
September 30, 2020

The OCC Issues Guidance Confirming that National Banks and Federal Savings Associations May Hold Reserves for Certain Stablecoins

On September 21, 2020, the Office of the Comptroller of the Currency (“OCC”) published guidance confirming that national banks and federal savings associations (“FSAs”) are authorized to take deposits that serve as reserves for stablecoins backed on a 1:1 basis by a single fiat currency in a hosted wallet.¹ While there is no one definition for “stablecoin,” the term is generally used for cryptocurrencies that are designed to be more steady in value than other digital assets, such as digital assets backed by fiat currency, including the U.S. Dollar.² On the same day, the Securities and Exchange Commission Strategic Hub for Innovation and Financial Technology Staff (“SEC FinHub Staff”) published a statement noting that the OCC’s guidance was limited to certain stablecoins, and encouraging issuers and other parties to seek guidance from the SEC to determine whether an underlying stablecoin is a security.³

Key Takeaways:

- This latest guidance by the OCC signals the agency’s continuing efforts to provide greater regulatory clarity to national banks and FSAs about digital assets, which comes only three months after the OCC published guidance stating that national banks and FSAs may provide cryptocurrency custody services on behalf of customers.⁴
- National banks and FSAs operating in the digital asset arena, including those holding stablecoin reserves, should continue to comply with all relevant existing laws and regulations, including those related to deposit insurance coverage and Bank Secrecy Act (“BSA”)/anti-money laundering (“AML”) obligations.
- Federal agencies are recognizing the growing activity in digital assets, particularly around stablecoins, and will likely continue to release guidance and regulations as the markets for digital assets continue to develop.

The OCC’s Guidance

The OCC’s guidance confirms that national banks and FSAs are authorized to hold reserves on behalf of customers who issue certain stablecoins,⁵ provided the reserves comply with existing laws and regulations, including those related to deposit insurance coverage and BSA/AML requirements.⁶

The OCC was careful to state that its guidance is limited to stablecoins (i) backed on a 1:1 basis by a single fiat currency, and (ii) in a hosted wallet.⁷ “Hosted wallets” are wallets⁸ controlled by a trusted third party. The OCC noted that it is not yet addressing banks’ authority to support unhosted wallets, which are those controlled by the individual user who owns the cryptocurrency being stored.⁹

The OCC cited the public interest in providing its guidance, observing that statements prepared by public independent auditors indicate that “several issuers” currently have reserve funds backing their currencies at banks within the United States, and those issuers cite the fact that the stablecoins are held at national banks to support the trustworthiness of those assets.¹⁰ In a statement released with the letter, Acting Comptroller of the Currency Brian P. Brooks estimated that national banks and FSAs are currently engaged in billions of dollars per day in stablecoin-related activity.¹¹

The SEC’s Statement

Also on September 21, 2020, the SEC FinHub Staff issued a public statement regarding the OCC’s letter, which notes that the OCC’s guidance is limited to a defined subset of stablecoins.¹² The statement includes a reminder that whether “a particular digital asset, including one labelled a stablecoin, is security under the federal securities laws is inherently a facts and circumstances determination.”¹³ The SEC staff also encourage parties seeking to structure and sell digital assets, or to engage in related activities, to contact the SEC FinHub Staff with any questions, including requests for guidance on whether particular digital assets are securities under federal law.¹⁴

We will continue to monitor these efforts to regulate the digital asset space, and the enforcement actions that are likely to follow based on existing and newly developed laws and regulations.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- ¹ Office of the Comptroller of the Currency, *Federally Chartered Banks and Thrifts May Engage in Certain Stablecoin Activities*, News Release 2020-125 (Sept. 21, 2020), available [here](#).
- ² There are three main types of stablecoins. The first type is centralized IOU stablecoins, which are backed with fiat currency or precious metals. For example, Gemini and Paxos are backed 1:1 with U.S. dollars. The second type is crypto-collateralized stablecoins, which are backed by other cryptocurrency. For example, Dai is a stablecoin which locks up Ether in a collateralized debt position. Finally, there are non-collateralized stablecoins, which stabilize through seniorage shares. For example, Basis is stabilized through on-chain supply management, which means the underlying smart contract increases or decrease the supply of Basis to bring the price back to \$1 if it fluctuate. For more, see, e.g., Coin Central, *Understanding the Three Types of Stablecoins* (Nov. 6, 2018), available [here](#).
- ³ Securities and Exchange Commission, *SEC FinHub Staff Statement on OCC Interpretation* (Sept. 21, 2020), available [here](#).
- ⁴ Office of the Comptroller of the Currency, *Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers*, Interpretive Letter No. 1170, at 5 (July 22, 2020), available [here](#).
- ⁵ Office of the Comptroller of the Currency, *OCC Chief Counsel’s Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves*, Interpretive Letter No. 1172, at 1 (Sept. 21, 2020), available [here](#).
- ⁶ *Id.* at 4.
- ⁷ *Id.* at 1.
- ⁸ A “wallet” in this context refers to the programs that store the cryptographic keys associated with a particular unit of digital currency. Office of the Comptroller of the Currency, *Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers*, Interpretive Letter No. 1170, at 5 (July 22, 2020), available [here](#).
- ⁹ Office of the Comptroller of the Currency, *OCC Chief Counsel’s Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves*, Interpretive Letter No. 1172, at 1 (Sept. 21, 2020), available [here](#).
- ¹⁰ *Id.*
- ¹¹ Office of the Comptroller of the Currency, *Federally Chartered Banks and Thrifts May Engage in Certain Stablecoin Activities*, News Release 2020-125 (Sept. 21, 2020), available [here](#).
- ¹² Securities and Exchange Commission, *SEC FinHub Staff Statement on OCC Interpretation* (Sept. 21, 2020), available [here](#).
- ¹³ *Id.*
- ¹⁴ *Id.*