January 4, 2021

Kenneth A. Blanco
Director, Policy Division
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

FinCEN Docket No. FINCEN-2020-0020, RIN 1506-AB47

Dear Director Blanco:

On behalf of our nation's venture capital (VC) investors and the entrepreneurs they support, I write to express our concerns around the process and substance of FinCEN's recent notice of proposed rulemaking ("NPRM") regarding certain convertible virtual currency (CVC) transactions involving "self-hosted wallets". Our members that are currently exploring the potential of blockchain technology are concerned that a rushed rulemaking on this issue could limit the ability for American consumers and entrepreneurs to make progress in this emerging field, unintentionally stifling the growth of our domestic blockchain technology industry and undermining the law enforcement goals that are the stated purpose of the rule.

We urge you to work with stakeholders through a more thoughtful and thorough notice and comment process to find a rule that works for all parties and renew our call for more substantial work on a comprehensive and effective regulatory regime for blockchain technology. A fifteen-day comment period, spanning the Christmas and New Year's holidays, is simply not a sufficient process to produce a thorough rulemaking in a complex area of law, like blockchain. We urge FinCEN to withdraw the NPRM, or at the very least to extend the comment period to provide a reasonable amount of time for policymakers and industry participants to work through the significant issues in this proposal. Our members stand ready to work together on this issue and broader regulatory action to set critically needed clear rules of the road to facilitate the growth of a promising technology and protect America's historic leadership in technology innovation.

Background on Venture Capital

As background, venture capitalists (VCs) create partnerships with institutional investors to combine the capital held by pension funds, endowments, foundations and other sophisticated investors with their talent and expertise to make risky, long-term equity investments into innovative startups. VCs typically invest early in the promise of an idea, then support a company with multiple investment rounds spanning between five and ten years, sometimes longer.

Venture capital investment has been critical to the experimentation and development of most emerging technologies in the post-World War II economy, including hardware and the home computer industry, the birth of the biotechnology industry, the software revolution, and clean energy development. Looking forward, VCs see promise in many emerging technologies, including blockchain technology. Due to increased interest in the technology by our members, NVCA created the Blockchain Working Group to bring together venture capital investors and the blockchain entrepreneurs they support to engage in the dynamic public policy conversations surrounding the emerging technology.

Venture Capital and Blockchain Technology

A number of our members believe that blockchain holds the promise to be the next transformative industry, provided the policy environment allows entrepreneurs to fully experiment with the technology in the United States. The current discussions around blockchain have many similarities to the regulatory policy conversations that occurred during the rise of previous generations of new industries, such as biotechnology and the commercialization of the Internet. In each of these cases, doubts amongst policymakers proliferated and policy proposals were considered that could have prevented American leadership before the full promise of the technology was realized. Fortunately, cooler heads prevailed and as a result, the United States has been the unquestioned global leader in technological innovation since World War II.

The commercialization of blockchain technology is in its infancy, but a glimpse into the current efforts of blockchain entrepreneurs offers a clear illustration of its potential. As we speak, blockchain entrepreneurs are working to apply the technology to solve critical societal challenges like access to financial services for the unbanked and underbanked, expanding economic opportunity, fighting climate change, and providing a market-based solution to technology and financial services industry concentration. These individuals are undertaking the risky endeavor of entrepreneurship to explore how the power of open protocols can fundamentally redesign how individuals and businesses use the internet.

History shows that open networks drive innovation and consumer value. Blockchain can create the fuel that powers the rise of open networks as all of these efforts are being developed on open, decentralized architectures, similar to how the early Internet was developed. This architecture is particularly relevant today given concerns about the concentration of market share held by a small number of important technology platforms. Blockchain architectures are governed and managed by decentralized communities, participation in which is available to anyone who so chooses, further democratizing access to this important foundational technology.

Concerns with Proposed Rule

The proposed rule would impose new recordkeeping rules on banks and money services businesses (each, a “Covered Entity”) for CVC transactions worth more than $3,000, as well as impose currency transaction report (CTR) requirements for CVC transactions worth more than $10,000.

The NPRM Will Harm Innovation in the United States

If implemented in its current form, the rule would harm American innovation by imposing overly broad and ambiguous regulations on CVC transactions. For example, despite purporting to only cover CVC transactions involving self-hosted wallets, the rule as drafted sweeps much broader, and in fact applies its recordkeeping and reporting obligations with respect to any "withdrawal, exchange, or other payment or transfer, by, through, or to a [Covered Entity] which involves a transaction in [CVC]". As drafted, these regulations would end up stifling not just the transactions to which they are intended to cover, but also other types of transactions and activities including staking, engaging with decentralized applications, and other fundamental elements of blockchain infrastructure.

This overly broad rule, as currently proposed, would push innovation and economic activity in the blockchain industry to foreign jurisdictions and leave the U.S. further behind in the race to experiment with a promising technology that could become central to internet usage. International competition is already underway, as multiple foreign jurisdictions have stated their intent to take a leading position in blockchain technology development in order to gain new industrial advantages in the technologies of the future.

The NPRM Will Harm Law Enforcement Efforts in the Short and Long-Term

While the proposal is an attempt to combat cybercrime, the expected reaction of any overreaching regulation will be the offshoring of activity to jurisdictions where federal law enforcement has no authority. This outcome will be the opposite of regulatory intent, making U.S. citizens less safe and hurting law enforcement efforts by greatly reducing the visibility that law enforcement might otherwise have into the creation, operation and evolution of these markets.

Further, the offshoring of this activity will fuel the development of blockchain technology in these foreign jurisdictions at the expense of American entrepreneurs, over the long-term leaving the United States as a diminished participant in our ability to influence the rules for the technology in a manner consistent with our values and national interests.

The NPRM Provided an Insufficient Notice and Comment Process

We strongly encourage a thorough rulemaking process that provides an appropriate notice and comment period for industry and other stakeholders to engage with regulators to address any regulatory concerns. Applying existing regulatory regimes to nascent technologies has always been an exceedingly difficult task, a challenge that VCs have faced many times during the development of previous emerging technologies. We appreciate the struggle regulators face with emerging technology regulation but point out that imposing a fifteen-day comment period only exacerbates the difficulties of trying to craft the most effective rule. Given the complexity of the subject matter involved here, this type of rulemaking should instead be granted a *longer* comment period, not shorter.

Historically, our country has benefited tremendously from prioritizing deliberation and input from a broad range of stakeholders in our policymaking processes. As we grapple with the increased pace of innovation, we must ensure that we have opportunities to work together to find the best path forward in order to ensure that we remain leaders in emerging technologies in an increasingly competitive global economy.

The Only Real Solution: A Comprehensive Blockchain Regulatory Regime

Our members strongly believe that the optimal solution for blockchain technology regulation is not one-off regulatory proposals, but a comprehensive and effective regulatory regime that can protect consumers and that blockchain entrepreneurs can rely on as they build their technology. We understand that establishing a clear regulatory framework for blockchain technology is a difficult task, but it is a priority shared by many policymakers on both sides of the aisle and most industry participants. As with any emerging technology field, there are many complex questions that must be answered.

Wishing away the rise of a technology has never been an effective solution to challenges that arise during innovation processes. Instead, we urge policymakers to do what previous generations of regulators were able to accomplish when faced with similar challenges: construct a regulatory regime that allows the technology to develop in a safe and sustainable manner. This is the ultimate solution to the challenges that this rule seeks to address and would be far more effective in accomplishing those objectives.

Conclusion

Blockchain technology is still in its infancy but has the potential to rearchitect how the internet works, an area the U.S. should support and allow its best innovators and brightest minds to explore fully to ensure we remain the global leader in internet technology. We hope to be able to work constructively to address the underlying goals of the rule in a manner that does not unintentionally stifle our longer-term innovation strategy.

Thank you for your consideration of our views.

Sincerely,

Bobby Franklin

Bobby Franklin
President & CEO