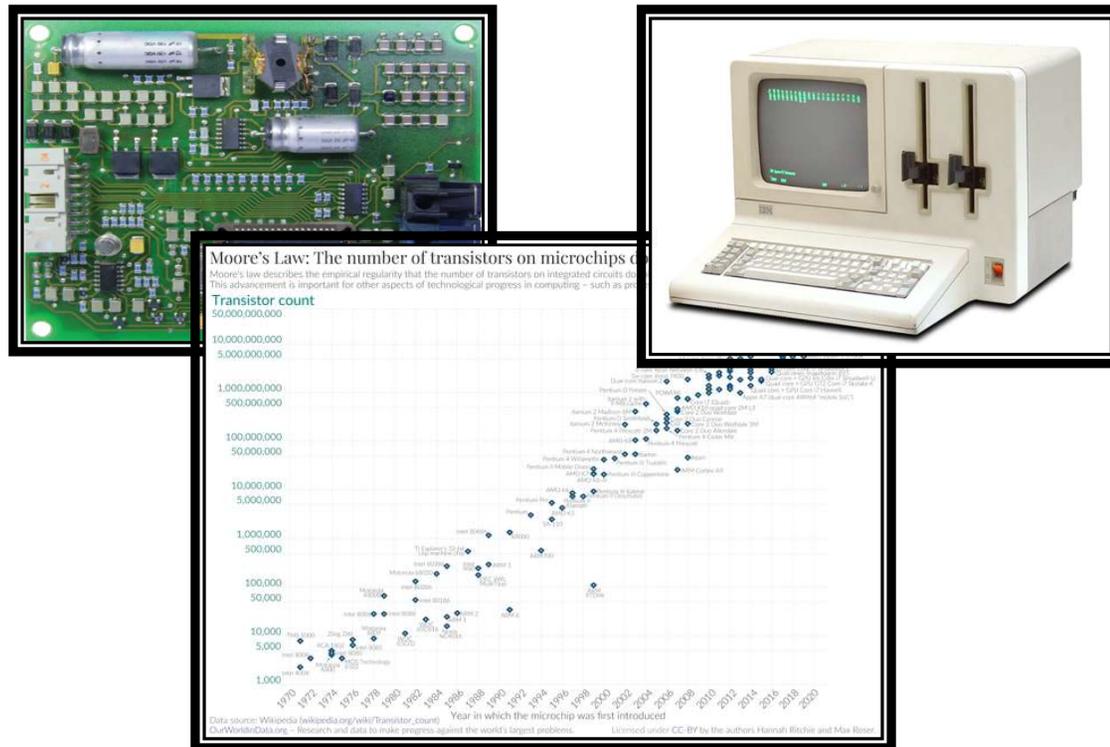
# “Crypto”

*A series of internet-based protocols to record and confirm the holding and transfer of things of value, including money itself.*

# First Wave: Internet of *Information*

## Key protocols:

- TCP/IP
- FCP/IP
- TFTP
- HTTP





# Transformed: All Manner of Information Sharing

*Music* (Pandora and Spotify)

*Television* (YouTube and Netflix)

*Retail shopping* (Amazon and eBay)

*Local transportation* (Uber and Lyft)

*Travel and leisure* (Expedia and Travelocity)

*Video/Photography* (Flicker and TikTok)

*Communications* (Twitter and FaceTime)

*Social networking* (Facebook and LinkedIn)

*Business meetings* (Zoom and Teams)

## Second Wave: *Internet of Things*



### Key protocols:

- CoAP
- SNMP
- MQTT
- WiFi
- Bluetooth



# Third Wave: *An Internet of Value*

## Bitcoin: A Peer-to-Peer Electronic Cash System

Satoshi Nakamoto  
satoshin@gmx.com  
www.bitcoin.org

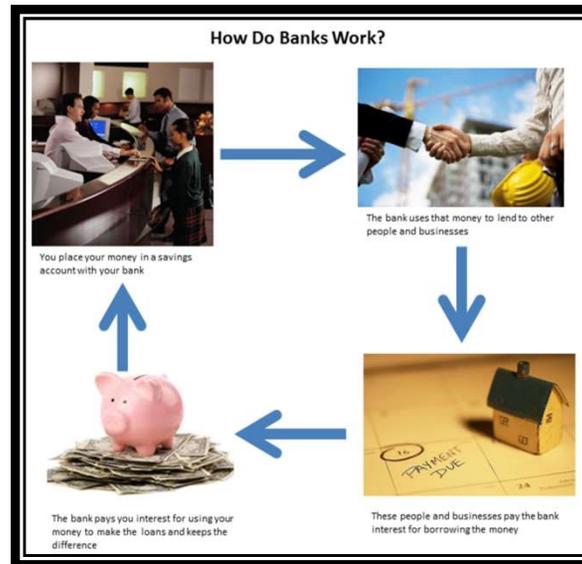
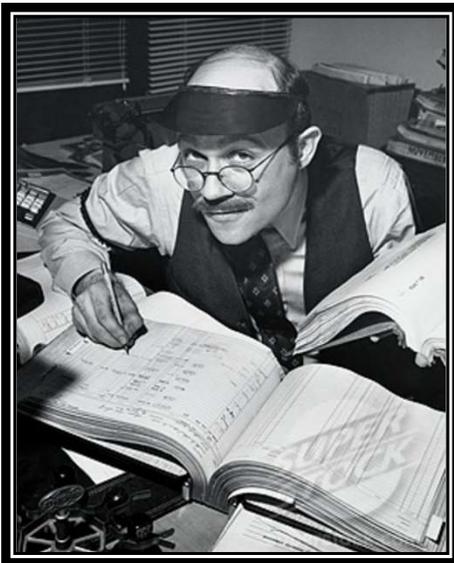
**Abstract.** A purely peer-to-peer version of electronic cash would allow online payments to be sent directly from one party to another without going through a financial institution. Digital signatures provide part of the solution, but the main benefits are lost if a trusted third party is still required to prevent double-spending. We propose a solution to the double-spending problem using a peer-to-peer network. The network timestamps transactions by hashing them into an ongoing chain of hash-based proof-of-work, forming a record that cannot be changed without redoing the proof-of-work. The longest chain not only serves as proof of the sequence of events witnessed, but proof that it came from the largest pool of CPU power. As long as a majority of CPU power is controlled by nodes that are not cooperating to attack the network, they'll generate the longest chain and outpace attackers. The network itself requires minimal structure. Messages are broadcast on a best effort basis, and nodes can leave and rejoin the network at will, accepting the longest proof-of-work chain as proof of what happened while they were gone.

## Key Protocols:

- BTC
- ETH
- SOL
- USDC

# Legacy Value Recording System

*Value recorded as assets and liabilities on proprietary balance sheets and asset registries.*





## A World of Digital Assets: Value Recorded on the Internet Using New DLT Protocols

- Cryptocurrencies
- Stablecoins
- Decentralized finance (DeFi)
- Non-fungible tokens (NFTs)
- Decentralized autonomous organizations (DAOs)
- Central Bank Digital Currency (CBDC)



# Rapid Global Engagement with Digital Assets

## The Private Sector

Bitcoin in 2008  
Ethereum in 2013

## Central Banks

China's Digital Yuan in 2014

## Market Regulators

CFTC Bitcoin Futures in  
2017

## Legislators

EU MICA crypto  
legislation in 2022



## Key Regulatory *Principles for Public Policy*

1. Begin with legislation
2. Create in bipartisan fashion
3. Seek substantive public input
4. Foster healthy crypto protocol development
5. Encourage greater financial inclusion



# The U.S. Legislative Process

- Small chance that stablecoin legislation will pass this year.
- Comprehensive crypto legislation more likely in next Congress.
- Legislative process will proceed through several Congressional committees.
- Current bills should be considered a first step in a longer process.



# Status Quo: Patchwork Regulatory Framework

- **CFTC jurisdiction**

- ✓ CFTC has full regulatory and enforcement authority over derivatives (e.g., futures and swaps) other than certain security-based derivatives.
- ✓ A commodity includes all other goods and articles [...], and all services, rights, and interests [...] in which contracts for future delivery are presently or in the future dealt.
- ✓ CFTC considers virtual currency to be a commodity.
- ✓ The CFTC has anti-fraud and anti-manipulation authority in the cash market for virtual currency transactions that do not qualify as securities (and, therefore, are commodities).



## Status Quo (cont.)

- **SEC jurisdiction**
  - ✓ Regulates the offer and sale of virtual currencies that are securities.
  - ✓ SEC v. W.J. Howey Co., 328 U.S. 293 (1946) – the “orange grove case” - an investment contract exists where there is: (1) An investment of money; (2) In common enterprise; (3) With a reasonable expectation of profits; and (4) Based upon the entrepreneurial or managerial efforts of others.
- **U.S. Dept of Treasury’s Financial Crimes Enforcement Network (FinCEN)**
  - ✓ Regulates the transmission of “currency” and “value that substitutes for currency” (including convertible virtual currencies, such as bitcoin and ether).
  - ✓ Transmitters of convertible virtual currency subject to registration as a money services business.
  - ✓ Money services businesses are subject to KYC/AML requirements.



## Status Quo (cont.)

- **State jurisdiction**

- ✓ Transmitters of virtual currency and money transmitter licensing requirements.
- ✓ New York State bitlicense.
- ✓ Some state licensing exemptions for banks and trust companies.

- **Prudential regulator jurisdiction**

- ✓ Federal vs. State banking regulation.
- ✓ Office of the Comptroller of the Currency (OCC)
- ✓ Federal Reserve Board
- ✓ Federal Deposit Insurance Corporation



# Legislative Bills that Reconsider the Status Quo

- **Comprehensive framework:**

- ✓ Responsible Financial Innovation Act (June 6, 2022)
- ✓ Digital Commodity Exchange Act (Apr. 28, 2022)

- **Targeted:**

- ✓ Stablecoin Innovation and Protection Act (Draft)
- ✓ Stablecoin Trust Act (Draft)
- ✓ Blockchain Regulatory Certainty Act (Aug. 17, 2021)
- ✓ Keep Innovation in America Act (Nov. 17, 2021)
- ✓ Virtual Currency Consumer Protection Act (Aug. 24, 2021)
- ✓ U.S. Virtual Currency Market and Regulatory Competitiveness Act (Aug. 24, 2021)



# Responsible Financial Innovation Act (RFIA)

- **Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY)**
- **Comprehensive bipartisan bill:**
  - ✓ New digital asset definitions
  - ✓ Division of authority between SEC and CFTC
  - ✓ Establishment of digital asset exchanges regulated by CFTC
  - ✓ Taxation of digital assets
  - ✓ Customer protections
  - ✓ Cybersecurity concerns
  - ✓ Regulation of payment stablecoins



## RFIA – CFTC Jurisdiction Over Digital Assets

- **Exclusive Jurisdiction.** Section 403 of the RFIA grants the CFTC exclusive jurisdiction over the purchase and sale of a digital asset, **including ancillary assets.**

CEA Section 1a(9): The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, **and a digital asset** and all other goods and articles, except onions [...] and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.



## RFIA – Retail Commodity Transactions – CEA Section 2(c)(2)(D)(ii)

- Retail digital asset transactions that are offered on a leveraged basis must be executed on a DCM, registered digital asset exchange, or with a FCM, **unless**:
  - ✓ Actual delivery occurs within 2 days of execution.
  - ✓ Actual delivery must be consistent with CFTC June 2020 Interpretation
- Spot or cash market transactions between ECPs are not required to be executed on a DCM or registered digital asset exchange even if they are offered on a leveraged basis.



# RFIA - Limitations to the CFTC's Jurisdiction

- **“Exclusive” jurisdiction over digital assets unlike jurisdiction to regulate futures and swaps.**
  - ✓ Regulatory jurisdiction is limited to transactions on CFTC-registered exchanges or that involve other CFTC registrants such as an FCM.
  - ✓ Absent CFTC registration, State laws become relevant for compliance purposes.
- **Custodial Activities**
  - ✓ CFTC exclusive jurisdiction does not apply to custodial activities of a digital asset if the entity is supervised or regulated by a State or other Federal regulatory agency.
- **Fungibility Requirement**
  - ✓ The RFIA requires that a digital asset be fungible, so exclusive jurisdiction does not apply to “digital collectibles and other unique digital assets.”



# RFIA – Digital Asset Exchanges

- **Digital Asset Exchanges**

- ✓ Any “trading facility that offers or seeks to offer a market in digital assets” **may** register with the CFTC.
- ✓ CFTC has exclusive jurisdiction over the regulation and other activities of the registered digital asset exchange.
- ✓ Must register as a DCM or SEF to list derivatives on digital assets.

- **Core Principles**

- ✓ Similar to the current regulatory framework for DCMs and SEFs, digital asset exchanges must comply with core principles in order to maintain registration.



## RFIA – FCMs and Digital Assets

- **Expansion of entities required to register as an FCM.**
  - ✓ An entity that is engaged in soliciting / accepting orders for digital assets traded on or subject to the rules of a registered entity.
  - ✓ Acting as a counterparty to any cash / spot transaction involving a digital asset with non-ECPs (*unless* conducted in compliance with State laws, subject to another Federal authority, or separately regulated under the CEA).
- **Addition to CEA Section 4d regarding segregation of digital assets.**
- **Limitation on FCMs acting as counterparties.**
  - ✓ FCMs may not act as counterparties to any transaction involving a digital asset that has not been listed for trading on a digital asset exchange.



## RFIA – Definition of Digital Assets

- **Digital Assets** are defined as a commodity under the CEA.
  - ✓ A natively electronic asset that – (i) confers economic, proprietary, or access rights or powers; and (ii) is recorded using cryptographically secured distributed ledger technology, or any similar analogue.
- **Ancillary assets** are presumed to be commodities, provided certain periodic disclosure requirements are satisfied.
  - ✓ Intangible, fungible assets that are offered, sold, or otherwise provided to a person in connection with the purchase and sale of a security through an arrangement or scheme that constitutes an investment contract.



## RFIA – Exclusion from Definition of Digital Asset

- The definition of a digital asset / ancillary asset excludes any asset that provides the holder with any of the following rights in a business entity:
  - (i) a debt or equity interest;
  - (ii) liquidation rights;
  - (iii) any form of entitlement to an interest or dividend payment;
  - (iv) any profit or revenue share derived solely from the entrepreneurial or managerial efforts of others; or
  - (v) any other financial interest



# RFIA – Responsible Payments Innovation

- **Payment Stablecoins.** A digital asset that is:
  - ✓ redeemable, on demand, on a one-to-one basis for instruments denominated in United States dollars and defined as legal tender;
  - ✓ issued by a business entity;
  - ✓ accompanied by a statement from the issuer that the asset is redeemable from the issuer or another identified person;
  - ✓ backed by one or more financial assets (excluding other digital assets); and
  - ✓ intended to be used as a medium of exchange.
- **Depository Institutions**
  - ✓ Permits banks to issue, redeem, and conduct all incidental activities relating to payment stablecoins, subject to certain conditions (e.g., backed by high quality liquid assets; disclosures).



# Digital Commodity Exchange Act (DCEA)

- Reps. Glenn "GT" Thompson (R-PA), Ro Khanna (D-CA), Tom Emmer (R-MN), and Darren Soto (D-FL).
- **Comprehensive bipartisan bill addressing many fundamental legal questions:**
  - ✓ New digital commodity definitions
  - ✓ New categories of registration with CFTC
  - ✓ Division of authority between SEC and CFTC
  - ✓ Establishment of digital commodity exchanges regulated by CFTC
  - ✓ Customer protections
  - ✓ Regulation of fixed-value digital commodities



# RFIA-DCEA Similarities and Differences

- **The DCEA is similar to the RFIA in many ways:**
  - Both grant the CFTC exclusive jurisdiction over digital assets/digital commodities.
  - Both provide that retail margin transactions must occur on a DCM, digital asset/commodity exchange, or with an FCM, unless actually delivered within 2 days.
  - Both create a new category of exchange, the digital asset exchange (RFIA) and the digital commodity exchange (DCEA), for which registration is optional. The exchanges both are required to comply with a similar set of core principles.
- **However, the two bills differ in other respects:**
  - RFIA and DCEA contain differing proposals on how to address stablecoins and how to distinguish between SEC and CFTC jurisdiction over certain digital assets.
  - DCEA does not address tax or cybersecurity issues.



# DCEA – Digital Commodity Presales

- **What is a pre-sold digital commodity?**
  - ✓ Delivery of a unit of a digital commodity (or right to a future digital commodity) before listing on an exchange, to certain persons.
- **Recipients of a pre-sold digital commodity may sell the commodity:**
  - ✓ via a securities transaction compliant with the Securities Act of 1933;
  - ✓ to an accredited investor; or
  - ✓ through a DCE that lists the digital commodity.
- **For holders of pre-sold “utility tokens,” once they exchange the token for the non-financial rights, the token is no longer considered pre-sold.**
- **Pre-sold vs. “unencumbered” digital commodities.**



## DCEA – Digital Commodity Exchanges

- The regulatory regime for digital commodity exchanges is broadly consistent across the DCEA and RFIA, but note:
  - ✓ DCEA requires that digital asset exchanges become members of NFA and register with the Treasury as a money services business.
- Under a modified self-certification process:
  - ✓ DCEs are required to consider a number of factors unique to digital commodities, including: purpose and use; consensus mechanism; governance structure; participation and distribution; and functionality.
  - ✓ DCEs must determine that it is not reasonably likely that the transaction history of the digital commodity can be fraudulently altered by any person or group of persons.



# DCEA – Digital Commodity Developer and Fixed-Value Digital Commodity Operator

- The DCEA incorporates voluntary registration categories that may streamline the listing process for digital exchanges.
- **Digital commodity developer:**
  - ✓ Must be a member of a registered futures association (NFA)
  - ✓ Required disclosures to CFTC.
- **Fixed-value digital commodity operator:**
  - ✓ A digital commodity which is redeemable for a fixed amount of fiat currency or another commodity, or the value thereof.
  - ✓ Voluntary registration with disclosure requirements to the CFTC for persons that solicit, accept, or receive assets from others to issue fixed-value digital commodities.



# Stablecoin Innovation and Protection Act of 2022

- Rep. Josh Gottheimer (D-NJ). Discussion draft issued February 2022.
- **Qualified stablecoins**
  - ✓ Any cryptocurrency or other privately-issued digital financial instrument that is redeemable, on demand, on a one-to-one basis for U.S. dollars. *A qualified stablecoin is not a security or a commodity.*
  - ✓ Removes “qualified stablecoins” from CFTC and SEC jurisdiction, with OCC being the primary regulator, but does not address other CFTC-SEC jurisdictional questions.
- **Entities eligible to issue qualified stablecoins**
  1. Banks
  2. Nonbank qualified stablecoin issuers subject to conditions (OCC supervision)
- **Qualified Stablecoin Insurance Fund.**



# Stablecoin TRUST Act of 2022

- **Senator Pat Toomey (R-PA). Discussion draft issued April 2022.**
- **Payment Stablecoin** means a convertible virtual currency that:
  - ✓ Is designed to maintain a stable value relative to fiat currency or currencies;
  - ✓ Is convertible directly to fiat currency by the issuer;
  - ✓ Is designed to be widely used as a medium of exchange;
  - ✓ Is issued by a centralized entity;
  - ✓ Does not inherently pay interest to the holder; and
  - ✓ Is recorded on a public distributed ledger.
- **Payment stablecoins are exempted from the definition of “security.”**
- **Entities eligible to issue a payment stablecoin, subject to disclosures:**
  1. Money Transmitters (or other authorized persons by a State banking authority)
  2. National Limited Payment Stablecoin Issuers (licensed by OCC)
  3. Insured Depository Institutions



# Other Legislative Fixes

- **Blockchain Regulatory Certainty Act**

- Financial Action Task Force guidance would classify decentralized finance operators in the same way as money service businesses.
- This bill provides a safe harbor for certain non-controlling blockchain developers and providers of blockchain services. Blockchain developers and miners that do not custody customer funds would not be required to register as money transmitters.

- **Keep Innovation in America Act**

- The Infrastructure Act broadly defined “broker” to capture miners, validators, developers, etc., subjecting them to tax reporting requirements. The Act also gave the Department of Treasury broad discretion over the definition of “digital asset.”
- This bill narrows the definition of “broker” and clarifies the information brokers must report when transferring digital assets to an account maintained by a non-broker.
- Removes the discretion given to Treasury to amend the definition of digital asset.



# Reports on the Industry

- **March 2022 Executive Order:**
  - President Biden issued an Executive Order that directs a number of federal agencies to examine and assess, as well as prepare reports on, various aspects of the digital asset markets within certain specified timeframes (ranging from 90 days to one year).
  - Treasury Fact Sheet: Framework for International Engagement on Digital Assets.
- **Virtual Currency Consumer Protection Act:**
  - Rep. Darren Soto (D-FL), and others, introduced a bill that directs the CFTC and other agencies to submit within one year a report examining the potential for price manipulation in the virtual currency markets.
- **U.S. Virtual Currency Market and Regulatory Competitiveness Act:**
  - Rep. Darren Soto (D-FL), and others, introduced a bill that directs the CFTC and other agencies to submit within one year a report on the state of virtual markets and competitiveness.



## Areas to Watch

- **Tracking near term developments**
  - Continued regulation through enforcement.
  - Stablecoin legislation.
  - Agency reports in response to the Executive Order.
  - Additional bills that address CFTC-SEC jurisdiction (Stabenow-D and Boozman-R bill).
- **Tracking medium-to-long-term developments**
  - Reconciliation of various legislative bills.
  - Even after legislation, the regulatory process will take time.

# Central Bank Digital Currency or “CBDC”

Over 100 of the world’s central banks have engaged in research or experimentation toward developing CBDC.

## CBDC FRAMEWORKS

Banque de France

## PROJECT JASPER

Central Bank of Canada

## ECCB CBDC PILOT

Eastern Caribbean Central Bank

## ECB CBDC

European Central Bank

## PROJECT KHOKHA

South African Reserve Bank

## PROJECT ABER

Saudi Arabian Monetary Authority and United Arab Emirates Central Bank

## SNB SBDC

Bank of International Settlements &  
Swiss National Bank

## E-KRONA

Central Bank of Sweden

## DIGITAL YUAN

The People’s Bank of China

## PROJECT STELLA

Bank of Japan

## BOK CBDC Pilot System

Bank of Korea

## PROJECT UBIN

Monetary Authority of Singapore



# Factors Driving Central Bank Interest

## Unlock Benefits

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### Modern and Resilient Payments

The ability to modernize current payment infrastructure while simultaneously creating a resilient, separate payment rail for retail and wholesale users alike has been attractive to central banks and treasury groups in governments.

### Financial Inclusion

As non-regulated entities, some with fully decentralized operating structures, proliferate the risks of currency failures by these private entities and associated contagion are areas of concern with regards to financial safety, stability, and soundness.

## Reduce Risks

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### Monetary Sovereignty

Central bankers and policy makers have become increasingly aware of the risks that non-bank, currency-like, instruments will displace their sovereign currency and thus decrease control over their monetary union.

### Stability and Soundness

As non-regulated entities, some with fully decentralized operating structures, proliferate the risks of currency failures by these private entities and associated contagion are areas of concern with regards to financial safety, stability, and soundness.

# A Digital Dollar: A Digital Bearer Instrument with the Full Faith & Credit of the US Government



# Federal CBDC Value Proposition

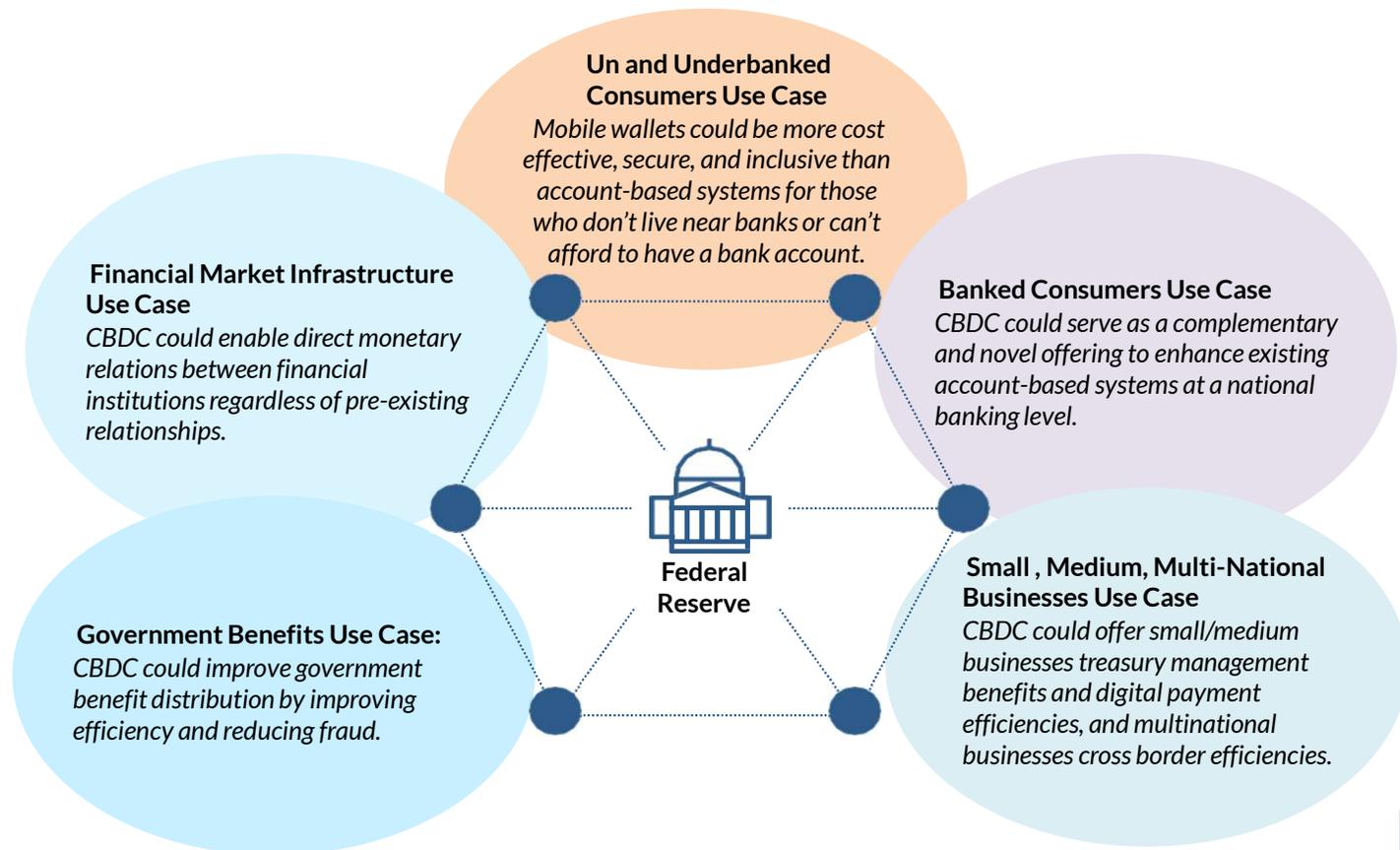
A centralized CBDC enables a common currency platform across possible use cases

## DDP Pilot Initiatives

The DDP is working with participants in various industries to explore how a CBDC impacts or benefits different markets

## Value of a Fed CBDC

- Deeper and more liquid markets than fractionalized Stablecoin networks
- Consistent & publicly available
- A CBDC is legal tender and trusted unit in case of an economic panic





## First Digital Dollar Pilot: Test Utility with Real World Pilot Projects

April 2022: Digital Dollar Project and Depository Trust Clearing Corp to test use of Digital Dollar in the clearing & settlement of securities.

- FIRST pilot in history to test a U.S. CBDC.
- FIRST pilot in history that is entirely private sector led, not initiated by a central bank to test CBDC of any denomination.

The digital dollar project expects to announce in the next 90 days a second digital dollar pilot project focused on retail usage with more pilots to come.



# Goal of the Project's Pilots

The Project's Pilot phase will focus on four key action-oriented pillars to continue the exploration and advocacy of a US CBDC.



## Inform Public Sector

The DDP pilot exploration will support greater awareness within the United States government and among key private stakeholders on the importance of a US CBDC, challenges and opportunities design, implementation, and use of such currency in line with global innovation.



## Gather Empirical Evidence

In order to meaningful test hypotheses the Project will focus on gathering empirical evidence through real world pilots to inform and support the policy and technology decisions that must be made by the Federal Reserve, Treasury, and law makers.



## Advance Standards

The initiative would convene key SMEs and private sector stakeholders to apply the learnings and insights from the Pilot Programs and global CBDC activity to begin evaluating and cataloguing the emerging standards and policies for a US CBDC.



## Publish Results

The initiative will prioritize publishing reports that summarize and analyze the results of the pilots to continue to inform the public and private sectors as well as individuals on the future challenges and advantages of a US CBDC.



# Thank you to our speakers!

Host: Mike Sorrell, *Deputy General Counsel, FIA*

Conrad Bahlke, *Counsel, Willkie Farr & Gallagher* | [cbahlke@willkie.com](mailto:cbahlke@willkie.com)

Margo Bailey, *Counsel, Willkie Farr & Gallagher* | [mbailey@willkie.com](mailto:mbailey@willkie.com)

Justin Browder, *Partner, Willkie Farr & Gallagher* | [jbrowder@willkie.com](mailto:jbrowder@willkie.com)

J. Christopher Giancarlo, *Senior Counsel, Willkie Farr & Gallagher* | [jcgiancarlo@willkie.com](mailto:jcgiancarlo@willkie.com)

Neal Kumar, *Partner, Willkie Farr & Gallagher* | [nkumar@willkie.com](mailto:nkumar@willkie.com)

Michael Passalacqua, *Associate, Willkie Farr & Gallagher* | [mpassalacqua@willkie.com](mailto:mpassalacqua@willkie.com)

Michael Selig, *Counsel, Willkie Farr & Gallagher* | [mselig@willkie.com](mailto:mselig@willkie.com)

Presentation prepared by





# Thank you for joining us today!

## Upcoming Webinars:



**Crypto: New Frontiers and Unanswered Questions**  
10:00 – 11:00 AM ET



**Digital Assets - The Transformation of Financial Markets**  
9:30 – 11:00 AM SGT



**Agency Deference No More? Lessons from  
West Virginia v. EPA**  
10:00 – 11:00 AM ET

The image features a stylized logo for 'FIA' centered on a white background. The logo consists of three letters: 'F' in dark grey, 'I' in dark grey, and 'A' in blue. The 'A' is composed of two overlapping shapes: a light blue triangle pointing up and a darker blue triangle pointing down. The background is composed of several overlapping, semi-transparent geometric shapes in shades of light green, light blue, and pale yellow, creating a layered, abstract effect.

**FIA**