

## OCC Confirms that National Banks May Take Deposits that Serve as Reserves for Fiat-Pegged Stablecoins

September 23, 2020

The Office of the Comptroller of the Currency (the **OCC**) issued an **interpretive letter** confirming that national banks and federal savings associations (together, **banks**) may take deposits that serve as reserves for fiat currency-pegged stablecoins (the **Stablecoin Letter**).<sup>1</sup> The staff of the Securities and Exchange Commission (the **SEC**) Strategic Hub for Innovation and Financial Technology (the **FinHub staff**) simultaneously published an **interpretation** with a reminder that whether a particular digital asset, including “one labeled a stablecoin,” is a security is a facts and circumstances determination (the **Interpretation**).<sup>2</sup>

The Stablecoin Letter builds off of the OCC’s July **interpretive letter**, which clarified that banks may provide custody services for cryptocurrencies (the **Custody Letter**).<sup>3</sup> The Stablecoin Letter continues the series of actions taken or announced by Acting Comptroller Brian Brooks to clarify how traditional banking regulations apply to fintech activities—particularly when those activities involve core, traditional banking activities such as custody and deposit taking.

The Stablecoin Letter recognizes that stablecoin issuers (**issuers**) have sought to hold funds backing their stablecoins (**reserves**) in deposits with U.S. banks. The Stablecoin Letter clarifies that banks are permitted to receive deposits from issuers, including deposits that constitute reserves for fiat-pegged stablecoins associated with hosted wallets,<sup>4</sup> and to engage in activities incidental to receiving deposits from issuers. Stablecoins that use unhosted wallets are not covered by the letter.

The OCC states that banks should have appropriate agreements in place with an issuer to verify and ensure that the deposit balances that are reserves held by the bank for the issuer are always equal to or greater than the number of outstanding stablecoins issued by the issuer. The Stablecoin Letter also clarifies that banks are permitted to enter into agreements with issuers that impose restrictions on a bank’s use of reserve deposits or on assets held in a reserve account and that enable the bank and the issuer to specify the responsibilities of the parties, such as the steps the parties will take to ensure that the appropriate party will be deemed the issuer or obligor of the stablecoin.

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<sup>1</sup> OCC Interpretive Letter #1172, *OCC Chief Counsel’s Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves* (September 21, 2020). Stablecoins are cryptocurrencies designed to avoid the volatility that frequently affects the cryptocurrency market. Stablecoins can be backed by and redeemable for another asset, such as another cryptocurrency or a fiat currency, or achieve price-stability through more complex mechanisms (e.g., by setting the supply of circulating stablecoins according to an algorithm). The Stablecoin Letter is limited to stablecoins that are fully backed by and redeemable for a single fiat currency on a 1-to-1 basis (**fiat-pegged stablecoins**).

<sup>2</sup> SEC FinHub Staff, *SEC FinHub Staff Statement on OCC Interpretation* (September 21, 2020), <https://www.sec.gov/news/public-statement/sec-finhub-statement-occ-interpretation>.

<sup>3</sup> OCC Interpretive Letter #1170, *Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers* (July 22, 2020).

<sup>4</sup> Hosted wallets are described as online services that hold the cryptographic keys of users’ cryptocurrencies on the users’ behalf. Hosted wallets may be provided by digital asset exchanges, by other digital asset service providers or on a standalone basis. Unhosted wallets are described as software that enables users to hold their own cryptocurrency keys.

**Considerations for banks holding stablecoin reserves.** The Stablecoin Letter focuses on several considerations for a bank taking deposits that constitute stablecoin reserves. First, the bank should be mindful of deposit insurance limits and eligibility requirements for pass-through insurance treatment for reserve deposit accounts. The Stablecoin Letter acknowledges that, if the requirements for pass-through insurance are met, reserves could either be held as deposits for the issuer or as deposits for the benefit of each individual stablecoin holder.

Additionally, the Stablecoin Letter confirms that Bank Secrecy Act and anti-money laundering compliance obligations extend to stablecoin-related activities. Such compliance obligations include customer identification requirements imposed by the USA PATRIOT Act and, for legal entity accountholders, beneficial owner identification and verification requirements.

Finally, a bank's stablecoin-related activities should align with its existing business plan and strategy and be subject to sound risk-management principles. Bank management should identify and control the risks with stablecoin-related activities, particularly liquidity risk, which could be heightened for reserves.

**Our take on the implications of the Stablecoin Letter.** The taking of deposits is a core banking activity under the National Bank Act and, in light of the broad judicial readings given to those activities "incidental" to the business of banking, national banks clearly have the power to take deposits that are reserves for stablecoins even without the Stablecoin Letter. Our view is that the OCC's decision to publish this letter is designed to further encourage banks to engage in these activities, and to build on the momentum from the Custody Letter. The Stablecoin Letter is best seen as designed to create certainty rather than as establishing new authority in bank activities and powers. Moreover, the Stablecoin Letter may provide further support for banks chartered by states with wildcard statutes to take deposits designed to be reserves for fiat-pegged stablecoins.

While the Stablecoin Letter does not mention it, banks will need to invest the funds received as stablecoin deposits in productive assets. The reference to liquidity risk in the Stablecoin Letter may well encourage banks to invest the deposit funds in short-term highly rated investment securities, such as U.S. Treasuries. It should be noted that the Stablecoin Letter comes at a time when many banks are experiencing an unprecedented inflow of deposits, and stablecoin-related deposits may add further pressure to existing liquidity constraints.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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