

## OCC Confirms that National Banks May Provide Cryptocurrency Custody Services

July 27, 2020

The Office of the Comptroller of the Currency (the **OCC**) issued an **interpretive letter** (the **Letter**) confirming that national banks and federal savings associations (together, **banks**) may provide cryptocurrency custody services.<sup>1</sup> This Letter is the latest in a series of actions taken or announced by Acting Comptroller Brian Brooks to clarify how traditional banking regulations apply to modern fintech activities.

Banks have provided safekeeping and custody services for a broad range of customer assets for centuries.<sup>2</sup> The Letter clarifies that cryptocurrency safekeeping and custody activities are a modern version of these traditional banking activities that are permitted under “longstanding authorities.” And that banks are authorized to perform these services by electronic means under existing OCC regulations.

Custody services would not, in the context of cryptocurrencies, involve a bank having physical possession of customer cryptocurrency. Rather, these services would involve a bank providing electronic safekeeping and custody of the cryptographic key that controls transfer of the customer’s cryptocurrency. The Letter describes how cryptocurrency custody services may also involve a wider range of activities, such as facilitating the customer’s cryptocurrency and fiat currency exchange transactions, transaction settlement, trade execution, recording keeping, valuation, tax services, reporting, or other appropriate custodial services. The Letter recognizes that safekeeping and custody services may be provided in both non-fiduciary and fiduciary capacities—though only those national banks with fiduciary powers are able to provide services in a fiduciary capacity.

**Unique operational and risk management issues.** The Letter acknowledges cryptocurrency custody services may raise considerations, and involve arrangements and services, specific to cryptocurrencies. For example, the Letter points out that custody agreements could contemplate how a customer’s cryptocurrency would be treated in the event there is a “fork” affecting that cryptocurrency and that audit procedures may have to be specially designed to account for the fact that both the bank and its customer can maintain access to the customers’ private keys at the same time.

Cryptocurrency custody services must be provided by banks in a safe and sound matter, in accordance with sound risk management practices and aligned with OCC guidance. The Letter highlights the importance of security measures, such as enhanced hacking, theft and fraud prevention systems that take into account the different technical features of various cryptocurrencies. The Letter states that consultation with the OCC may be appropriate prior to engaging in cryptocurrency custody activities.

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<sup>1</sup> OCC Interpretive Letter #1170, *Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers* (July 22, 2020). The Letter uses the term “cryptocurrency” but clarifies that the term is meant to “encompass[] digital assets that are not broadly used as currencies.” This memorandum uses the term “cryptocurrency” in a way that is consistent with the Letter.

<sup>2</sup> Indeed, “[t]he earliest European depository institutions acted as mere custodians for deposits of gold and other precious metals, charging fees for their custody and book-entry payment and foreign exchange services.” Randall D. Guynn, *Modernizing Securities Ownership, Transfer and Pledging Laws: A Discussion Paper on the Need for International Harmonization*, at 17 and note 22 (International Bar Association, 1996).

**Implications of the Letter.** By confirming that banks may provide cryptocurrency custody services, the Letter could broaden the range of cryptocurrency custody service providers, with national banks and federal savings associations joining the state-chartered trusts and other entities that have been providing these services to date. State-chartered banks, including both members and non-members of the Federal Reserve System, may be indirectly affected by the Letter under state wild card or parity statutes, which generally permit state-chartered banks to engage in the same activities as national banks.

There also could be greater integration of traditional banking services with cryptocurrency services, including those currently provided by specialized cryptocurrency firms. Bank cryptocurrency custody services may, in turn, facilitate increased participation by broker-dealers, investment advisers and registered investment companies in cryptocurrency markets.

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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.

<b>Randall D. Guynn</b>	212 450 4239	<a href="mailto:randall.guynn@davispolk.com">randall.guynn@davispolk.com</a>
<b>Jai R. Massari</b>	202 962 7062	<a href="mailto:jai.massari@davispolk.com">jai.massari@davispolk.com</a>
<b>Daniel E. Newman</b>	212 450 4992	<a href="mailto:daniel.newman@davispolk.com">daniel.newman@davispolk.com</a>
<b>Jeremy M. Sklaroff</b>	212 450 3751	<a href="mailto:jeremy.sklaroff@davispolk.com">jeremy.sklaroff@davispolk.com</a>

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