

Regulatory Alert

Regulatory Insights



November 2021

Cryptocurrency activities

As the financial services regulators refine supervisory frameworks for crypto and digital assets, financial services companies, including nonbank financial entities and third parties, should anticipate heightened inquiries and supervision in an array of activities including custody, sales, lending, distributions, and holds. New entrants and charter applicants should expect scrutiny, particularly relative to trust and fiduciary standards. Look for evolving frameworks and expectations, as well as regulatory reports and guidance, including coverage of central bank digital currencies (CDBC).

Interagency Statement

The FRB, OCC, and FDIC issued a [joint statement](#) on “crypto-assets,” defined by the agencies as “any digital asset implemented using cryptographic techniques.” The statement indicates that during 2022 the agencies intend to provide i) clarity on whether certain crypto-assets-related activities are legally permissible for banking organizations, and ii) expectations for safety and soundness, consumer protection, and compliance with existing laws and regulations related to:

- Crypto-asset safekeeping and traditional custody services
- Ancillary custody services
- Facilitation of customer purchases and sales of crypto-assets
- Loans collateralized by crypto-assets
- Issuance and distribution of stablecoins
- Activities involving the holding of crypto-assets on balance sheet.

The agencies indicate they will also evaluate the application of bank capital and liquidity standards to crypto-assets for activities involving U.S. banking organizations.

OCC Guidance

In a separate release, the OCC issued [Interpretive Letter 1179](#) to clarify that a national bank or federal savings association (collectively, Bank) seeking to engage in certain cryptocurrency, digital ledger, or stablecoin activities (as previously covered by Interpretive Letters 1170, 1172, and 1174) must first:

- Notify the OCC in writing of its intention to engage in the activity, and
- Receive the OCC’s written notification of supervisory non-objection.

To receive supervisory non-objection, the Bank must demonstrate, to the satisfaction of its supervisory office, that it has risk management systems and controls in place to conduct the activity in compliance with all applicable laws and in a safe and sound manner. To address compliance, the Bank must demonstrate, in writing, an understanding of any compliance obligations related to the specific activities under consideration, including applicable requirements under the federal securities laws, the Bank Secrecy Act, anti-money laundering, the Commodity Exchange Act, and consumer protection laws.

Banks currently engaged in cryptocurrency, distributed ledger, or stablecoin activities (i.e., as of November 23, 2021) are not required to obtain supervisory non-objection.

Chartering. The letter also clarifies OCC authority to charter banks (including de novo banks and conversions of state institutions) that limit their operations to those of a trust company (as covered by Interpretive Letter 1176). The OCC

states that it retains discretion to determine if an applicant's activities that are considered trust or fiduciary activities under state law are considered trust or fiduciary activities for purposes of applicable federal law.

For additional information, please contact [Amy Matsuo](#), [Todd Semanco](#), or [Damian Plioplys](#).

Relevant Interpretive Letters

- Interpretive Letter [1170](#) addresses cryptocurrency custody services.
- Interpretive Letter [1172](#) addresses dollar deposits serving as reserves backing stablecoins.
- Interpretive Letter [1174](#) addresses distributed ledgers and stablecoins in payment activities.
- Interpretive Letter [1176](#) addresses OCC chartering authorities.

Relevant links:

- Joint Statement on Crypto-Assets, is available [here](#).
- OCC Interpretive Letter 1179, is available [here](#).
- KPMG Regulatory Alert | Interagency report on regulation of stablecoins, is available [here](#).

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