



United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

August 23, 2023

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chair Powell:

We are writing to express concerns regarding the Federal Reserve Board’s (“Fed”) recent supervision and regulation letters titled “Creation of Novel Activities Supervision Program” (“SR 23-7”) and “Supervisory Nonobjection Process for State Member Banks Seeking to Engage in Certain Activities Involving Dollar Tokens” (“SR 23-8”), both of which were issued on August 8, 2023.¹ We are concerned that these actions are being taken to subvert progress made by Congress to establish a payment stablecoin regulatory regime. Moreover, if these letters are left in place, they will undoubtedly deter financial institutions from participating in the digital asset ecosystem.

Congress understands the need to provide regulatory certainty for payment stablecoins and the broader digital asset ecosystem. A regulatory framework established by Congress will better protect consumers and provide certainty to market participants. This recognition was the impetus for the *Clarity for Payment Stablecoins Act*, a bill that was favorably reported by the House Committee on Financial Services on a bipartisan basis. Yet, instead of working with Congress to establish a workable regime, less than two weeks after the Committee’s action, the Fed released SR 23-7 and SR 23-8.

In fact, the Committee’s approach creates a clear and permissible framework for regulated institutions, including banks under the Fed’s purview, to issue payment stablecoins.² The legislation imposes strict standards on all payment stablecoin issuers regarding reserves, disclosures, redemptions, liquidity, and risk management that will ensure the integrity of the payment stablecoin. SR 23-7 and SR 23-8, however, run counter to this approach.

By issuing the letters, the Fed has chosen to effectively prevent banks from issuing payment stablecoins—or engaging in the payment stablecoin ecosystem. While the supervisory nonobjection process is masked as guidance outlining a process by which these activities can be

¹ Federal Reserve Board, SR 23-7: *Creation of Novel Activities Supervision Program* (Aug. 8, 2023); Federal Reserve Board, SR 23-8/CA 23-5: *Supervisory Nonobjection Process for State Member Banks Seeking to Engage in Certain Activities Involving Dollar Tokens* (Aug. 8, 2023).

² The Fed uses the term “dollar token” and this letter uses the word “payment stablecoin,” but the words are synonymous for the purposes of SR 23-7 and SR 23-8.

permissible, it is clear the Fed does not intend to allow any such activity, at least as it relates to public, permissionless blockchains.³

Furthermore, the Novel Activities Supervision Program (“Program”) created under SR 23-7 appears designed to impose additional regulatory burdens on banking institutions to engage with crypto-assets and to provide the Fed with additional tools to deny crypto-asset related activities. Consequently, this approach, when taken in conjunction with previous policy statements⁴ and Fed decisions,⁵ will ultimately lead to a de facto prohibition on banks engaging with the digital asset ecosystem.

Finally, SR 23-7 and SR 23-8 were not issued in accordance with the notice and comment process as required under the Administrative Procedure Act. This guidance represents an effort by the Fed to set policy without being held accountable to market participants and the public, which is unacceptable.

To further understand the Fed’s rationale and intentions pertaining to SR 23-7, please provide written answers to the following questions:

1. How does the Fed intend to implement a fair and consistent process for determining which banking organizations will be subject to supervisory examination of novel activities?
2. How does the Fed intend to interpret what constitutes “banking products and services to end customers” with respect to those offered through third-party partnerships with banking organizations?
3. SR 23-7 states that the Program will engage broadly with “experts from academia and the banking, finance, and technology industries.”
 - a. How will the Fed determine which stakeholders will be consulted as part of the Program?
 - b. What will be the proportional representation for each stated area of expertise?
 - c. Will separate experts be consulted with respect to the four different activities specified in SR 23-7?

³ Federal Reserve Board, SR 23-8/CA 23-5: *Supervisory Nonobjection Process for State Member Banks Seeking to Engage in Certain Activities Involving Dollar Tokens* (Aug. 8, 2023) at footnote 9: “the agencies believe that issuing or holding as principal crypto-assets (referring generally to any digital asset implemented using cryptographic techniques) that are issued, stored, or transferred on an open, public, and/or decentralized network, or similar system is highly likely to be inconsistent with safe and sound banking practices.”

⁴ Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, *Joint Statement on Crypto-Asset Risks to Banking Organizations* (Jan. 3, 2023).

⁵ Federal Reserve Board, FRB Order 2023-02, Order Denying Application for Membership (Jan. 27, 2023), available at <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20230324a1.pdf>.

4. Will the Fed reconsider denials of applications for eligible depository institutions who previously indicated that they would engage in such novel activities described in SR 23-7?

Additionally, to further understand the Fed's rationale and intentions pertaining to SR 23-8, please provide written answers to the following questions:

1. Does the Fed intend to consult state banking regulators as part of its nonobjection process, particularly in instances where a state banking regulator permits the payment stablecoin activities under consideration?
2. SR 23-8 states that the Fed will evaluate payment stablecoin activities based on, but not limited to, the following: operational risks, cybersecurity risks, liquidity risks, illicit finance risks, and consumer compliance risks. Does the Fed intend to elaborate more on each particular risk and create a standardized evaluation process for evaluating regulated institutions as it relates to payment stablecoin activities?
3. SR 23-8 requires state member banks to notify the Fed prior to conducting payment stablecoin activities, which includes "for the purpose of testing" such activities.
 - a. How will the Fed evaluate a state member bank's proposal to test payment stablecoin activities?
 - b. Under what circumstances would the Fed deny giving a written notification of supervisory nonobjection to institutions who wish to test payment stablecoin activities?
 - c. Are there other instances, separate from payment stablecoin activities, where state member banks must receive a written nonobjection prior to conducting testing in such activities? Please explain.
4. When did the Fed first begin drafting SR 23-8?

Please also provide the following documents pertaining to SR 23-7 and SR 23-8:

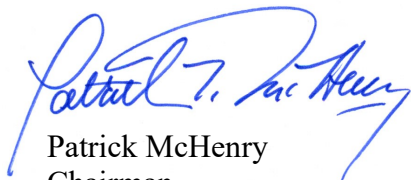
1. All records and communications, between and among employees of the Division of Supervision and Regulation, employees of the Legal Division, and employees of the Division of Consumer and Community Affairs referring or relating to SR 23-7 or SR 23-8, from January 2021 to present;
2. All records and communications of Vice Chair for Supervision Michael Barr referring or relating to SR 23-7 or SR 23-8, from January 2021 to present;
3. All records and communications, between and among employees of the Division of Supervision and Regulation, referring or relating to SR 23-7 or SR 23-8 that mention the

“FIT for the 21st Century Act” or “market structure legislation,” the “Clarity for Payment Stablecoins Act,” or “payment stablecoin legislation,” from January 2021 to present;

4. All records and materials, used in preparation of any “S&R Quarterly Presentation,” to highlight crypto-related financial risks, from January 2021 to present;
5. All records and materials, used in preparation of any “System Risk Report” for the Federal Reserve Supervision Committee, to highlight concerns about crypto-related financial risks, from January 2021 to present; and
6. All records and materials, used in preparation of any “Supervision and Regulation Report,” to highlight concerns about crypto-related financial risks, from January 2021 to present.
7. All records and materials referring or relating to the Fed’s Policy Statement on Section 9(13),⁶ from January 2021 to present.

Please provide the requested information as soon as possible, but no later than 5:00 p.m. on September 29, 2023. The Committee on Financial Services has jurisdiction to oversee the activities of the Board of Governors of the Federal Reserve System pursuant to Rule X of the Rules of the House of Representatives. If you have any questions, please contact the Republican Staff of the Committee on Financial Services. Thank you for your attention to this important matter.

Sincerely,



Patrick McHenry
Chairman
Committee on Financial Services



French Hill
Chairman
Subcommittee on Digital Assets,
Financial Technology and Inclusion



Bill Huizenga
Chairman
Subcommittee on Oversight and Investigations

⁶ Board of Governors of the Federal Reserve System, *Policy Statement on Section 9(13) of the Federal Reserve Act* (Jan. 27, 2023).