



**To:**

James P. Sheesley  
Assistant Executive Secretary  
Federal Deposit Insurance  
Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

**January 16, 2025**

**Re: Recordkeeping for Custodial Accounts -  
Notice of Proposed Rulemaking**

Coinbase, Inc. (**CBI** and together with its subsidiaries, **Coinbase**) appreciates the opportunity to respond to the Notice of Proposed Rulemaking referenced above (the **Proposal**) issued by the Federal Deposit Insurance Corporation (**FDIC**).

Coinbase is not a bank—CBI is a NY-state licensed virtual currency business and licensed money transmitter in 44 states, and its subsidiary Coinbase Custody Trust Company, LLC (**CCTC**) is a NY-state chartered limited purpose trust company. However well intentioned, we believe the Proposal should not apply to Coinbase's accounts at its partner banks or impose new requirements on Coinbase's established and robust custodial operations conducted in accordance with applicable state law requirements. Aspects of the Proposal also are so vague and overbroad that they could capture Coinbase's accounts in ways that exceed the FDIC's statutory authority and undermine the Proposal's policy goals.

The Proposal's lack of clear guardrails and its improper reach over state-regulated "account holders" invites unbounded regulatory discretion and conflicting recordkeeping requirements, along with unnecessary costs that produce no identifiable corresponding benefits for the end users the Proposal seeks to protect.

Beyond its overreach, the Proposal also suffers from various substantive and technical issues, many of which would result in the grant of additional discretion by the FDIC to itself to expand the scope of its authority without prior notice or explanation. Examples of this include: (i) the lack of any distinction between



transactions that are made between related entities with a verified common owner, and those that are made to unrelated third parties; (ii) the lack of any definition for the commonly used term "commingled" being used by the FDIC in an uncommon manner; and (iii) a sweeping footnote that could capture nearly all possible transfers as payments to third parties as relevant to determining which accounts are subject to the requirements of the Proposal.

For the reasons detailed below, Coinbase requests various amendments in any final rule stemming from the Proposal (**Final Rule**), including an express exclusion for custodial accounts established by state-regulated entities like CBI and CCTC from the "custodial deposit account with transactional features" (**CDAWTF**) definition.

In the alternative, Coinbase requests that the FDIC adopt a principles-based approach and refrain in any Final Rule from prescribing any specific reporting or data file structure for enhanced recordkeeping. Instead, any Final Rule should provide insured depository institutions (**IDIs or banks**) and third parties with flexibility in meeting the broader goals of the Proposal. The requested amendments described below would provide needed transparency and clarity for Coinbase and the broader market, and support the FDIC's policy goals without exceeding the FDIC's statutory authority.

Yours sincerely,



Faryar Shirzad  
Chief Policy Officer

**I. The Proposal<sup>1</sup> exceeds the FDIC’s statutory authority by covering accounts established by account holders who are already subject to separate and robust state-level recordkeeping requirements.**

For the reasons set forth below, Coinbase believes the FDIC should refocus the Proposal on the recordkeeping practices of those banking entities already subject to its existing authority, and clearly exclude other entities such as Coinbase that support the substantive objectives of the Proposal under the laws and supervision of other state and federal authorities. Should the FDIC fail to do so, it would contradict the FDIC’s statement in the Proposal that it “does not intend to impose any recordkeeping requirements through this proposal that directly conflict with other legal requirements.”<sup>2</sup>

***A. Coinbase’s accounts at partner banks do not present significant complexity in deposit insurance determinations.***

The Proposal is focused on strengthening recordkeeping requirements in situations where a beneficial owner may authorize or direct a transfer through an account holder from an FDIC-insured account to a party other than the account holder or beneficial owner in ways that may increase the number of potential parties who could have a claim on the funds. However, accounts where transactions remain within an ecosystem managed by a state regulated financial institution, such as Coinbase, do not create such complexity because the partner banks of the state regulated institution already receive real time, continuous access to end-user balances and records of beneficial owners via APIs.

Coinbase and similarly-situated entities also already comply with pre-existing state recordkeeping requirements, which, when paired with appropriate equivalent recordkeeping practices of FDIC regulated institutions, accomplish recordkeeping objectives substantially equivalent to those sought by the FDIC. Therefore, without substantial revisions the Proposal is likely to create significant and unnecessary operational costs for Coinbase and similarly-situated parties that partner with IDIs, without any corresponding benefit for the end-users the Proposal seeks to protect.

***i. New York Banking Law - CCTC***

CCTC is subject to New York State law recordkeeping and access requirements as a limited purpose trust company, similar to trustees, securities brokers, dealers, and investment advisers, and other parties exempted under the Proposal. As a limited purpose

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<sup>1</sup> Recordkeeping for Custodial Accounts, 89 Fed. Reg. 80135 (Oct. 2, 2024) (to be codified at 12 CFR pt. 375) (“Proposal”).

<sup>2</sup> Proposal at 80141.

trust company and fiduciary,<sup>3</sup> CCTC is authorized to “take, manage, hold and dispose of[,] according to the terms of such trust, duty or power, any property . . . which may be the subject of any such trust, duty or power.”<sup>4</sup> Where CCTC is required to hold depositors’ accounts in “such depositor’s own name[s]” or “in trust for a third party beneficiary[,]” it must make a written record of the beneficiary’s address at the time the account is established.<sup>5</sup> CCTC is also required to “preserve all its records of final entry” and is subject to annual examination.<sup>6</sup> In short, CCTC’s accounts at its partner banks are accounts “established . . . by a trustee that already has a duty under State law to maintain records regarding the beneficial owners of the funds.”<sup>7</sup>

Like the custodial accounts established by trustees, securities brokers, dealers, and investment advisers, and other parties exempted under the Proposal, accounts established by Coinbase and other cryptocurrency exchanges are used to hold customers’ funds in connection with the asset transactions executed on their platform. Thus, there are a limited number of potential counterparties for transfers of funds from these accounts. Also, unlike partnerships involving middleware companies like Synapse, Coinbase maintains a direct relationship with its bank partners, and it manages the ledgering or recordkeeping of the cash transactions in parallel with its recordkeeping for asset transactions. As such, the accounts established by Coinbase are “unlikely to present significant difficulty in making a deposit insurance determination” if one of Coinbase’s partner banks were to fail.<sup>8</sup>

Furthermore, as a legal fiduciary, CCTC is subject to a similar standard of care as applies to other fiduciaries who remain exempt from the Proposal. Registered investment advisers, for example, maintain a fiduciary obligation to their clients, which comprises a duty of care and a duty of loyalty.<sup>9</sup> Similarly, under New York Banking Law, CCTC must

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<sup>3</sup> CCTC’s trust charter designates CCTC as a fiduciary under New York State Banking Law. See Press Release, N.Y. Dep’t Fin. Servs., DFS Authorizes Coinbase Global, Inc. to Form Coinbase Custody Trust Company LLC (Oct. 23, 2018), [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr1810231](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr1810231).

<sup>4</sup> N.Y. Banking Law § 100(5).

<sup>5</sup> *Id.* at § 9-n.

<sup>6</sup> *Id.* at §§ 128, 122.

<sup>7</sup> Proposal at 80141.

<sup>8</sup> Proposal at 80142.

<sup>9</sup> See, e.g., Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. 1A-5248, Fed. Reg. No. 2019-12208 (July 12, 2019), <https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf> (noting investment advisers are fiduciaries under the Investment Advisers Act of 1940). “Investment advisers who manage funds belonging to others are a classic example of fiduciaries who owe the highest duty of loyalty to those on whose behalf they act. Both New York law and the federal Investment Advisers Act recognize this status and obligation.” *Beacon Hill CBO II, Ltd. v. Beacon Hill Asset Mgmt. LLC*, 249

safe-keep customer property.<sup>10</sup> As a limited purpose trust company engaged in custodial services, CCTC is considered to engage in activities “under the fiduciary umbrella,”<sup>11</sup> exercising fiduciary powers subject to the restrictions and limitations contained under New York Banking law.<sup>12</sup>

*ii. Licensed Money Transmitter in 44 States - CBI*

In addition, CBI is a licensed money transmitter under the laws of 44 states.<sup>13</sup> The recordkeeping requirements imposed by these licenses are more than sufficient to ensure that an FDIC-insurance determination would not be complicated in the event of any partner bank’s failure. State-licensed money transmitters are required to keep, among other records, a record of each outstanding money transmission obligation sold; a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts; bank statements and bank reconciliation records; records of outstanding money transmission obligations; and, records of each outstanding money transmission obligation paid within a certain time period.<sup>14</sup>

Licensed money transmitters also have extensive requirements to ensure that customer funds are protected. For example, states have minimum net worth requirements designed to ensure that companies are financially sound.<sup>15</sup> In the event a licensed money transmitter fails, states have bond and investment requirements to protect against customer losses.<sup>16</sup> The risks of customers losing money in an account established by a

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F. Supp. 2d 268, 273 (S.D.N.Y. 2003), *aff’d on other grounds* 89 Fed. Appx. 749 (2d Cir. 2004); see *Lowenbraun v. L.F. Rothschild, Unterberg, Towbin*, 685 F. Supp. 336, 343 (S.D.N.Y. 1988) (applying New York law); *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 US 11, 17 (1979) (applying federal law); *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 US 180, 191–94 (1963) (applying federal law).

<sup>10</sup> See generally N.Y. Banking Law § 96(3).

<sup>11</sup> N.Y. Dep’t Fin. Servs., *Organization of a Limited Purpose Trust Company*, [https://www.dfs.ny.gov/apps\\_and\\_licensing/banks\\_and\\_trusts/procedure\\_certificate\\_merit\\_trust\\_company](https://www.dfs.ny.gov/apps_and_licensing/banks_and_trusts/procedure_certificate_merit_trust_company) (last visited Jan. 2, 2025).

<sup>12</sup> See generally New York Banking Law §100 (Fiduciary Powers).

<sup>13</sup> In addition, Coinbase is a registered money services business under regulations promulgated by the Financial Crimes Enforcement Network implementing the anti-money laundering obligations of the Bank Secrecy Act.

<sup>14</sup> These requirements are from the Money Transmission Modernization Act (**MTMA**), which has been adopted in whole or in part by twenty-six states. See Money Transmission Modernization Act (MTMA), <https://www.csbs.org/sites/default/files/2023-02/CSBS%20Money%20Transmission%20Modernization%20Act.pdf>. States that have not adopted the MTMA generally have similar recordkeeping requirements for their licensed money transmitters.

<sup>15</sup> See, e.g., MTMA.

<sup>16</sup> See, e.g., MTMA.

licensed money transmitter is, therefore, significantly less than in accounts established by unlicensed custodians.

*iii. [Virtual Currency Licensee - CBI](#)*

CBI is also a New York and Louisiana virtual currency licensee (**VC licensee**). In both New York and Louisiana, a VC licensee has a pre-existing requirement to maintain for each transaction, the amount, date, and precise time of any transaction; payment instructions; the total amount of fees and charges received and paid to, by, or on behalf of the licensee; and the names, account numbers, and physical addresses of the parties to the transaction, bank statements and bank reconciliation records, in addition to other requirements.<sup>17</sup> The state law requirements for a VC licensee to maintain records and provide access to such records are, in some cases, *more* comprehensive than the other exempted entities in the Proposal.<sup>18</sup>

***B. The FDIC should not use the Proposal as a back-door to regulate state-licensed trust companies, money transmitters, and virtual currency businesses.***

The FDIC is authorized to prescribe rules and regulations (**FDIC Rules**) as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act (**FDI Act**).<sup>19</sup> FDIC Rules cover IDIs, as that term is defined in section 3(c) of the FDI Act.<sup>20</sup> While the

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<sup>17</sup> See 23 CRR-NY 200.12(a)(1); LA R.S. 6:1391.1.

<sup>18</sup> New York has provided additional guidance to VC licensees regarding custodial structures for consumer protection in the event of insolvency. See [Letter from Adrienne A. Harris, Superintendent of Financial Services, to Entities Licensed Under 23 NYCRR Part 200 or Chartered as Limited Purpose Trust Companies Under the New York Banking Law That Custody Virtual Currency Assets, Guidance on Custodial Structures for Customer Protection in the Event of Insolvency \(Jan. 23, 2023\)](#), [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20230123\\_guidance\\_custodial\\_structur](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230123_guidance_custodial_structur)[es](#). Notably, this guidance requires that virtual currency must be held "in either (i) separate on-chain wallets and internal ledger accounts for each customer under that customer's name or (ii) one or more omnibus on-chain wallets and internal ledger accounts that contain only virtual currency of customers held under the VCE Custodian's name as agent or trustee for the benefit of those customers." *Id.* If the virtual currency is held in an omnibus account, the VC licensee should "maintain appropriate records and maintain a clear internal audit trail to identify customer virtual currency and account for all customer transactions, so that each individual customer's beneficial interest is always evident and up-to-date," along with clear policies and procedures explaining the safeguards in place. *Id.* VC licensees are also required to be prepared to demonstrate reconciliation between the VC licensee's book and the on-chain activity upon request from the New York State Department of Financial Services. *Id.*

<sup>19</sup> 12 U.S.C. §§ 1819(a), 1820(g), 1821(d)(4)(B)(iv).

<sup>20</sup> 12 U.S.C. § 1813(c)(2).

Proposal is nominally directed at IDIs with CDAWTFs, application of any Final Rule to Coinbase accounts at partner banks would impermissibly add a layer of regulation on state-regulated “account holder” custodians like Coinbase, who remain squarely outside the FDIC’s remit.<sup>21</sup> In addition, as discussed above, the Proposal is likely to create significant and unnecessary operational costs for Coinbase and similarly-situated parties that partner with IDIs, without any corresponding benefit to the end-users the Proposal seeks to protect.

State-licensed, non-bank financial services providers are subject to regulation, examination, and supervision by applicable state agencies. These financial services providers necessarily rely on bank partners to hold deposits and other funds on behalf of their customers and on the FDIC to supervise those bank partners effectively. The Proposal abuses this reliance and would create a back-door for the FDIC to regulate Coinbase and other state-licensed financial services providers outside the FDIC’s jurisdiction based, in part, on the ineffectiveness of the FDIC’s own supervisory standards and practices applicable to IDIs. Rather than memorialize such perverse incentives, Coinbase believes the FDIC should refocus the Proposal on improving the recordkeeping practices of those banking entities already subject to its existing authority rather than seek to expand its jurisdiction beyond established statutory limits.

***C. The FDIC should exempt state-licensed trust companies, money transmitters, and virtual currency businesses from the CDAWTF definition, consistent with the exemption for other regulated entities.***

The Proposal also provides a framework for expressly exempting accounts “[w]here the [agency] believes its policy objectives would not be advanced by the additional recordkeeping requirements.”<sup>22</sup> According to the FDIC, its policy objectives are met and an exception is warranted where a custodial deposit account is established by a person or entity that is already subject to recordkeeping requirements under state or federal law and

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<sup>21</sup> The Proposal defines “account holder” as the person or entity who opens or establishes a CDAWTF with an IDI. Proposal at 80140–41.

<sup>22</sup> Proposal at 80141. These exemptions would apply to deposit accounts: (1) only holding trust deposits; (2) established by a Government depositor; (3) established by or on behalf of one or more brokers, dealers, or investment advisers; (4) established by an attorney or law firm on behalf of clients; (5) held in connection with an employee benefit plan or retirement plan; (6) maintained by real estate industry participants in which funds from multiple clients are deposited in connection with real estate transactions; (7) maintained by a mortgage servicer in certain circumstances; (8) where Federal or State law prohibit the disclosure of deposit beneficial owners; (9) maintained by IDIs in a network pursuant to a particular agreement; and (10) exclusively holding security deposits tied to certain housing purposes. 12 CFR § 375.3(d)(1)-(10), as in the Proposal at 80141–42.



where the accounts do not present significant complexity in deposit insurance determinations.<sup>23</sup>

For example, the Proposal exempts custodial deposit accounts established by brokers or dealers under the Securities and Exchange Act of 1934 and investment advisers under the Investment Advisers Act of 1940 on the grounds that “these entities are already subject to recordkeeping requirements under Federal and State laws in addition to regulatory supervision, and the FDIC believes these measures should generally mitigate the issues addressed through this proposal.”<sup>24</sup>

For the reasons discussed in section I.A above, state-licensed trust companies, money transmitters, and virtual currency businesses such as Coinbase do not present significant complexity in deposit insurance determinations. Accordingly, Coinbase requests that the FDIC adds an exclusion from the recordkeeping requirements of any Final Rule for accounts established by or on behalf of one or more trust companies, money transmitters, or virtual currency businesses that are licensed under applicable state law.

**II. The Proposal is ambiguous, invites unbounded regulatory discretion, and has substantive flaws that lead to unnecessary and duplicative recordkeeping requirements.**

**A. Key terms in the Proposal are either undefined or lack clarity.**

*i. The terms “custodial” and “account holder” will create confusion.*

Although the FDIC acknowledges that “[t]he term ‘custodial deposit account’ may have different meanings in other banking contexts,” it is unfortunate that the FDIC could not identify a different term to describe the accounts it intends to cover.<sup>25</sup> While potentially unintended, the Proposal will create confusion with accounts where a bank is acting as the custodian in accordance with its own custodial or trust powers and the bank maintains a ledger. Furthermore, “account holder” in its common usage means the person who owns the account. This aspect of the Proposal is already causing confusion as entities who may be deemed account holders attempt to understand its implications. Coinbase strongly suggests the FDIC identify different terms for these concepts in any Final Rule.

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<sup>23</sup> Proposal at 80141–42.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 80137.



- ii. *The FDIC should clarify that the Proposal covers only accounts holding cash denominated in U.S. dollars (USD).*

The Proposal provides that “deposit” for purposes of the recordkeeping requirements has the same meaning as in section 3(l) of the FDI Act.<sup>26</sup> While the FDIC has generally considered deposits to mean USD, that is not expressly defined in the statute or FDIC Rules. Because the Proposal indirectly applies to entities that deal in a wide range of asset classes and currency types, Coinbase requests the FDIC clarify that CDAWTFs only include accounts holding USD.

- iii. *Any Final Rule should define “commingled” to exclude accounts structured as omnibus accounts with subaccounts.*

The second prong of the CDAWTF definition captures accounts where “the deposits of multiple beneficial owners are commingled,”<sup>27</sup> but the term “commingled” is not defined. Consistent with the stated policy of the Proposal - i.e., facilitating a prompt and accurate determination of deposit insurance coverage, any Final Rule should define “commingled” to exclude omnibus account structures where each beneficial owner’s funds are in a designated subaccount.

“Commingled” is commonly used to mean an account that contains both operating funds and client funds. Here, based on the policies espoused in the Proposal, the FDIC is presumably referring to a pooled account represented on the bank’s core ledger as a single deposit balance. In a pooled account, only the custodian knows the individual, end-user balances, and to the extent end-users are provided with account numbers, those numbers exist only on the custodian’s system. In contrast, where there is an omnibus account with subaccounts, even though the custodian manages the transaction records collectively, the end users have account numbers and routing numbers that are on the core ledger of and fully visible to the partner bank. Under an omnibus-subaccount structure, the underlying goals of the Proposal—i.e., facilitating a prompt and accurate determination of deposit insurance coverage—are served.

***B. The Proposal has substantive flaws that, if left unaddressed, could inappropriately capture Coinbase accounts without identifiable corresponding benefits for the end users the Proposal seeks to protect.***

Coinbase holds USD on behalf of its retail and institutional customers in deposit accounts at several partner banks, which they access through a Coinbase-hosted USD wallet (**USD**

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<sup>26</sup> 12 CFR § 375.2, as in the Proposal at 80141.

<sup>27</sup> Proposal at 80152.

**Wallet**). Customers use the USD Wallet as an onramp and offramp for fiat currency, generally to bring funds into the Coinbase platform to make cryptocurrency asset purchases or to withdraw the proceeds of asset sales from the platform.

- i. [Any Final Rule should distinguish transactions that are made between related entities with a verified common owner, and those that are made to unrelated third parties.](#)

The third prong of the CDAWTF definition captures custodial accounts “[t]hrough which beneficial owner(s) may authorize or direct a transfer through the account holder from the custodial deposit account to a party *other than the account holder or beneficial owner.*”<sup>28</sup> In other words, if the account permits an owner to transfer funds only to themselves or to the account holder, then the account is not subject to the Proposal’s recordkeeping requirements. For purposes of this definition, we request that any Final Rule permit transfers to related entities with a verified common owner without causing the account to become a CDAWTF.

There are readily apparent substantive reasons for this requested change. For example, individuals may connect external accounts to Coinbase that may not have the exact same titling as the customers’ Coinbase accounts, but are otherwise verified to be those of the same customer through our established know-your-customer processes. In addition, Coinbase users may connect and send funds to accounts in the name of their own living trusts, which are verified with name matching at the time of connection, and Coinbase accounts in their name of individual users may connect to external accounts that are joint accounts. In all such cases, fund transfers permitted from the USD Wallet are limited to accounts where the beneficial owner has a verified beneficial interest. There are also broadly equivalent examples of this type of scenario for institutional customers of Coinbase as well, such as when funds are sent to accounts in the names of affiliates or subsidiaries under verified common ownership of the Coinbase customer.

The FDIC states that the purpose of this prong of the definition is “to apply the proposed recordkeeping requirements only to custodial deposit accounts that are established and used in a manner that allows beneficial owners to direct a transfer of funds from the account to another party—for example, to make purchases or pay bills.” Transfers from a custodial account to other accounts in which the beneficial owner has an ownership interest, such as the accounts of living trusts, affiliates, and subsidiaries, are not purchases or payments to third parties, and do not present the types of risks intended to be addressed by the Proposal. For these reasons, any Final Rule should exclude

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<sup>28</sup> 12 CFR § 375.2, as in the Proposal at 80152 (emphasis added).

transactions that are made between related entities with the same verified common owner from the third prong of the CDWATF definition.

- ii. [Any Final Rule should delete a sweeping footnote that could capture multiple transfers of funds from a beneficial owner to itself, not to an unrelated third party.](#)

A footnote in the Proposal's preamble leaves open the possibility that a transfer from a custodial account to a second account owned by the account holder or beneficial owner, and a subsequent transfer from that second account to a third party, would nevertheless capture the original custodial account within the Proposal's scope.<sup>29</sup> This footnote suggests that for any situation involving a potentially limitless number of account transfers stemming from the original custodial account, the FDIC would look at the totality of the transaction flow and single out the original custodial account for enhanced recordkeeping compliance purposes.

As written, the potential application of this footnote could be nearly limitless, as the reason people transfer funds between financial institutions ordinarily is to make one or more subsequent payments to third parties. It would be an absurd result if this footnote caused those transfers to be considered made to a party other than the beneficial owner, and thereby caused all such accounts to be considered CDAWTFs. To avoid this sweeping result, any Final Rule should delete this footnote in its entirety so that it does not inappropriately capture intra-beneficial owner transfers made in anticipation of subsequent, separate payments to third parties. The limiting principles in the body of the Proposal itself should be relied upon directly to establish the characteristics of CDAWTFs, without an additional grant of discretion by the FDIC to itself to modify those substantive standards as it alone sees fit.

**III. In the alternative, the FDIC should adopt a principles-based approach and refrain in any Final Rule from prescribing a specific reporting or data file structure for enhanced recordkeeping.**

The Proposal would require a bank holding a CDAWTF to maintain end-user records in a standardized data format and layout, as described in Appendix A of the Proposal. Records would be required to identify each beneficial owner, along with corresponding balances and ownership categories for purposes of FDIC deposit determinations. If Coinbase's accounts are inappropriately captured in any Final Rule, Coinbase's partner banks could either maintain these records on their own or continue relying on Coinbase (as the "account holder") to maintain such records.

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<sup>29</sup> Proposal at 80141 n. 24.

Continued reliance on Coinbase by its partner banks to maintain the recordkeeping would require Coinbase to, among other things, obtain independent validation, at least annually, to assess and verify it is maintaining accurate and complete records. While on its face the Proposal would only apply to IDIs, this validation obligation likely would require significant changes to how Coinbase and its partner banks structure their account relationship, ledgering, and reconciliation processes.

Coinbase submits that no such changes would be warranted or necessary to protect end users, not only because the CDAWTF definition should be inapplicable to our accounts, but also because Coinbase already provides its partner banks with “direct, continuous, and unrestricted” access to end-user balance data. Restructuring this ledgering operation in the format the FDIC proposes imposes unnecessary duplication and cost on both Coinbase and its partner banks without corresponding benefits for end users.

Assuming banks and the FDIC have access to the requisite information for deposit insurance purposes, the manner and method of how that information is provided from an account holder to an IDI should be irrelevant. Accordingly, any Final Rule should provide IDIs with the flexibility to identify compliant recordkeeping practices that meet the broader goals of the Proposal. Instead, the FDIC seeks to create a single recordkeeping taxonomy needlessly constrained by Part 370,<sup>30</sup> without considering reasonable alternatives for accomplishing its broader policy goals. Rather than requiring an annual certification process, for example, any Final Rule could significantly reduce implementation-related costs by regularly testing IDIs’ capabilities to demonstrate that they have “direct, continuous, and unrestricted access” to account records and beneficial owner information that supports a deposit insurance determination by the FDIC.<sup>31</sup>

## Conclusion

In summary, Coinbase requests that any Final Rule include:

- an express exclusion for custodial accounts established by state-regulated entities like Coinbase from the CDAWTF definition because these accounts are already subject to comprehensive, reliable, and detailed recordkeeping requirements under various states’ laws;
- a clarification that transfers to an account where the beneficial owner is the same, where the authorized signatory is the same, or where the entities are under common corporate control are considered transfers to the beneficial owner, and therefore, are excluded from third prong of the CDAWTF definition;

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<sup>30</sup> 12 CFR § 370.

<sup>31</sup> Proposal at 80152.



- a definition of “commingled” that excludes omnibus-subaccounts structures that track end-user deposits to a bank’s core ledger; and
- a clarification that digital assets are not deposits, digital asset wallets are not deposit accounts, and that any Final Rule does not bring digital assets within scope.

Coinbase urges the FDIC to carefully consider our comments and take actions consistent with them. We also are available to speak with FDIC staff to address any questions they may have at their convenience.

## Annex: Responses to Relevant Questions in the Proposal

### Custodial Deposit Accounts With Transactional Features

**Q1:** *The proposed definition of “custodial deposit account with transactional features” generally relies on three elements: (1) the account is established for the benefit of beneficial owners; (2) the account contains commingled deposits of multiple beneficial owners; and (3) the beneficial owners may authorize or direct a transfer from the custodial deposit account to a party other than the account holder or beneficial owner. The FDIC believes this definition would include the types of custodial deposit accounts that would present significant complexity in a deposit insurance determination. Should the FDIC consider alternative approaches to defining the “custodial deposit accounts with transactional features” that would generally be subject to the proposed rule?*

**A1:** As detailed above in II.A.iii, the term “commingled” should be defined. Consistent with the stated policy of the Proposal, any Final Rule should define “commingled” to exclude omnibus account structures where each beneficial owner’s funds are in a designated subaccount. Under such omnibus account structures, even though the custodian manages the transaction records collectively, the end users have account numbers and routing numbers that are on the core ledger of and fully visible to the partner bank. Omnibus-subaccount structures serve the underlying goals of the Proposal—i.e., facilitating a prompt and accurate determination of deposit insurance coverage.

### Exemptions

**Q2:** *Are there other categories of custodial deposit accounts with transactional features that should be expressly exempted from the proposed rule’s recordkeeping requirements? If so, why should they be exempt, and what factors would tend to ensure that complete and accurate records of the beneficial owners of the deposits are readily available for the FDIC in the event of the failure of an IDI holding such custodial deposit accounts?*

**A2:** For the reasons discussed above in section [I.C], Coinbase requests the FDIC add an exclusion from the recordkeeping requirements of any Final Rule for accounts established by or on behalf of one or more trust companies, money transmitters, or virtual currency businesses that are licensed under applicable state law.

### Compliance Provisions

**Q3:** *Given the recordkeeping, internal control, and compliance requirements addressed in the proposal, how long would it take to revise systems, processes, and contracts for the purposes of complying with a rule? What would be a reasonable amount of time to achieve compliance with the rule, and why?*

**A3:** Given the lack of clarity regarding which accounts constitute CDAWTFs subject to the requirements of the Proposal, and the significant discretion the FDIC proposes to retain for itself to modify those relevant account characteristics on its own initiative, we believe there is no reasonable way to provide the estimates requested based on the information in the Proposal. The additional revisions and clarifications we have requested above should help to address these shortcomings and provide a better basis for such estimates.

### **Expected Effects**

**Q4:** *Would the proposed rule have any costs, benefits, or other effects that the FDIC has not identified?*

**A4:** Yes. Aspects of the Proposal are so vague and overbroad that they could result in the accounts of Coinbase and other similarly situated parties being subject to substantive regulation by the FDIC in ways that exceed the FDIC's statutory authority.

### **Alternatives**

**Q5:** *Are there other recordkeeping requirements or approaches that are not reflected in the proposal that could be considered in ensuring the accuracy and availability of beneficial ownership records with respect to custodial deposit accounts with transactional features?*

**A5:** As noted above in A1, we recommend that any Final Rule exclude omnibus account structures from the CDAWTF definition as these structures serve the underlying goals of the Proposal—i.e., facilitating a prompt and accurate determination of deposit insurance coverage.

In addition, assuming banks and the FDIC have access to the requisite information for deposit insurance purposes, the manner and method of how that information is provided from an account holder to an IDI should be irrelevant. Accordingly, any Final Rule should provide IDIs with the flexibility to identify compliant recordkeeping practices that meet the broader goals of the Proposal. Rather than requiring an annual certification process, for example, any Final Rule could significantly reduce implementation-related costs by regularly testing IDIs' capabilities to demonstrate that they have "direct, continuous, and unrestricted access" to account records and beneficial owner information that supports a deposit insurance determination by the FDIC.<sup>32</sup>

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<sup>32</sup> Proposal at 80152.