

July 16, 2021

**Submitted Electronically**

James P. Sheesley, Assistant Executive Secretary  
Federal Deposit Insurance Corporation,  
550 17th Street NW,  
Washington, DC 20429  
Attention: Comments-RIN 3064–ZA25

**Re: Request for Information and Comment on Digital Assets; RIN 3064–ZA25**

Dear Ladies and Gentlemen,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing over 200 state and nationally chartered banks, savings and loan associations, and savings banks. WBA appreciates the opportunity to provide comment on the Federal Deposit Insurance Corporation's (FDIC's) request for information regarding depository institutions' current and potential activities related to digital assets (RFI).

Digital asset markets are still relatively new, and FDIC's request for information is timely. Wisconsin banks are evaluating their role in the digital asset ecosystem and exploring ways to provide access and services to their customers. As an area of new technology and innovation, digital assets present novel and unique considerations. As such, WBA supports FDIC's efforts to gather information regarding the use of digital assets in financial markets and believes that consumer access to these markets is best served through banks subject to oversight and compliance supervision to ensure appropriate consumer protections. WBA also encourages FDIC to adopt perspectives that enable innovation so that banks can responsibly meet customer needs.

WBA is further pleased with the timeliness of the RFI as its member banks have begun tailoring their policies and procedures to suit certain narrow digital asset activity, as discussed in more detail below. Several Wisconsin banks have worked with examiners regarding policies related to monitoring or allowing digital asset activity. WBA encourages FDIC to use the information it gathers to provide supervisory clarity of digital assets.

WBA offers the following comments expanding upon these concepts and to provide a recent example of a member bank exploring the possibility of conducting activities related to digital assets.

**Introduction**

FDIC has requested information and comment to further its understanding of activities involving digital assets. Specifically, FDIC poses questions regarding current or potential use cases, risk and compliance management, supervision and activities, and deposit insurance and resolution. While the RFI provides broad categorizations of "digital asset," it does not define the term more specifically. As discussed further below, Wisconsin banks have only recently begun hearing customer's express their interest in the digital asset marketplace. This interest has largely been on the "currency" side of digital assets, rather than inclusive of the broader categories identified in the RFI. As such, while WBA presents some broader comments below, the examples included from our members' current experiences will be focused on the narrower perspective of digital currencies.

Furthermore, while Wisconsin law defines “digital property” in terms of rights to electronic records as found under the state’s adoption generally of the Revised Uniform Fiduciary Access to Digital Asset Act, it does not define the term “digital asset” in the same broad sense discussed in the RFI. This, combined with the lack of a commonly agreed to definition, has created uncertainty regarding what constitutes a “digital asset” and how Wisconsin banks should treat various products that may fall within the digital asset ecosystem.

Additionally, as the market has developed, a variety of use cases have emerged. The market has become a diverse, complex, and rapidly evolving space of concepts, ideas, and companies offering new products. With rapid development, comes increasing uncertainty. Specifically, the uncertainty surrounding the legal status and regulatory treatment of digital assets.

WBA has found that the majority of Wisconsin banks have been cautious in their approach to digital assets. While eager to provide innovative services and other accommodations for their customers, many remain concerned because of legal uncertainties and the challenges presented with complying with anti-money laundering (AML) and further Bank Secrecy Act (BSA) considerations. Thus, as a general matter, WBA urges FDIC and the other prudential regulators to both define digital assets and related terms in clear and consistent manner, and set supervisory expectations related to such, on a uniform basis.

## **Comments and Discussion**

WBA believes it is important that FDIC define the term “digital asset,” along with related terms. Because the initial step in approaching the digital assets market involves identifying types of products and services, in order to adopt an appropriate framework, any lack of clarity would create doubt. WBA is concerned that such doubt could discourage banks from participating, and potentially result in unnecessary costs or undue supervisory scrutiny.

In addition to the overall considerations of legal uncertainty, WBA requests that FDIC consider, in the same light, the need for supervisory clarity. Wisconsin banks would welcome further clarity, and WBA supports the RFI as an opportunity for FDIC to gather information, and develop guidance.

WBA has heard from several members who have had examinations involving discussion of bank policies for handling deposits related to cryptocurrencies. In these situations, the bank believed the examiner expected it to have policies specifically tailored to evaluating deposit relationships that had transactional activity involving digital currency. One example involved an examiner questioning accounts with trading activity through third-party platforms such as Robinhood Markets, Inc. In several situations, there was no indication that the trading involved digital currency. Furthermore, the examiners did not have any specific policy expectations to point to.

WBA believes that when conducted within appropriate BSA expectations, banks should maintain flexibility to provide digital asset services for their customers within the existing regulatory framework. While the exam experiences discussed above were not negative, they are indicative of the need for banks to reconsider their policies. As a result, many Wisconsin banks have proactively developed account opening or monitoring policies according to their customer base, lines of business, and account activity. However, Wisconsin banks have inquired as to what to expect from future examinations. Thus, the RFI is a welcome opportunity for FDIC to gather information, and issue supervisory insights and guidance.

Additionally, while many Wisconsin banks have taken these proactive steps, WBA believes any level of supervisory oversight should be applied to banks and non-bank technology firms alike to ensure all customers receive equal protections. As such, FDIC should, to the extent the activity falls within its jurisdiction, engage in efforts to ensure that digital asset activities are appropriately monitored,

and emerging risks are adequately captured. WBA recommends FDIC collaborate with other prudential regulators in such efforts to further insure supervisory consistency.

### **Specific Issues**

In the RFI, FDIC requests examples of current and potential use cases. While WBA has not heard of a surge in digital asset activity in Wisconsin, it has learned of a scenario, as discussed below.

The scenario involved a potential relationship in which a bank would offer deposit services to a company which holds cryptocurrency in a custodial capacity. This third-party company would utilize deposit accounts for the purpose of conducting bitcoin transactions. Specifically, the third-party company hosts a platform for cryptocurrency custody services, through which a deposit account is established at the bank for the sole purpose of buying and selling bitcoin through this platform. In this relationship, the bank would never hold the cryptocurrency, but would provide deposit services for purposes of the transaction.

In this situation, the bank developed a risk-based approach to evaluate the potential relationship. The analysis also involved significant BSA/AML considerations. It also led to the thought that future digital asset activities would likely need to be conducted on a case-by-case basis. As an example, WBA believes this represents the uniqueness of the digital asset marketplace, particularly when it comes to custodial activities. As such, Wisconsin banks would benefit from clear definitions and supervisory expectations when it comes to developing policies and procedures to evaluate such relationships.

### **Conclusion**

WBA appreciates the opportunity to comment on FDIC's RFI on digital assets. As a new area of technology and innovation, Wisconsin banks are exploring ways to responsibly participate in the digital asset marketplace. WBA is grateful that FDIC has taken the opportunity to gather information and comments from financial institutions. WBA encourages FDIC, together with other prudential regulators, to define digital assets and related terms in clear and consistent manner, and set uniform supervisory expectations related to such. This in turn, will allow regulated institutions to further serve the digital asset uses of their customers.

We appreciate your consideration of these comments.

Rose Oswald Poels  
President/CEO