

# Are Crypto Lending, DeFi and Stablecoins the New “Lions and Tigers and Bears, Oh My!”? A Review of Recent Crypto Legal and Regulatory Developments

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Developments continue at a frenetic pace in the crypto industry. Issues barely on the radar screen 18 months ago have come front and center in today’s headlines. Areas with relatively small market capitalizations a year ago have ballooned many multiples during the past year. This advisory overviews three key areas – crypto lending, decentralized finance (DeFi) and stablecoins – and summarizes what key regulators have been saying about and doing in them.

## I. Interest-Bearing Accounts (or Crypto Lending)

### Background

- A number of crypto platforms now offer interest-bearing opportunities permitting their customers to earn interest on cryptoassets that they hold with, or lend to, such platforms. On the back end, the platforms generally use those deposited or lent assets to fund digital asset loans to traders or other market players.
- Many of these opportunities tout interest-rate returns far exceeding what traditional financial institutions currently offer.
- These crypto-lending accounts or relationships are **not** traditional bank accounts or relationships and are not insured by the Federal Deposit Insurance Corporation (FDIC), and the platforms that offer these products are **not** members of the Securities Investor Protection Corporation (SIPC). Thus, these “deposit accounts” or lent assets are not entitled to the same regulatory protections that apply to conventional bank or brokerage accounts.

### Canaries in the Coal Mine? Regulatory Scrutiny

- Purported interest-bearing accounts offered by one major market player have generated significant regulatory scrutiny in recent months. Securities regulators in five different states have alleged that, or at least questioned whether, these “accounts” are actually unregistered securities offerings to residents of those states and, in some cases, have already issued cease-and-desist orders to the offering firms.<sup>1</sup>
- Separately, Coinbase issued a public statement on September 7 disclosing that it had received a Wells notice from the Securities and Exchange Commission (SEC) with respect to its proposed Coinbase Lend program (Lend program), which would have allowed users to earn interest on select assets held with Coinbase.<sup>2</sup> In essence, the Wells notice was a warning to Coinbase that if it were to launch the program as proposed,

<sup>1</sup> The states in question are New Jersey, Texas, Alabama, Vermont and Kentucky. *Disclosures and Complaints* (last accessed Sept. 9, 2021), <https://blockfi.com/disclosures-and-complaints/>.

<sup>2</sup> Paul Grewal, “The SEC has told us it wants to sue us over Lend. We don’t know why.” Coinbase Blog (Sept. 7, 2021), <https://blog.coinbase.com/the-sec-has-told-us-it-wants-to-sue-us-over-lend-we-have-no-idea-why-a3a1b6507009>.

the SEC would take formal action against it. The SEC reportedly has informed Coinbase that it views Lend program as a security under the *Howey* and *Reves* tests.<sup>3</sup>

- Coinbase maintains that the Lend program does not constitute an offering of securities because  
[c]ustomers won't be "investing" in the program, but rather lending the [stablecoins] they hold on Coinbase's platform in connection with their existing relationship. And although Lend customers will earn interest from their participation in the program, [Coinbase has] an obligation to pay this interest regardless of Coinbase's broader business activities. What's more, participating customers' principal is secure and [Coinbase is] obligated to repay their [stablecoins] on request.
- These developments may reasonably be construed as a warning to the many other platforms that offer interest-bearing accounts. The penalties for an unregistered securities offering can be steep. An issuer of unregistered securities is likely to be the target of an enforcement action by the SEC (and possibly other regulators) and may ultimately be required to, among other things, pay substantial monetary penalties and/or to provide participating investors a rescission right.

### SEC Chairman Gensler Weighs In on Crypto Lending: "Wild West"

- On August 3, in his remarks before the Aspen Security Forum,<sup>4</sup> SEC Chairman Gensler emphasized that "[t]he American public is buying, selling, and lending crypto on these trading, lending, and DeFi platforms, and there are significant gaps in investor protection." He warned crypto platforms to "[m]ake no mistake: If a lending platform is offering securities, it . . . falls into SEC jurisdiction," and the securities must be registered under the Securities Act of 1933, as amended, or eligible for a registration exemption.
- In his remarks, Chairman Gensler summarized the current state of play as follows: "Right now, we just don't have enough investor protection in crypto. Frankly, at this time, it's more like the Wild West. . . . In my view, the legislative priority should center on crypto trading, lending, and DeFi platforms."

## II. DeFi

### Background

- Decentralized finance, also known as DeFi, is a fast-growing sector of the blockchain ecosystem. DeFi protocols use smart contracts to create and manage financial products and services that are non-custodial in nature. Ideally, they do not rely on a central party for governance and maintenance, but many still do in practice.<sup>5</sup> DeFi-related applications are administered via online portals, called "dApps," and are often supported by individuals who pool together assets in a "liquidity pool."
- Those that deposit assets in a liquidity pool "lock their assets" and often earn fees and/or automatically receive cryptoassets in the form of "governance tokens." The practice of submitting assets to a DeFi protocol is often referred to as "liquidity mining," while the process of earning fees and/or governance tokens is referred to as "yield farming."<sup>6</sup>

### Common Uses for DeFi

- Some of the most common use cases for DeFi include:

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<sup>3</sup> Stemming from two seminal Supreme Court cases (*SEC v. Howey Co.*, in 1946, and *Reves v. Ernst & Young*, in 1990), courts and regulators have developed analytical frameworks for determining whether a financial instrument constitutes an "investment contract" or a "note," respectively, within the meaning of the definition of "security" under the Securities Act of 1933, as amended.

<sup>4</sup> Gary Gensler, SEC, Remarks Before the Aspen Security Forum (Aug. 3, 2021), <https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03>.

<sup>5</sup> John Divine, *DeFi 101: A Guide to Decentralized Finance* (Apr. 30, 2021), <https://money.usnews.com/investing/stock-market-news/articles/defi-101-a-guide-to-decentralized-finance>.

<sup>6</sup> Alyssa Hertig, *What Is DeFi?* (Sept. 18, 2020), <https://www.coindesk.com/tech/2020/09/18/what-is-defi/>.

- **Decentralized Exchanges (DEXs)** that permit users to trade certain cryptocurrencies for other cryptocurrencies, without the need to transfer any tokens to a centralized exchange or other intermediary.<sup>7</sup>
- **Borrowing / Lending Protocols** that employ smart contracts to allow users to borrow and lend cryptocurrencies (and to pay and receive interest on such transactions) without reliance on intermediaries such as banks.<sup>8</sup>
- **Derivatives / Synthetic Asset Protocols** that allow users to, on a decentralized basis, create and trade in speculative and hedging instruments in various cryptocurrencies, including synthetic assets.<sup>9</sup>
- **Insurance Protocols** that offer various safeguards against threats to cryptocurrency assets, such as insurance against crypto wallet theft, collateral protection for crypto-backed loans, and coverage for losses stemming from the hacking or manipulation of smart contracts, all without the involvement of a conventional insurance company.<sup>10</sup>
- **Prediction Markets** that permit participants to bet on the outcome of future events, such as elections and sporting events, without the need for intermediaries to manage and collect on bets.
- The open and “permissionless” nature of DeFi protocols, which enables anyone to list a token for exchange or create or otherwise participate in a DeFi product, is both one of its most appealing characteristics and the main source of substantive regulatory concern.

### Industry Developments: Investment in Expansion

- DeFi is expanding at an astronomical rate. Over the past 12 months, the “total value locked” in DeFi (a metric that measures the total value of the smart contracts underlying DeFi protocols converted into US dollars) has risen from less than \$20 billion to nearly \$80 billion, approximately a four-fold increase.<sup>11</sup>
- Some of the largest players in the DeFi space have fueled, and continue to fuel, this expansion by investing in programs that promote increased investment in, and understanding of, the space.
  - On August 18, the Avalanche Foundation, the organization behind the Avalanche blockchain, which supports the BENQI DeFi liquidity protocol, introduced a new \$180 million incentive program, Avalanche Rush, to incentivize the development of more DeFi assets and applications on the Avalanche blockchain network. Leading DeFi protocols Aave and Curve are among the first to participate. The program will be used to distribute AVAX, the network’s currency, to liquidity miners working through Aave and Curve.<sup>12</sup>
  - On August 30, a consortium of DeFi protocols – including Aave, SushiSwap, Curve, 0x and PoolTogether – announced a \$100 million financial inclusion venture known as “DeFi for the People” that will build on the Celo blockchain to provide educational initiatives, grants and incentives to educate people about DeFi.<sup>13</sup>

### CFTC Commissioner Berkovitz on DeFi: Focus on Investor Protection

- On June 8, Commodity Futures Trading Commission (CFTC) Commissioner Berkovitz discussed DeFi. He noted that Wikipedia and Google both define the function of DeFi as the disruption of the current financial system’s reliance on financial intermediaries. He emphasized the importance of financial intermediaries in providing legal protections to investors in US markets:

<sup>7</sup> Alexander Osipovich, *Upstart Peer-to-Peer Crypto Exchanges Take Aim at Coinbase* (May 24, 2021), <https://www.wsj.com/articles/upstart-peer-to-peer-crypto-exchanges-take-aim-at-coinbase-11621848601>.

<sup>8</sup> Jeff Benson, *What Is Aave? Inside the DeFi Lending Protocol* (May 26, 2021), <https://decrypt.co/resources/what-is-aave-inside-the-defi-lending-protocol>.

<sup>9</sup> Jakub, *Derivatives in DeFi Explained* (Jan. 1, 2021), <https://fnematics.com/derivatives-in-defi-explained/>.

<sup>10</sup> Blockchain Simplified, *Decentralized Insurance – An emerging sector in DeFi* (Mar. 31, 2021), [https://medium.com/@blockchain\\_simplified/decentralized-insurance-an-emerging-sector-in-defi-79bd84502cab](https://medium.com/@blockchain_simplified/decentralized-insurance-an-emerging-sector-in-defi-79bd84502cab).

<sup>11</sup> DeFi Pulse. Total Value Locked (USD) in DeFi (accessed September 10, 2021), <https://defipulse.com>.

<sup>12</sup> Ryan Weeks, *Avalanche launches \$180 million DeFi incentive scheme with Aave and Curve* (Aug. 18, 2021), <https://www.theblockcrypto.com/post/114782/avalanche-launches-180-million-defi-incentive-scheme-aave-curve>.

<sup>13</sup> Tom Farren, *Leading DeFi projects launch \$100M global adoption initiative* (Aug. 30, 2021), <https://cointelegraph.com/news/leading-defi-projects-launch-100m-global-adoption-initiative>.

We have a system in which intermediaries are legally accountable for protecting customer funds. In many instances, such as in the clearing system, if a counterparty fails to perform, an intermediary will make the customer whole. In a pure “peer-to-peer” DeFi system, none of these benefits or protections exist. There is no intermediary to monitor markets for fraud and manipulation, prevent money laundering, safeguard deposited funds, ensure counterparty performance, or make customers whole when processes fail. A system without intermediaries is a Hobbesian marketplace with each person looking out for themselves.<sup>14</sup>

- Commissioner Berkovitz also questioned the legality of unregistered DeFi markets under the Commodity Exchange Act (CEA), which, among other things:
  - requires futures contracts to be traded on a designated contract market (DCM) licensed and regulated by the CFTC;<sup>15</sup>
  - makes it unlawful for any person other than an eligible contract participant to enter into a swap unless the swap is entered into on, or subject to, the rules of a DCM;<sup>16</sup> and
  - requires any facility that provides for the trading or processing of swaps to be registered as a DCM or a swap execution facility (SEF).<sup>17</sup>

### SEC Chairman Gensler on DeFi: Projects are “Not Immune” to Regulation

- On July 25, 2017, the SEC published a report of investigation pursuant to Section 21(a) of the Securities Exchange Act of 1934 (Securities Exchange Act) against The DAO, a Decentralized Autonomous Organization (the DAO Report). In the DAO Report, the SEC advised that a platform that permits the trading of cryptoassets that are securities and operates as an “exchange,” as defined under the Securities Exchange Act, must register with the SEC as a national securities exchange or be exempt from registration.<sup>18</sup>
- On November 8, 2018, in light of the DAO Report’s findings, the SEC issued a cease-and-desist order and levied disgorgement and civil monetary penalties totaling \$387,000 against Zachary Coburn, founder of EtherDelta, finding that the online platform for trading Ether and “ERC20 tokens” (which refers to the class of digital assets developed and traded on the Ethereum blockchain) was an “exchange” as defined by Section 3(a)(1) of the Securities Exchange Act and Rule 3b-16 thereunder, and was therefore required to register as a national securities exchange.<sup>19</sup>
- On August 19, SEC Chairman Gary Gensler emphasized that DeFi projects are “not immune” to regulation by virtue of their decentralized nature. He noted that projects rewarding participants with valuable digital tokens or similar incentives could cross a line and become regulated activities, no matter how “decentralized” they say they are: “There’s still a core group of folks that are not only writing the software, like the open source software, but they often have governance and fees ... There’s some incentive structure for those promoters and sponsors in the middle of this.”<sup>20</sup>
- In the past several weeks, the SEC has brought two notable actions against DeFi firms under the registration and antifraud provisions of the Securities Exchange Act, finding that both platforms were subject to the federal securities laws:<sup>21</sup>

<sup>14</sup> Dan Berkovitz, Commissioner, CFTC, Keynote Address Before FIA and SIFMA-AMG, Asset Management Derivatives Forum 2021 (Jun. 8, 2021), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opaberkovitz7>.

<sup>15</sup> CEA §4(a), 7 U.S.C. §6.

<sup>16</sup> CEA §2(e), 7 U.S.C. §2(e).

<sup>17</sup> CEA §5h(a), 7 U.S.C. §7b-3.

<sup>18</sup> *Report of Investigation Pursuant To Section 21(a) Of The Securities Exchange Act of 1934: The DAO* (Exchange Act Rel. No. 81207) (July 25, 2017).

<sup>19</sup> *In the Matter of Zachary Coburn*, SEC No. 3-18888 (Nov. 8, 2018).

<sup>20</sup> Dave Michaels and Paul Kiernan, Crypto’s ‘DeFi’ Projects Aren’t Immune to Regulation, SEC’s Gensler Says (Aug. 19, 2021), <https://www.wsj.com/articles/cryptos-defi-projects-arent-immune-to-regulation-secs-gensler-says-11629365401>.

<sup>21</sup> See, e.g., Securities Exchange Act §§5, 10(b), 17(a), 15 U.S.C. §§77e, 78j(b), 77q(a).

- **Uulala, Inc.** — On August 4, the SEC settled charges against Uulala, Inc. and its two founders for allegedly defrauding more than one thousand investors in an unregistered offering of UULA tokens that raised over \$9 million.<sup>22</sup>
- **Blockchain Credit Partners** — On August 6, DEX Blockchain Credit Partners (BCP) and its founders were the subject of a cease-and-desist order that required them to, among other things, pay a disgorgement of \$12,849,354 and civil penalties of \$250,000, in connection with their unregistered sale of “mTokens,” which purportedly offered investors a return backed by real-world assets, and “DMG tokens,” which were governance tokens that purportedly gave holders certain voting rights and a share of profits in certain token resales.<sup>23</sup>
- On September 3, it was reported that the SEC is conducting a probe into Uniswap Labs, the main developer of Uniswap, the world’s largest DEX; the SEC is reportedly looking into how investors use Uniswap and how it is marketed.<sup>24</sup> Separately, the SEC’s enforcement division issued letters to multiple DeFi startups in recent months seeking information on their platforms, which is suggestive of a potentially broader effort to bring DeFi platforms into compliance with registration requirements.<sup>25</sup>

### Financial Action Task Force (FATF) Draft Guidance

- FATF is a global, intergovernmental body that establishes anti-money laundering and anti-terrorist financing standards and procedures. Over 200 countries and jurisdictions have committed to implementing the standards adopted by FATF (FATF Standards), including the United States.
- On March 19, FATF revised the FATF Standards to expand the definition of “virtual asset service provider” (VASP). DApps are not themselves considered VASPs, because FATF does not seek to regulate the underlying technology. However, FATF has taken the position that developers of DeFi protocols may qualify as VASPs and could thus be liable for the absence of, or deficiencies in, know-your-customer (KYC) procedures, even if the developers are not responsible for the DeFi protocols post-launch.<sup>26</sup> The guidance also states that owners/operators of DeFi protocols are “likely to fall” within the expanded meaning of VASP and that those involved in business development activities for DeFi protocols could also be VASPs, because they engage in VASP activities both as businesses and on behalf of others.<sup>27</sup>

### World Economic Forum (WEF) Whitepaper

- As regulators worldwide seek to understand DeFi and how it interacts with the current regulatory space, WEF, an international organization encouraging public-private cooperation in the creation of policy, published a DeFi Policy-Maker Toolkit (Toolkit) on June 8, 2021. The goal of the Toolkit is to provide regulators with an understanding of DeFi that could inform policy decisions.<sup>28</sup>
- Published in coordination with the Wharton Blockchain and Digital Asset Project, the Toolkit breaks down DeFi, including its architecture and the various services that it can provide. The Toolkit also discusses the risks presented by DeFi from the financial, technical, operational, legal and other perspectives. Finally, the Toolkit proposes policy approaches for regulators with respect to DeFi. The Toolkit acknowledges that the

<sup>22</sup> *SEC v. Uulala, Inc.*, No. 5:21-cv-01307 (C.D. Cal. filed Aug. 4, 2021) <https://www.sec.gov/litigation/complaints/2021/comp25157.pdf>.

<sup>23</sup> *In the Matter of Blockchain Credit Partners*, SEC No. 3-20453 (Aug. 6, 2021).

<sup>24</sup> Dave Michaels, *Regulators Investigate Crypto-Exchange Developer Uniswap Labs* (Sept. 3, 2021), <https://www.wsj.com/articles/regulators-investigate-crypto-exchange-developer-uniswap-labs-11630666800>.

<sup>25</sup> *Id.*

<sup>26</sup> Nikhilesh De, *State of Crypto: FATF’s New Guidance Takes Aim at DeFi* (Mar. 30, 2021), <https://www.coindesk.com/policy/2021/03/30/state-of-crypto-fatfs-new-guidance-takes-aim-at-defi/>.

<sup>27</sup> Agata Ferreira, *FATF draft guidance targets DeFi with compliance* (May 16, 2021), <https://cointelegraph.com/news/fatf-draft-guidance-targets-defi-with-compliance>.

<sup>28</sup> Nikhilesh De, *World Economic Forum Hopes to Explain DeFi for Regulators with White Paper* (Jun. 8, 2021), <https://www.coindesk.com/markets/2021/06/08/world-economic-forum-hopes-to-explain-defi-for-regulators-with-white-paper/>.

primary challenge with respect to DeFi is that many DeFi protocols do not involve a central entity that can be easily identified and regulated in the traditional sense. The Toolkit proposes that an effective regulatory response will likely involve a combination of existing regulation, retrofitted regulation and new, bespoke regulation.<sup>29</sup>

### III. Stablecoins

#### Background

- Stablecoins are a type of cryptoasset intended to be more resistant to the extreme price volatility that is characteristic of more high-profile cryptoassets such as Bitcoin and Ether.
- To reduce price volatility, stablecoins are generally collateralized by another asset or basket of assets, which may include commodities, securities, fiat currencies, real property or other assets. Today, many stablecoins are designed to correspond to the value of the US dollar.<sup>30</sup>
- Stablecoins enable investors to trade different cryptoassets without the need to convert their cryptoassets into fiat currencies. As of September 9, stablecoins had an aggregate market capitalization of approximately \$123 billion, up more than 680 percent year-to-date.
- The dramatic growth of stablecoins in recent months has prompted some observers to warn that, “without additional private or public backstops, stablecoins can be subject to severe price discounts or self-fulfilling runs, especially when backed by risky or opaque assets and in times of market turmoil.” These observers also note that “if stablecoins were to gain significant usage, runs on stablecoins could provoke fire sales of the assets used to back their value.”<sup>31</sup>

#### Growing Regulatory Interest in Stablecoins

- On July 21, SEC Chairman Gary Gensler suggested that a “stable value token backed by securities . . . [is] implicated by the securities laws and must work within [the SEC’s] securities regime.”<sup>32</sup>
- In his August 3rd prepared remarks before the Aspen Security Forum, Chairman Gensler repeated that some stablecoins may be securities and that their issuers may be investment companies, stressing that the SEC will “apply the full investor protections of the Investment Company Act and the other federal securities to these products.”<sup>33</sup> Chairman Gensler further suggested that “stablecoins may facilitate those seeking to sidestep a host of public policy goals connected to the traditional banking system: anti-money laundering (AML), tax compliance, sanctions, etc.”<sup>34</sup>
- Secretary of the Treasury Janet Yellen urged regulators to quickly establish a regulatory framework for stablecoins during a July meeting of the President’s Working Group on Financial Markets.<sup>35</sup>
- Senator Elizabeth Warren suggested in an interview with the *New York Times* on September 5 that it is “worth considering” a prohibition on US banks from holding stablecoin cash reserves.<sup>36</sup>

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<sup>29</sup> World Economic Forum, Whitepaper, Decentralized Finance: (DeFi) Policy-Maker Toolkit (2021), <https://www.weforum.org/whitepapers/decentralized-finance-defi-policy-maker-toolkit>.

<sup>30</sup> See CoinMarketCap, Top Stablecoin Tokens by Market Capitalization, <https://coinmarketcap.com/view/stablecoin/>.

<sup>31</sup> BIS Working Papers, *Stablecoins: risks, potential and regulation* (Nov. 24, 2020), <https://www.bis.org/publ/work905.pdf>.

<sup>32</sup> SEC Chairman Gary Gensler, Remarks Before the American Bar Association Derivatives and Futures Law Committee Virtual Mid-Year Program (July 21, 2021), <https://www.sec.gov/news/speech/gensler-remarks-aba-derivatives-futures-law-committee-virtual-mid-year-program-072121>.

<sup>33</sup> SEC Chairman Gary Gensler, Remarks Before the Aspen Security Forum (Aug. 3, 2021), <https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03>.

<sup>34</sup> *Id.*

<sup>35</sup> Pete Schroeder, *Yellen Urges Quick U.S. Adoption of Stablecoin Rules* (Jul. 19, 2021), <https://www.reuters.com/technology/yellen-says-us-must-move-quickly-establish-stablecoin-rule-framework-2021-07-19/>.

<sup>36</sup> Eric Lipton & Ephrat Livni, *Crypto’s Rapid Move Into Banking Elicits Alarm in Washington* (Sept. 5, 2021), <https://www.nytimes.com/2021/09/05/us/politics/cryptocurrency-banking-regulation.html?referringSource=articleShare>.

## Cash, Cash Equivalents and . . . Commercial Paper? Behind the Scenes of USDT, USDC and USDP

- Tether (USDT)
  - Tether, the company behind USDT, the largest stablecoin by market capitalization,<sup>37</sup> and other respondents entered into a settlement agreement with the New York Attorney General’s Office (NYAG), which imposed a fine of \$18.5 million together with other remedial measures. Among other things, the NYAG alleged that the respondents made material misstatements about the US dollar reserves backing the issued tethers.<sup>38</sup>
  - As part of the settlement agreement, Tether agreed to provide, among other things, a quarterly report substantiating Tether’s reserve account.<sup>39</sup> Tether published its first reserve report on March 31, which showed that approximately 76 percent of its reserves were backed by cash and cash equivalents.<sup>40</sup>
  - According to Tether’s latest report as of June 30, approximately half of Tether’s \$62.8 billion in assets were held in commercial paper and certificates of deposit.<sup>41</sup>
- Circle (USDC)
  - Circle, the company behind USDC, the second largest stablecoin by market capitalization,<sup>42</sup> published a reserve report, which showed that as of May 28, 61 percent of its reserves were held in cash and cash equivalents. Another 13 percent was backed by Yankee Certificates of Deposit issued by non-US banks, 12 percent by US Treasuries, 9 percent by commercial paper, and the rest by municipal and corporate bonds.<sup>43</sup>
  - Circle subsequently announced on August 22 that effective September, all USDC reserves would be held in “cash and short-duration US government treasuries.”<sup>44</sup>
- Paxos (USDP)
  - Paxos, the company behind the stablecoin USDP, announced on August 24 that it would be rebranding its stablecoin from its previous name Paxos Standard (PAX) to Pax Dollar (USDP).<sup>45</sup> As part of the announcement, Paxos noted that USDP “is regulated and redeemable one-to-one for US dollars” and that “USDP reserves are held 100% in cash and cash equivalents.”<sup>46</sup>
- Gemini (GUSD)
  - At least one stablecoin company asserts that its reserves are backed by equivalent dollars in FDIC-insured accounts. Gemini, the company behind the stablecoin GUSD, states that GUSD “reserves are eligible for FDIC insurance up to \$250,000 per user.”<sup>47</sup>

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<sup>37</sup> *Supra* note 30.

<sup>38</sup> In the Matter of iFINEX Inc., BFXNA Inc., BFXWW Inc., Tether Holdings Limited, Tether Operations Limited, Tether Limited, Tether International Limited (Feb. 18, 2021), [https://ag.ny.gov/sites/default/files/2021.02.17\\_-\\_settlement\\_agreement\\_-\\_execution\\_version.b-t\\_signed-c2\\_oag\\_signed.pdf](https://ag.ny.gov/sites/default/files/2021.02.17_-_settlement_agreement_-_execution_version.b-t_signed-c2_oag_signed.pdf) (last visited Sept. 6, 2021).

<sup>39</sup> *Id.*

<sup>40</sup> Tether, Reserves Breakdown at March 31, 2021 (Mar. 31, 2021), <https://tether.to/wp-content/uploads/2021/05/tether-march-31-2021-reserves-breakdown.pdf> (last visited Sept. 6, 2021).

<sup>41</sup> Tether, Independent Accountant’s Report (Jun. 30, 2021), [https://tether.to/wp-content/uploads/2021/08/tether\\_assuranceconsolidated\\_reserves\\_report\\_2021-06-30.pdf](https://tether.to/wp-content/uploads/2021/08/tether_assuranceconsolidated_reserves_report_2021-06-30.pdf) (last visited Sept. 6, 2021).

<sup>42</sup> *Supra* note 30.

<sup>43</sup> Circle, Independent Accountant’s Report (Jul. 16, 2021), [https://www.centre.io/hubfs/pdfs/attestation/Grant-Thorton\\_circle\\_usdc\\_reserves\\_07162021.pdf](https://www.centre.io/hubfs/pdfs/attestation/Grant-Thorton_circle_usdc_reserves_07162021.pdf) (last visited Sept. 6, 2021).

<sup>44</sup> Circle, *Evolving USDC Reserves to 100% Cash and Short Duration US Treasuries*, Circle.com (Aug. 22, 2021), <https://www.circle.com/blog/evolving-usdc-reserves-to-100-cash-and-short-duration-us-treasuries>.

<sup>45</sup> Walter Hessert, *The Digital Dollar that Always Equals a Dollar – Paxos Standard (PAX) is now PAX Dollar (USDP)* (Aug. 24, 2021), <https://www.paxos.com/the-digital-dollar-that-always-equals-a-dollar-paxos-standard-pax-is-now-pax-dollar-usdp/>.

<sup>46</sup> *Id.*

<sup>47</sup> Gemini Dollar, <https://www.gemini.com/dollar> (last visited Sept. 6, 2021).

## Stablecoins and CBDCs: Friends or Foes?

- The People’s Bank of China, the central bank of the People’s Republic of China, is forging ahead with its Central Bank Digital Currency (CBDC) experiment, the e-CNY. The Bank released a “whitepaper” of the e-CNY in July, noting that, among other things, one of the main objectives of its digital currency is to “explore the improvement of cross-border payments.”<sup>48</sup>
- Amidst increasing government interest in both CBDCs and stablecoins, Federal Reserve Chairman Jerome Powell suggested in July that one of the main incentives for the US to launch its own CBDC would be to eliminate the need for stablecoins and cryptocurrencies generally, noting that “you wouldn’t need stablecoins; you wouldn’t need cryptocurrencies, if you had a digital US currency.”<sup>49</sup> While no official timeline has been announced, Chairman Powell acknowledged that developing a digital dollar is a “high priority project.”<sup>50</sup> Senator Elizabeth Warren has echoed similar sentiments,<sup>51</sup> sparking debate over whether CBDCs would act as substitutes for, or complements to, stablecoins.

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<sup>48</sup> Working Group on E-CNY Research and Development of the People’s Bank of China, *Progress of Research & Development of E-CNY in China* (Jul. 15, 2021), <http://www.pbc.gov.cn/en/3688110/3688172/4157443/4293696/2021071614584691871.pdf>.

<sup>49</sup> MacKenzie Sigalos, *Why the Fed hates cryptocurrencies and especially stablecoins* (Jul. 16, 2021), <https://www.cNBC.com/2021/07/16/jerome-powell-promotes-cbdc-digital-dollar-warns-against-stablecoins.html>.

<sup>50</sup> Sarah Hansen, *Fed Chair Powell Says Digital Dollar Is a ‘High Priority Project’* (Feb. 23, 2021), <https://www.forbes.com/sites/sarahhansen/2021/02/23/fed-chair-powell-says-digital-dollar-is-a-high-priority-project/?sh=3321d8957e4c>.

<sup>51</sup> *Supra* note 36.



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## CONTACTS

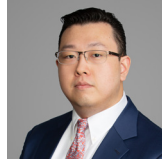
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