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# Federal Reserve Requires Notification of Crypto-Asset-Related Activities

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## Federal Reserve Guidance Imposes Requirements Similar to Those Imposed by the OCC and FDIC

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Following in the wake of recent supervisory guidance published by the Office of the Comptroller of the Currency (the “OCC”) and the Federal Deposit Insurance Corporation (the “FDIC”),<sup>1</sup> on August 16, 2022, the Board of Governors of the Federal Reserve System (the “Federal Reserve”) issued a supervisory letter<sup>2</sup> requiring all Federal Reserve-supervised banking organizations to notify their lead supervisory point of contact at the Federal Reserve prior to engaging in any crypto-asset-related activities, like the approach taken by the OCC and the FDIC. A supervised banking organization that is already engaged in such activities also must promptly notify Federal Reserve supervisory staff.

Unspecified timing for supervisory response. As with the guidance from the OCC and the FDIC, the supervisory letter contemplates that relevant supervisory feedback will be provided “in a timely manner,” but, similarly, does not specify any particular timeline for that feedback. The OCC guidance explicitly states that “[a] bank should not engage in the [crypto-related] activities until it receives written notification of the supervisory office’s non-objection.”<sup>3</sup> Although the Federal Reserve and the FDIC did not make such an express statement, in practice it is likely that the process will be similar across all the agencies (*i.e.*, banks must wait for a supervisory response before they commence the activities).

Definition and permissibility of “crypto-asset-related activities.” The supervisory letter does not define “crypto-asset-related activities,” but provides the following examples: crypto-asset safekeeping and traditional custody services; ancillary custody services; facilitation of customer purchases and sales of crypto-assets; loans collateralized by crypto-assets; and issuance and distribution of stablecoins.<sup>4</sup> Unlike the OCC’s guidance, which specifically identifies (i) providing custodial services, (ii) holding stablecoin reserves and (iii) using distributed ledgers and stablecoins to facilitate and engage in payment activities<sup>5</sup>

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as permissible activities for a national bank, the Federal Reserve, like the FDIC, declines to weigh in on the legal permissibility of any specific crypto-related activity by their supervised institutions.

Interaction with other regulatory regimes. The supervisory letter notes that banking organizations must (i) ensure that the activities are legally permissible under relevant state and federal laws and determine whether any regulatory filings are required and (ii) have adequate systems and controls in place to conduct such activities in a safe and sound manner and in compliance with applicable laws, including applicable consumer protection statutes and regulations.<sup>6</sup> The Federal Reserve also encourages state member banks to notify their state regulators. The supervisory letter notes the following specific requirements that may be relevant:

- Section 24 of the Federal Deposit Insurance Act, which prohibits an insured state bank from engaging as principal in any type of activity that is not permissible for a national bank, unless the FDIC has determined that the activity would pose no significant risk to the Deposit Insurance Fund and the bank is and remains in compliance with the Federal Reserve’s capital requirements.<sup>7</sup>
- The Federal Reserve’s Regulation H, which requires the permission of the Federal Reserve before a bank may cause or permit any change in the “general character of its business or in the scope of [its] corporate powers.”<sup>8</sup>

Potential risks of crypto-related activities. Although the Federal Reserve acknowledges that crypto-assets may present opportunities to banking organizations, their customers, and the overall financial system, it cautions that crypto-assets may also pose risks, including: (i) technological and operational risks associated with cybersecurity and governance of underlying networks and related arrangements; (ii) anti-money laundering and countering of financing of terrorism risks; (iii) consumer protection risks related to price volatility, misinformation, fraud and theft or loss of assets; (iv) legal compliance risks for banking organizations relating to the uncertain legal status of many crypto-assets, legal exposure arising from losses, and relationships with crypto-asset service providers; and (v) risks to financial stability, including potentially through destabilizing runs and disruptions in payment systems.<sup>9</sup>

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ENDNOTES

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- <sup>1</sup> See OCC’s interpretive letter regarding the authority of banks to engage in cryptocurrency activities (see Sullivan & Cromwell LLP, “OCC Issues Interpretive Letter Regarding the Authority of Banks to Engage in Cryptocurrency Activities” (December 21, 2021), *available at* <https://www.sullcrom.com/sc-publication-occ-issues-interpretive-letter-regarding-authority-of-banks-to-engage-in-cryptocurrency>); FDIC’s Financial Institution Letter on crypto-related activities (see Sullivan & Cromwell LLP, “FDIC Requires Notification of Crypto-Related Activities” (April 8, 2022), *available at* <https://www.sullcrom.com/sc-publication-fdic-requires-notification-crypto-related-activities>).
- <sup>2</sup> Federal Reserve Supervision and Regulation Letter 22-6 (August 16, 2022), *available at* <https://www.federalreserve.gov/supervisionreg/srletters/SR2206.pdf> (“Supervisory Letter 22-6”).
- <sup>3</sup> OCC Interpretive Letter 1179 (November 18, 2021), *available at* <https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf> (“OCC Interpretive Letter 1179”).
- <sup>4</sup> Supervisory Letter 22-6, *supra* note 2 at fn. 3. The letter also provides that “a crypto-asset generally refers to any digital asset implemented using cryptographic techniques.” *Id.* at fn. 1.
- <sup>5</sup> OCC Interpretive Letter 1179, *supra* note 3.
- <sup>6</sup> Supervisory Letter 22-6, *supra* note 2.
- <sup>7</sup> *Id.* at 2 fn. 8.
- <sup>8</sup> *Id.* at 3 fn. 9.
- <sup>9</sup> *Id.* at 1, 2.

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