Rob Nichols' Washington Update
August/September 2022

Breaking Down the Debate over Digital Assets

As I traveled the country this summer speaking at various state bankers association conventions, I'd always ask this question of my audience: *How many of you have clients and customers that are asking you about cryptocurrencies and digital assets?* And nearly everywhere I went, nearly every hand would go up.

The interest in cryptocurrencies and digital assets is undeniable—even in the face of recent volatility in digital asset markets. Americans want them: from the casual dabbler to the serious investor, from Gen Z'ers to boomers, everyone it seems wants a bite at the crypto apple. Many banks want to engage, too—as digital assets become more popular, and those banks are exploring ways to meet the needs of customers who want their bank to be the custodian of these assets.

I've written previously about the merits of banks being able to take on custodial roles for digital assets—there are many—and the need for a regulatory architecture that will support them taking on these roles if they choose. That's an area where ABA continues advocate for banks' ability to enter the digital asset space in a safe and sound manner. But it's just one of the debates that are currently brewing over crypto. There are several others that bankers should be aware of:

Who should regulate? One key quandary facing policymakers right now is: what's the right way to regulate crypto, and to which agency should that authority be delegated?

Currently, the Securities and Exchange Commission and the Commodity Futures Trading Commission are both vying for the role of crypto cop. Two separate bills have been introduced this summer—one by Sens. Cynthia Lummis (R-Wy.) and Kirsten Gillibrand (D-N.Y.) and another by Sens. Debbie Stabenow (D-Mich.) and John Boozman (R-Ark.)—that would delegate most of this authority to the CFTC. Simultaneously, there are some in the crypto community who are calling for the creation of a whole new regulatory agency dedicated to digital asset supervision, though this seems far less likely.

Regardless of which entity ultimately ends up with regulatory authority, it is imperative that it develops clear definitions of digital asset products that are based on the risk that each category of digital asset carries. Working with the banking agencies, any prospective crypto regulator must also ensure a level playing field between bank and non-bank entities in the digital asset markets and establish clear guidelines for risk management and consumer protection.

Payments system access? Another key question is the extent to which nonbank crypto firms should have access to the payment system. The Federal Reserve took a significant step toward answering this question in mid-August when it finalized a framework for assessing which entities may be granted payments system access. This framework creates a tiered system for evaluating incoming requests, and under it, institutions that engage in novel activities would undergo a more extensive review.

Access to the payments system is a significant privilege and comes with many responsibilities. As the Fed begins evaluating new requests for access, we'll be watching carefully to ensure that these new guidelines are appropriately accounting for the inherent risks that come with some of these new financial players.

Is there a use case for a CBDC? Finally, there's the question of a central bank digital currency and whether there's a use case for it in the U.S. As ABA told policymakers in several comment letters and testimonies over the last year, our view is that no such case exists—for every problem that proponents say a CBDC could solve, the fact is that there are *already* solutions available that don't involve a government-created currency. Financial inclusion is just one example: Banks are already making great strides to bring more unbanked households into the financial system by offering Bank On-certified accounts.

Not only would a CBDC be duplicative of private-sector solutions that already exist, but it also has the potential to have an incredibly damaging effect on bank balance sheets and the flow of credit to households and businesses if the Federal Reserve were to become a competitor for bank deposits.

All of these ongoing debates underscore an urgent need for a fair, well-calibrated regulatory framework for digital assets—one that promotes responsible innovation while minimizing systemic risk and protecting consumers. And that's a framework we'll continue to fight for.

######