



January 4, 2021

Via Federal E-Rulemaking Portal and via email to: [frc@fincen.gov](mailto:frc@fincen.gov)

Policy Division  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

**Re: FinCEN Docket Number FINCEN-2020-0020; RIN Number 1506-AB47  
“Requirements for Certain Transactions Involving Convertible Virtual Currency or  
Digital Assets”**

To Whom It May Concern:

The **Wall Street Blockchain Alliance** (the “WSBA”) appreciates the opportunity to provide the collective views of our member-based organization regarding FinCEN’s recently published notice of proposed rulemaking “*Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*” (the “NPRM”).

The WSBA is an industry leading non-profit trade association based in New York City, with a mission to guide and promote the comprehensive adoption of blockchain technology and digital assets across global markets in a manner that complies with all relevant laws and regulations. The WSBA is structured into Working Groups that, in turn, coordinate the collaboration of leaders across industries and professions to fulfill the WSBA’s mission.

**1. Introduction**

The WSBA, as a matter of policy, has and will always support the equitable regulation and monitoring of financial markets. Further, this support wholly includes safeguarding the financial system from illicit use, terrorist financing, money laundering, and the myriad of concerns core to the mission of FinCEN and regulatory bodies, both in the United States and abroad. The WSBA membership encompasses a wide variety of organizations and roles, including banks, broker-dealers, investment firms, law firms, accountants, compliance officers and more, all of whom are deeply familiar with and appreciative of protective laws and regulations.

That said, there are serious concerns that the diverse membership of the WSBA has regarding the NPRM that we strongly believe require further consideration by FinCEN. This letter will first address what we collectively believe to be the significant business and reporting related issues associated with this proposed rulemaking. The latter part of this letter will address the process concerns and considerations that we respectfully believe should be reconsidered by FinCEN, and which have been publicly addressed at length by a variety of other peer industry organizations as well. Finally, we submit a series of other considerations regarding the NPRM for FinCEN to

analyze. We believe it important to note that the extraordinarily shortened period for review put forward for the NPRM makes it difficult to offer the comprehensive analysis and feedback warranted for this proposed rulemaking. We request that FinCEN give thought to a deeper series of discussions and information sharing with industry participants than is currently feasible given the time of year, as well as the current pandemic issues, so that industry participants can engage collaboratively with FinCEN to arrive at a rule that is clear, may be implemented without undue difficulty for all involved and achieves the desired results.

## 2. Business Related Issues

The WSBA believes that many aspects of this NPRM will present an unreasonable burden on the industry participants involved in "convertible virtual currencies ("CVC") and legal tender digital assets ("LTDA")." In the view of the WSBA and its members, given our deep experience in various regulated industries, effective regulations should fulfill the stated goals of regulatory agencies, while allowing industry participants to continue to innovate in their fields without undue burdens or barriers to entry in the marketplace. We believe that the proposed rule outlined in the NPRM would make achieving these goals extremely difficult. For example, we believe that the proposed rule inadequately accounts for the range of transactions that can be performed in the CVC and LTDA ecosystems, both now and in the future. We have concerns regarding FinCEN's perspective on digital-asset related protocols that we believe require further analysis and discussion. In addition, FinCEN's estimate of industry costs may be under-calculated, and we believe that the NPRM has not fully considered all aspects of the digital asset market. Further, there are concerns regarding the lack of clarity, the potential ramifications posed to both firms and individuals, and the potential stifling of competitive sector innovations. We address these concerns below.

- a. **Concerns regarding inadequate transaction definitions** - Upon a preliminary assessment, the WSBA finds various inadequacies and aspects requiring reporting in the NPRM to be definitionally unclear and potentially harmful to the proper monitoring of CVC or LTDA activity. The proposed rule seems to inadequately account for the variety of the types of transactions that can be conducted both "on-chain" and "off-chain." As interpreted by many in the industry as the modern adaptation of a personal, physical wallet, "unhosted" wallets are essential in the evolving financial ecosystem, particularly as regards CVC or LTDA. Additionally, sections of the text of the proposed rule are concerning and in need of further clarification. As one example, according to the NPRM, "*as a technical matter, blockchain-based CVC or LTDA generally consist of computers operating the network software (nodes) that enable, and store transaction records on a distributed ledger (a blockchain).*"<sup>1</sup> Although this may be true in a general sense, realistically, there is more than one "network software" (known as a client). The specifics of off-chain transactions may vary, highlighting the necessity for clear and

---

<sup>1</sup> Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets, *Notice of Proposed Rulemaking*, Financial Crimes Enforcement Network of the U.S. Treasury Departments (Dec. 23, 2020), <https://www.federalregister.gov/documents/2020/12/23/2020-28437/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets>.

concise rules to be established if this rule is to proceed. Additionally, stating that the nodes store the transactions on a distributed ledger is an overly broad explanation of how this process is conducted, rendering the rule difficult to interpret and comply with and thus less effective than it could be. Also, there is nothing within FinCEN's provided description that mentions the roles of mining or staking on the network, critical parts of the specific functionality of public blockchains. Identifying these specific inaccuracies and points we believe requires significant further discussion and clarification.

Additional concerns are associated with the broad nature with which all CVC or LTDA transactions will be treated under the proposed rules, and the lack of definition regarding critical terms within the NPRM. For example, while specifically noting transactions subject to the proposed rulemaking would be affiliated with “hosted” and “unhosted” wallets, there seems to be no sufficiently clear definition of “hosted” and “unhosted” wallets that will ensure that the industry is able to respond in a compliant manner. Furthermore, we believe it necessary to differentiate and recognize the many different CVCs and LTDAs that are available now and will be available in the future, all of which will potentially operate in many different ways and serve many different functions.

- b. Concerns regarding FinCEN representation of certain digital asset related processes** - We believe that FinCEN's representation of digital asset processes is not a wholly accurate representation of the actual processes involved in this ecosystem. FinCEN notes that *"[t]o transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient. Once the network has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key."* The process of crafting a transaction is entirely stateless. This means one can craft a transaction offline (rather than connecting to the network). Further, the only information necessary for a transaction to be crafted are for the most part the outputs (i.e., who the CVC or LTDA are going to) and the inputs (i.e., who the CVC or LTDA are coming from). In addition, signatures are not mandatory default features of blockchains. Signatures, rather, are only necessary depending on the type of address that holds the CVC or LTDA. Accordingly, by the implication in FinCEN's statement that the description of the process is factually accurate, FinCEN will increase the confusion of an already not well-understood process – consequently causing detrimental harm to the blockchain technology industry and blockchain's future innovations.

This specific language also seems to assume that all cryptoasset transactions happen in the exact same manner. Custodial services, stablecoins, and other more recent

blockchain and CVC or LTDA innovations have created a more complex and nuanced ecosystem within which CVC or LTDA transactions can, and do, occur. In addition to the specific potential inaccuracies outlined in the above paragraph, this proposed rule also seems to ignore how non-decentralized CVC or LTDA transactions occur. For example, there may be a centralized clearinghouse or issuing entity that already governs and manages how transactions are documented and recorded. These semi-centralized clearinghouses already perform many of the same recordkeeping, reporting, and disclosure requirements that are a part of this proposed ruling. In addition to being redundant, these proposed requirements will add even more confusion to an already ambiguous environment. Many of the functions outlined as new proposed requirements and obligations on behalf of individuals and organizations would appear to be duplicative and ignoring many of the existing facts on the ground.

We also point out what we believe to be another inaccuracy within the same statement, namely: "[t]o transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software...". Firstly, assuming that FinCEN may potentially be referring to a compressed<sup>2</sup> private key, the "code" does not necessarily need to be alphanumeric. Second, nothing is entered directly into a cryptographic hash function. By virtue of the address where CVC or LTDA have been spent (e.g., the address holding the unspent CVC or LTDA), certain conditions are imposed upon the would-be spender. These conditions can and do often vary significantly from one transaction to the next. In order to "spend" the CVC or LTDA, the user must provide an input into a script function (directed by the wallet address itself) that results in the executed script pushing a "true" to the blockchain network. Notably, the transaction's sender does not execute this function, but rather the miners (in a public blockchain) do so to ensure that the actual transaction is a valid spend before including it in a subsequent block. Furthermore, this is a stateless, offline process - not one that is enabled by the network software, and this process is not what "allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient." We believe that these inaccuracies necessitate a greater review period than has currently been provided by NPRM, and that more time could potentially be spent in consultation with a wide variety of industry participants to research and potentially recraft less ambiguous rules regarding certain specific digital asset processes. If enacted as proposed, these and possibly other ambiguities present in the rule may cause significant harm to blockchain technology's current and future prospects, as well as the industry's ability to adhere to the proposed rule in an efficient and cost-effective manner.

---

<sup>2</sup> What is a compressed Bitcoin key?; Stack Exchange Network, <https://bitcoin.stackexchange.com/questions/3059/what-is-a-compressed-bitcoin-key>.

Further, we believe FinCEN’s concerns regarding unhosted wallet transactions are overly emphasized. CVC transactions between unhosted wallets (i.e., peer-to-peer transactions) are fully traceable and auditable on public blockchains. Indeed, there are a number of technology solutions and analytics capabilities available in the market that allow for this type of forensic research, many of which are currently being utilized by law enforcement agencies around the world.<sup>3</sup>

Lastly, the ultimate goal of any illicit activity would presumably be to convert such CVC or LTDA into a fiat currency, which we do not believe is adequately represented in the NPRM. To do this, access to a BSA regulated entity such as an exchange would be necessary regardless, and indeed it has been publicly noted by blockchain analytics firm Elliptic that “...more than 90% of illicit funds were sent to exchanges and other MSBs that are already subject to identity verification, recordkeeping and SAR requirements”.<sup>4</sup> Thus, potential compliance with the mandates noted in the NPRM may potentially be accomplished utilizing existing BSA requirements and participants.

- c. **Estimate of Industry Implementation Costs** - We believe that the industry costs calculated under the NPRM far understate the expected true costs of industry implementation and adherence. The NPRM acknowledges a lack of information regarding the initial costs of implementation for small businesses and requests comments in this regard. However, this evaluation would require more time than is available since the current comment period allotted by the NPRM makes it impossible for a large enough set of industry participants to derive more detailed estimates. For example, we can point to several items that we believe are underrepresented costs not accounted for in the NPRM:

- 1. Digital asset markets operate on a 24 hour per day basis, 365 days per year. Requirements set forth in the NPRM would require access to market prices, trading volume, and other information on a 24/7/365 basis, which will inevitably increase the cost of compliance. Additionally, these costs will be in excess of traditional equity or financial instrument reporting, due to the decentralized and continuous nature of cryptoasset trading. Thus, we believe that these aspects of the cost of compliance, among others, have not been adequately considered in the proposed rulemaking.

---

<sup>3</sup> Lucas Ropek *Cryptocurrency Trackers Could Give Cops Jump on Cybercrime*, Governing (Sept. 25, 2020), <https://www.governing.com/security/Cryptocurrency-Trackers-Could-Give-Cops-Jump-on-Cybercrime.html>.

<sup>4</sup> Letter from Simone Maini, Chief Executive Officer of Elliptic to Financial Crimes Enforcement Network (Dec. 31, 2020), <https://www.elliptic.co/hubfs/Elliptic%20Open%20Letter%20to%20FinCEN%20-%20Proposed%20Unhosted%20Wallet%20Rule%20Change%2020201231.pdf>.

2. Digital asset markets currently lack unified reference data and price recording methodologies, thus increasing the costs of compliance for firms to capture reportable data under the NPRM, as well as calculate the applicable transaction amounts at and above the \$3,000 and \$10,000 levels that invoke recordkeeping and reporting requirements under the NPRM. In light of these and other operational challenges, we believe that the true costs of compliance with this NPRM are underrepresented, and in particular, the impact on smaller or startup firms that may not have the needed resources to comply. We believe that underrepresented industry costs are one of the most important reasons for FinCEN to consider a lengthier comment period.

**d. Concerns regarding form and type of reporting** - We believe that the NPRM in its current forms lacks clarity in terms of some specific reporting requirements, highlighting the need to extend the comment period to gather feedback on the real-world effects of these proposed rules. For example, we believe that there is insufficient clarity on the form and type of reporting required as well as a lack of clarity on how firms participating in the CVC or LTDA markets would achieve access to counterparty data from “*unhosted or otherwise covered*” wallets. Specifically, by their very nature unhosted wallets make it difficult to collect the “*(...name and physical address) concerning the customer’s counterparties*” as noted in the NPRM, insofar as unhosted wallets are software applications that enable users to conduct personal, pseudonymous (not anonymous) transactions in digital assets over the internet without the use of an intermediary. In this regard, the proper gathering of this data may be difficult, and require industry effort and research that cannot be accomplished in a timely manner given current timeframes for the NPRM. Indeed, it was noted in footnote 32 of the NPRM that “*FinCEN recognizes that persons engaged in illicit finance will likely attempt to use falsified credentials and other types of schemes to evade the requirement to report their true identities. However, banks and MSBs develop solutions to try to ferret out such abuse, not only for AML purposes but also to avoid being defrauded by illicit actors themselves. Furthermore, such efforts can generate valuable leads through suspicious activity reports.*”<sup>5</sup> Currently hosted wallets already have anti-money laundering (“AML”) solutions in place, but such solutions may be lacking or more complex to implement for unhosted wallets. Given this acknowledgement, banks and money services businesses (“MSBs”) will require further time to research and develop solutions to accommodate these recordkeeping and recording requirements.

Following on from these concerns, several questions need to be answered by the industry and by those firms that will be subject to the mandates of the NPRM. These

---

<sup>5</sup> Notice of Proposed Rulemaking, *supra* note 1, at footnote 32.



questions include, but are not limited to, the following: By what mechanisms can a reporting firm obtain name and physical address information of customer counterparties using unhosted wallets? How does a reporting firm confirm the source and veracity of such data? Must the reportable information include such items as the specific wallet address, or other information relevant to the specific digital asset? How can these recordkeeping and reporting requirements be complied with, in the absence of clear definitions regarding hosted and unhosted wallets that allow for the evaluation of wallet permutations as the technology evolves? These and other questions necessitate further effort and research by industry participants, which we fear cannot be accomplished in the timeframes required under the NPRM.

Lastly, we would also point out that the Financial Action Task Force (“FATF”), the intergovernmental organisation founded in 1989 on the initiative of the G7 to develop policies to combat money laundering, published a report<sup>6</sup> in July of 2020 that acknowledged the limited risk posed by unhosted wallets in comparison to traditional financial channels (while nevertheless noting that global regulators may need to consider various restrictive measures should adoption increase). We agree with this assessment, and it is our position that the NPRM in its current form puts too great an emphasis on the reporting of unhosted wallet information, or at a minimum requires further time and research to allow for appropriate reporting as mandated by the NPRM.

- e. **Privacy considerations in light of the NPRM** - We believe that there are several additional considerations directly related to data privacy and cybersecurity which cannot be sufficiently addressed in the time given for a response to the proposed NPRM. For example, how will existing data privacy laws be taken into account and factored into this rule? Examples of applicable laws include but are not limited to the European Union General Data Protection Rule (“GDPR”)<sup>7</sup> and the California Consumer Privacy Act (“CCPA”)<sup>8</sup>. Additionally, governmental and regulatory agencies face the same shared and increasing risk of data breaches, hacks and other cybersecurity violations that enterprises around the world are forced to deal with.<sup>9</sup> These clearly indicate a significant risk of centralizing private data and legal information, which would be a consequence of the NPRM. This is particularly true given the global nature and scope of the industry and the volume of data to be collected and reviewed.

---

<sup>6</sup> Financial Action Task Force, *12 Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers*, FAFT (June 2020), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/12-month-review-virtual-assets-vasps.html>.

<sup>7</sup> *Complete guide to GDPR compliance*, GDPR.EU (2021), <https://gdpr.eu>.

<sup>8</sup> California Consumer Privacy Act, 2018 Cal. Legis. Serv. Ch. 55 (A.B. 375),

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB375](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375)

<sup>9</sup> *Cybersecurity Challenges Facing the Nation - High Risk Issue*, U.S. Government Accountability Office, [https://www.gao.gov/key\\_issues/ensuring\\_security\\_federal\\_information\\_systems/issue\\_summary](https://www.gao.gov/key_issues/ensuring_security_federal_information_systems/issue_summary).

- f. Concerns regarding impact of proposed rulemaking on competitive and innovation standing of the United States** - As stated previously, the WSBA fully supports the safeguarding of the financial system from illicit use, terrorist financing, money laundering and more. That said, we believe that the NPRM in its current form will serve to continue the “regulatory arbitrage” that may be driving financial activity and innovation away from the United States and to other nations that are working to pursue accommodative but compliant regulatory policies regarding CVC and LTDA.<sup>10</sup> Governments around the world continue to promote and implement regulations regarding CVCs and LTDAs that are widely seen as fostering innovation and allowing new businesses and new business models the opportunity to experiment and innovate, while working to safeguard the global financial system. Our fear is that the NPRM will potentially escalate this flight of innovation from the United States to other nations working to maintain a competitive advantage.

### 3. Process Related Concerns

According to the U.S. government, the notice-and-comment rulemaking process's significant strengths are that it allows commenters to choose which aspects are most important to them, thus limiting the burden of responding to extensive questionnaires.<sup>11</sup> The government also believes that notice-and-comment's availability to reach all stakeholders and the existence of a public record associated with notice and comment avoids overreliance on information obtained in meetings and closed gatherings.<sup>12</sup> However, as indicated in the NPRM, a truncated 15-day period, closed-door visits to cryptocurrency businesses in California in February 2020, an "industry" meeting with the Secretary of the Treasury in March 2020, and two FinCEN Exchange events in May 2019 and November 2020 are noted to suffice instead.<sup>13</sup> Further, even in the best of situations, a NPRM of this import would have been difficult to adequately respond to, let alone having to do so in a 15-day holiday period. In addition, we agree with the views expressed by Coinbase in their public commentary that responding to separate, in-depth Requests for Comment within the NPRM would necessitate detailed technical analyses and extensive cost assessments, all of which would require time and resources that are not available due to the truncated response window.<sup>14</sup>

The U.S. government also finds that there is built-in accountability for considering public comments.<sup>15</sup> In the final rule, agencies must explain how it addressed all substantive comments

---

<sup>10</sup> *Blockchain Laws and Regulations 2021*, Global Legal Insights, <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations>.

<sup>11</sup> See *Public notice and comment rulemaking (United States)*, Organization of Economic Cooperation and Development 1, 3, (2016), <https://www.oecd.org/gov/regulatory-policy/USA-Public-Notice-and-Comment.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See Letter from Paul Grewal, Chief Legal Officer of Coinbase to Kenneth A. Blanco, Director of Financial Crimes Enforcement Network, (Dec. 21, 2020), <https://blog.coinbase.com/coinbases-response-to-recent-proposed-rulemaking-from-the-u-s-treasury-and-fincen-109dd7477d31>.

<sup>15</sup> See *Public notice and comment rulemaking (United States)*, *supra* note 11.



and is responsible for ensuring that the final rule is based on the public record.<sup>16</sup>

Regardless of reasons for a truncated period, we believe that those involved in the CVC and LTDA ecosystems will unfortunately not have a fair chance to provide the feedback needed for such comprehensive regulation. By extension, customers of such firms will suffer from such inability to provide not only comment, but also to prepare for the reporting and recordkeeping requirements of the NPRM. Given the importance of the proposed rule and for the reasons stated above, a 15-day public comment period simply does not provide adequate time for industry response. Further, we respectfully believe that the use of the APA's "good cause" and foreign affairs exceptions, which we fully understand as critical in the curbing of illicit finance and threats to the US national interest, are not time critical to the effective implementation of the NPRM. Thus, as most illicit activity is conducted away from hosted wallets, we believe that the 15-day notice and comment period should be extended.

- a. **Concerns regarding NPRM Notice and Comment Procedures** - The WSBA membership believe that given the importance of the proposed rule, a 15-day public comment, over the holiday season and during federally mandated holidays, does not provide the industry sufficient opportunity to evaluate and respond to the NPRM in the comprehensive manner that it deserves, given its clear impact on the digital asset industry. As noted in the Administrative Conference of the United States, Rulemaking Comments, Recommendation number 2011–2 (June 16, 2011)<sup>17</sup> “[for] significant regulatory actions ... agencies should use a comment period of at least 60 days...”, a timeframe with which the collective WSBA membership believes is minimally appropriate.

In addition, the WSBA membership believe that given the importance of the proposed rule, this shortened comment period does not allow for considered thought about the impact on the industry as well as its customers and the evaluation of the true costs in time, money, and resources to administer the record-keeping and reporting requirements as outlined under the aforementioned NPRM. In addition, there has been considerable public commentary<sup>18</sup> regarding the legal and procedural concerns associated with the proposed rulemaking. The membership of the WSBA broadly agrees with the concerns as publicly elaborated by these peer organizations and will forego adding any more substantially to the public comments regarding process concerns and any Administrative Procedure Act (“APA”) concerns noted.

---

<sup>16</sup> *Id.*

<sup>17</sup> Adoption of Recommendations, *Notice*, Administrative Conference of the United States (Aug. 9, 2011), <https://www.federalregister.gov/documents/2011/08/09/2011-20138/adoption-of-recommendations>.

<sup>18</sup> Letter from Jerry Brito, Executive Director of Coin Center and Peter Van Valkenburgh, Director of Research of Coin Center to Policy Division of Financial Crimes Enforcement Network (Dec. 22, 2020), <https://www.coincenter.org/app/uploads/2020/12/2020-12-22-comments-to-fincen.pdf>; @brian\_armstrong, Twitter (Nov. 25, 2020, 6:42 PM), [https://twitter.com/brian\\_armstrong/status/1331745196887867393](https://twitter.com/brian_armstrong/status/1331745196887867393).

Given the above facts and circumstances, the WSBA respectfully requests that FinCEN reconsider and extend the currently allotted time frame to a minimum of 60-days to allow for proper industry analysis and response.

- b. Concerns regarding invocation of “good cause” exceptions and national Security** - FinCEN's determination<sup>19</sup> that a longer period of public comment is unnecessary and would frustrate the rule's objective by unduly delaying implementation of measures to curb illicit finance and threats to the United States national interests is, we believe, incorrect. Here, "rapid implementation" is not critical because the concern of the rapid "escape" of illicit CVC or LTDA, which is a stated reason for the rushed timeline, as the majority of any illicit activity is most probably conducted away from any hosted wallets, and would require access to hosted wallets and other BSA subject organizations, as noted above.<sup>20</sup>

Further, in defense of its determination to forgo the otherwise applicable notice-and-comment procedures, FinCEN notes that a delay in implementing the proposed rule could “accelerate or cause the movement of assets implicated in illicit finance” to unhosted wallets or moving CVCs to exchanges that do not comply with AML/CFT requirements. We respectfully believe that this justification seems to be based on a hypothesis that unidentified parties will take measures to evade regulations. However, in *Tennessee Gas Pipeline Co., v. F.E.R.C.*<sup>21</sup>, the D.C. Circuit rejected a similar argument wherein the agency posited that a delay in implementation of the proposed rule might lead to environmental damage by pipeline companies speeding-up construction.<sup>22</sup> The court determined that the, “*justification rests on the regulator's prediction of the regulated's reaction to a proposed rulemaking...*” and that the justification entails a degree of speculation. The court then rejected the agency’s argument and held that an agency must indicate the basis for its prediction so that a reviewing court may be in a position to determine whether it acted reasonably.<sup>23</sup>

- c. Concerns regarding use of previously published reports** - We believe that an undue amount of weight was given to data found in prior published reports cited by FinCEN<sup>24</sup>, which stated that approximately 1% of overall market transaction volume in CVC or LTDA activity conducted globally in 2019 was illicit.<sup>25</sup> While we support and agree with the aforementioned report, we believe that its use has potentially been misconstrued to illustrate a narrative of underreporting and

---

<sup>19</sup> Notice of Proposed Rulemaking, *supra* note 1, at VII.

<sup>20</sup> Letter from Simone Maini, Chief Executive Officer of Elliptic, *supra* note 4.

<sup>21</sup> *Tennessee Gas Pipeline Company v. Federal Energy Regulatory Commission, et. al.*, 969 F.2d 1141 (D.C. Cir. 1992).

<sup>22</sup> *Id.* at 1145.

<sup>23</sup> *Id.*

<sup>24</sup> Notice of Proposed Rulemaking, *supra* note 1 at footnote 13.

<sup>25</sup> See *Id.* at 6; See also Chainalysis, *2020 Crypto Crime Report*, (Jan. 2020), <https://go.chainalysis.com/2020-Crypto-Crime-Report.html>.



uncertainty in the industry, or misperceptions regarding the amount of illicit activity actually occurring in the CVC or LTDA markets.

### **Conclusion**

Cryptoassets and blockchain technology continue to drive change, innovation, disruption, and the development of new products and services in the global banking and financial services industries, as well as in many other segments of the global economy. Many WSBA member firms are at the forefront of such changes and expressed concern that the shortened time frame to provide comment would be insufficient. As a consequence, they are concerned that critical issues may be overlooked, and that there would not be sufficient time to properly develop solutions to comply with the NPRM. Thus, we sincerely hope that FinCEN will extend the time for such rulemaking commentary and implementation. We look forward to discussing our thoughts and comments about the best ways to accommodate these changes and innovations while safeguarding the financial system from illicit use, terrorist financing, money laundering, and other critical concerns. Given its far reaching impact, the WSBA stands ready to work with FinCEN in any way to address the issues raised regarding the aforementioned Notice of Proposed Rulemaking.

Respectfully submitted for and on behalf of the members of the Wall Street Blockchain Alliance,

Ron Quaranta  
Chairman and Chief Executive Officer  
**The Wall Street Blockchain Alliance**  
New York, New York, USA  
January 2021