

United States Senate

WASHINGTON, DC 20510

March 9, 2023

Hon. Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Mr. Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Hon. Marty Gruenberg
Chairman of the Board
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Dear Chairman Powell, Chairman Gruenberg, and Acting Comptroller Hsu:

Over the last few months, the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the banking regulators) and the White House have released several statements calling on heightened supervision for crypto-related activities.^{1, 2, 3} These releases have caused banks to reevaluate their decision to provide banking services to the crypto sector, resulting in crypto firms' bank accounts being unexpectedly closed.⁴

This coordinated behavior seems disturbingly reminiscent of Operation Choke Point, which as you know, was an Obama Administration initiative, where federal regulators applied pressure on financial institutions to cut off financial services to certain licensed, legally operating industries simply because certain regulators and policymakers disfavored those industries. Legal investigation found that “government officials illegally targeted lawful business in an ideological crusade based on personal disdain.”⁵ In response, the FDIC took steps to clarify that banks are allowed to provide services to legal businesses and indicated they, “will conduct additional

¹ 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, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230103a1.pdf>.

² Policy Statement on Section 9(13) of the Federal Reserve Act, (Feb. 7, 2023, <https://www.federalregister.gov/documents/2023/02/07/2023-02192/policy-statement-on-section-913-of-the-federal-reserve-act>.

³ The Administration's Roadmap to Mitigate Cryptocurrencies' Risk, January 27, 2023, <https://www.whitehouse.gov/nec/briefing-room/2023/01/27/the-administrations-roadmap-to-mitigate-cryptocurrencies-risks/>

⁴ Louise Ensign, Rachel and David Benoit, “Banks are Breaking Up with Crypto During Regulatory Crackdown,” *The Wall Street Journal*, Feb. 16, 2023, <https://www.wsj.com/articles/banks-are-breaking-up-with-crypto-during-regulatory-crackdown-22de183>

⁵ Shaul, Dennis, “There's No Downplaying the Impact of Operation Choke Point,” *American Banker*, November 28, 2018, <https://www.americanbanker.com/opinion/theres-no-downplaying-the-impact-of-operation-choke-point>

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training of its examination workforce on these policies by the end of 2019 to ensure that its examiners adhere to the highest standards of conduct and respect the rule of law.”⁶

Unfortunately, nearly four years after the enhanced training, banking regulators seem to be reverting to old practices. Even if the actions towards the crypto economy emanate from different regulatory concerns—it appears that the desired outcome from the banking regulators is similar to that of Operation Choke Point—the de-banking of the crypto industry in America. We understand the last few months have seen particular swings in volatility and unearthed some problematic vulnerabilities for the crypto industry; however, the problems of the few should not drive the harm of many. When the Bernie Madoff fraud was uncovered, regulators did not pressure banks to cut off access to other asset managers. Similarly, regulators should not be punishing an entire industry; rather, the banking regulators should be working to provide updated guidance and proposed rules for public comment so that lawful businesses can have access to banking services and so that banks wishing to engage in issuing or holding principal crypto-assets have clear rules to follow. Doing so would be consistent with the federal bank regulators mandate of articulating what “safe and sound” banking practices are; however, the current posture of the banking regulators is not consistent with this mandate and will result in risks being pushed out of the regulated system.

We are especially worried that overreaching behavior by the banking regulators will inevitably bleed into other legal industries. Any industry could be potentially “disfavored,” based on a given regulator’s ideological perspective. Banks have a mission of protecting safety and soundness, not selecting winners and losers based on the partisan or ideological whim of a regulator.

To that end, we request that you answer the following questions related to the release of this recent guidance:

- Please justify how the heightened scrutiny over crypto-related firms helps protect consumers.
- Are banks allowed to provide financial services and lend to crypto firms under the guidance? And if so, will the regulators release updated guidance to clarify that? If not, how has this position been determined and how has this position been communicated to your regulatory staffs?

⁶ Letter from Floyd Robinson, Deputy General Counsel, FDIC to David H. Thompson, Counsel to Plaintiffs, May 22, 2019), <https://www.fdic.gov/news/press-releases/2019/pr19040a.pdf>

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- Diversifying risk is a bedrock principle of banking. In theory, allowing crypto companies to access a variety of banking institutions would increase the diversification of their banking partner risk, while helping the banks involved in crypto reduce dependencies on a specific sector. This guidance seems in direct opposition to the goal of risk diversification. Could you please clarify whether risk diversification was part of the analysis before you released the guidance? And if so, why or why not?
- Is there internal discussion amongst or a pending plan by any of the banking regulators to release similar guidance for other disfavored industries?
- For the OCC, please explain how you are ensuring that national banks provide the crypto industry with fair access to financial services, as required under 12 U.S. Code § 1. Please provide records interpreting or explaining compliance with this requirement.
- For the FDIC, have you analyzed internally whether the recent crypto-related guidance conflicts with policies released in 2019 related to the Operation Choke Point settlement? The President’s Working Group on Financial Markets, which included the bank regulators, released a report⁷ and recommendations on stablecoins in 2021. That report made the recommendation that legislation should require stablecoin issuers to be insured depository institutions. In the January 3, 2023 Joint Statement, you articulated that “issuing or holding as principal crypto-assets ... is highly likely to be inconsistent with safe and sound banking practices.” Please reconcile how you collectively made a recommendation that only banks should be allowed to issue stablecoins but are now saying that doing so would be unsafe and unsound. Further, please explain for us how banks who do want to engage in issuing or holding as principal crypto-assets, can do so consistent with your supervisory and regulatory requirements. Lastly, please clarify for us how banks who want to engage with companies in the crypto economy can provide banking services—such as simple operational accounts—to that industry without fearing retribution from their prudential banking regulator.

⁷ <https://home.treasury.gov/news/press-releases/jy0454>

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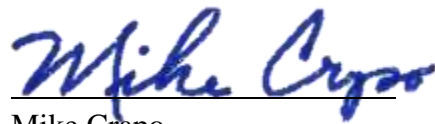
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Please provide your answers as soon as possible, but no later than March 24, 2023. Congress has an oversight duty to ensure that all regulatory agencies are acting within their mission. This is a responsibility we take very seriously. These answers will be critical to preventing another Operation Choke Point initiative from damaging the strength and credibility of our financial regulating system.

Sincerely,



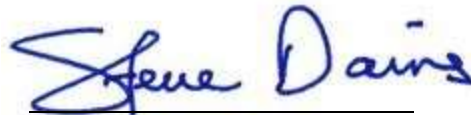
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Thom Tillis
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Steve Daines
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