

Hedera Council Meeting Minutes

Date: December 21, 2021
Time: 9:00am – 11:00am ET
Location: Videoconference

Attendees:

Avery Dennison: Pradeep Iyer
Boeing: Brian Jeffords
Dentons: Kenneth Oh, Yi Jing Teo
DLA Piper: Scott Thiel, Mark Radcliffe, Andrew Gastwirth
EDF: Paul Breslow
FIS/Worldpay: Micah Kershner, Che Cabrerros
Google: Simonas Baksys, Rich Widmann
IIT: Dr. Prabhu Rajagopal
LGE: Jaewook Kim, Tony Jang
London School of Economics: Thamim Ahmed, Carsten Sorensen
Magazine Luiza: Simon Olson
Nomura: Yu Ori
ServiceNow: Tasker Generes, Nicola Attico
Shinhan: Do Hyung (Andrew) Kim, Taeyoung Shin, Daseob Lee
Swirls: Bill Miller, Arlan Harris
TATA Comm: Ankur Jindal
University College London: Paolo Tasca, Nikhil Vadgama, Juan Ignacio Ibanez

Hedera Officers/Staff:

Mance Harmon, CEO
Dr. Leemon Baird, Chief Scientist
Young Cho, CFO
Brett McDowell, Executive Director
Natale Furman, General Counsel
Lionel Chocron, Chief Product Officer
Christian Hasker, Chief Marketing Officer
Zenobia Godschalk, SVP, Corporate Communications
Samuel Brylski, Chief Compliance Officer & Regulatory Counsel
Tom Sylvester, Assoc. General Counsel & Secretary
Rachel Epstein, Corporate Counsel

Invited Guests:

Ken Herzinger, Paul Hastings LLP
Josh Planton, VTM Group
Jessica Ravone, VTM Group
April Denning, VTM Group

Members Not Present

Chainlink
DBS
Deutsche Telekom
eftpos Australia
IBM
Standard Bank
Wipro
Zain Group

Summary of actions taken at meeting

- **Reorganization plan.** Council Members approved the reorganization plan for further decentralization that was presented at the meeting.
- **Open sourcing of hashgraph code.** Council Members directed the Hedera Board to (i) proceed with finalizing an IP Purchase Agreement with Swirls to purchase the hashgraph IP and (ii) oversee the process of publishing the hashgraph code under an Apache 2.0 open-source license.
- **Treasury Management Policy.** Council Members (i) authorized the Board to enter into agreements for transfer of hbars in accordance with the proposal presented to the Council Members at the meeting, (ii) directed the Board and Hedera’s Chief Compliance Officer to work with CoinCom and formalize the foregoing in a written Treasury Management Policy, which shall, among other things, require Council Member approval of any transfers (or categories of transfers) that do not fall within a previously approved category; and (iii) approved amending the LLC agreement to provide that the total supply of hbars may not be increased above fifty billion hbars (50,000,000,000 ħ) without the unanimous consent of the Members.

Call to Order & Introductions

Brett M. formally called the meeting to order and welcomed Council Members to the sixth Council meeting of 2021. Natalie F. reviewed the Hedera Council Antitrust Policy and Market Integrity Policy.

**Brett M.
McDowell**
Executive Director

After being moved and seconded, the Council Members approved the agenda as presented for the meeting. Brett M. welcomed new members and allowed them a few minutes to introduce themselves.

Decentralization Task Force Proposals

Brett M. shared the Decentralization Task Force's objectives and that this meeting was requested by the Task Force to have the Council address the Task Force's recommendations. He shared that these recommendations were motivated by, and in line with, the original Hedera mission and vision that have informed the Council's strategy since inception, which is to create a public ledger with both decentralized consensus and decentralized governance. The recommendations grew out of a recent strategic review undertaken by the Board, the Legal & Regulatory Committee, and the Treasury Management & Coin Economics Committee. A Decentralization Task Force of Council Members was created, which narrowed inputs to a set of proposals guided by the original Hedera vision. Brett M. also observed that such changes would likely provide regulatory and strategic benefits within a DLT market that favors open source software. Scott T. noted that the Task Force review process was thorough and resulted in near universal agreement on three proposals, which the Task Force is asking the Council to vote on.

**Brett M.
McDowell**
Executive Director

Brett M. discussed why decentralization is critical for layer-1 DLT networks and reviewed Hedera's long-standing roadmap for increased decentralization over time. He noted that Hedera had taken significant steps towards greater decentralization in 2022, including the grant to the HBAR Foundation, an independent entity focused on supporting the growth of the Hedera ecosystem.

The proposed next major step in Hedera's decentralization is to dramatically reduce the functions undertaken by Hedera and reduce Hedera's staff size accordingly. As part of the proposed reorganization, Hedera's product, engineering, human resources, and marketing teams—as well as the CEO and certain legal/compliance, finance, and network operations staff—would leave Hedera and join Swirlds or a to-be-formed wholly owned subsidiary of Swirlds. Hedera would retain an estimated six employees to facilitate Council governance and assist the Members with network operations. The Council Members discussed the implications of the proposed reorganization, including how certain necessary functions would be maintained in the further decentralized structure.

Brett M. further reviewed the key structural changes to implement the decentralization plan, including changing the Board structure so that all its members are elected by the Council Members and the elimination of central authority roles such as the offices of CEO and CTO, and the departure of most of Hedera's staff. He also summarized the proposed transition plan and milestones.

To implement the proposed reorganization, Brett M. and Tom S. explained that Council Members would need to, among other things, amend Hedera's LLC Agreement, elect three new Board members, and revise Hedera's Committee Policy. Brett M. also mentioned that he will be scheduling quarterly meetings with all Council Members to review their own network utilization interests.

Tom Sylvester
*Secretary &
Assoc. General
Counsel*

Brett M. shared the identified benefits and risks of the proposal that the Task Force had reviewed. He also reported that the Decentralization Task Force is also recommending that the Hedera Council purchase the hashgraph IP from Swirlds and then open source the code. Leemon B. explained how there are now technical controls in place (via "state proofs") to ensure that, if copycat ledgers appeared, network users would always be able to tell which was the true version of the Hedera network.

The Council Members also discussed the benefits, risks, and strategic implications of open sourcing the software code in a competitive environment.

It was noted that the negotiations between Swirlds and Hedera that resulted in a non-binding term sheet took 13 weeks and were conducted at arm's length to avoid any conflicts of interest. The Council Members discussed the benefits and risks of the proposed transaction.

Action Item (Dr. Leemon Baird) – CoinCom to review the appropriateness of using the 30-day trailing average HBAR price to calculate the USD value of HBAR in the context of transactions in which Hedera is to transfer HBAR valued at a specified USD amount.

After being moved and seconded, the Council Members approved the following resolution. Swirlds abstained from the vote.

WHEREAS, as part of Hedera's path to greater decentralization, the Council Members believe now is an appropriate time to take certain steps to further decentralize governance and operations;

NOW, THEREFORE, BE IT RESOLVED, the Council Members approve the reorganization plan presented to the Council on December 21 and direct the Board to proceed with finalizing an outsourcing agreement with Swirlds and effect a smooth transition of the engineering, product, marketing, human resources teams and certain legal, finance, and other personnel to a subsidiary of Swirlds; and

BE IT RESOLVED, FURTHER, the Council Members direct the Secretary to provide, for review and approval by the Council Members, an amended and restated Hedera LLC agreement that reflects the anticipated changes and enables the proposed reorganization.

The Council meeting then moved into executive session to discuss additional decentralization-related proposals, after which the meeting was adjourned.

Report from Executive Session

In the executive session, the Council Members approved the following resolutions:

Open Source Hashgraph Code

WHEREAS, the Hedera network uses the proprietary hashgraph consensus algorithm through a license agreement with Swirlds;

WHEREAS, the hashgraph code is available for "open review" but is not open source;

WHEREAS, the Board has determined that the Hedera network has matured to a point where technical controls are sufficient and legal controls are no longer as necessary to ensure the stability of the Hedera network;

WHEREAS, Hedera's Board of Directors has determined that open sourcing the hashgraph code would promote the further development of the Hedera network ecosystem;

WHEREAS, Hedera has negotiated the purchase of the hashgraph IP from Swirlds on an arm's length basis and on terms that, in the considered judgment of Hedera's Board, are fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED, the Council Members direct the Board to (i) proceed with finalizing an IP Purchase Agreement with Swirlds on the proposed terms from the signed non-binding term sheet and (ii) oversee the process of publishing the hashgraph code under an Apache 2.0 open source license.

Treasury Management Policy

WHEREAS, the Council Members and Board are taking an increasingly active role in management of Hedera activities;

WHEREAS, the Council Members seek to have a policy clarifying authorizations for hbar transfers;

THEREFORE, BE IT RESOLVED, the Council Members authorize the Board to enter into agreements for transfer of hbars in accordance with [the proposal presented to the Council Members at the meeting];

BE IT RESOLVED, FURTHER, the Council Members direct the Board and Hedera's Chief Compliance Officer to work with CoinCom and formalize the foregoing in a written Treasury Management Policy, which shall, among other things, require Council Member approval of any transfers (or categories of transfers) that do not fall within a previously approved category;

BE IT RESOLVED, FURTHER, the Council Members approve amending the LLC agreement to provide that the total supply of hbars may not be increased above fifty billion hbars (50,000,000,000 h) without the unanimous consent of the Members.

The Council Members also discussed related-party transactions and debated corporate governance best practices for completing the IP purchase from Swirls. In response to the discussion, the Executive Director and acting Chair, who would be assigned to represent Hedera's interest in the negotiations, volunteered to explore how an independent 3rd-party valuation of the IP might be conducted and used by the Board as they complete the process of purchasing the IP from Swirls.

Actions taken or ratified by the Hedera Council by written consent (Nov. 17, 2021 – Dec. 21, 2021)

None