

September 24, 2020

Stablecoin Activities by National Banks

OCC Interpretive Letter Confirms National Bank Authority to Hold Stablecoin Reserves

In an interpretive letter released to the public on September 21, 2020, the Office of the Comptroller of the Currency (“OCC”) concluded that a national bank may, as a service to banking clients, hold deposits that serve as reserves for certain “stablecoins.” A stablecoin is a type of cryptocurrency that is designed to have a stable value, facilitating its use in payments and in other contexts. While there are a number of ways to achieve this goal, the interpretive letter addresses only stablecoins that are “backed on a 1:1 basis by a single fiat currency where the bank verifies at least daily that reserve account balances are always equal to or greater than the number of the issuer’s outstanding stablecoins.”¹ Further, the interpretive letter is limited to stablecoins that are transacted on “hosted wallets”—an account-based software program, controlled by an identifiable entity, that stores the cryptographic keys associated with such stablecoin—as opposed to those transacted on un-hosted wallets.²

As in the interpretive letter issued in July 2020,³ the OCC uses the letter to emphasize that “banks are encouraged to manage customer relationships and mitigate risks based on client relationships rather than declining to provide banking services to entire categories of customers.”⁴ In its discussion, the OCC recognizes that stablecoin issuers may naturally want to place stablecoin reserves with a national bank, and that receiving deposits is a core banking activity.⁵ Building on the prior interpretive letter, the OCC reaffirms that a national bank may provide banking services to any lawful business—including businesses associated with cryptocurrencies—so long as the bank is able to manage the relevant risks, including the substantial liquidity risk inherent in these services,⁶ and comply with all applicable law, including federal securities laws, the Bank Secrecy Act and anti-money laundering (“AML”) requirements.⁷

The OCC also cautions that, as with any deposit product, a national bank or federal savings association (“FSA”) that accepts stablecoin reserves should be cognizant of deposit insurance limits, as well as requirements that must be met so that deposit insurance may “pass through” to the underlying depositor, if

SULLIVAN & CROMWELL LLP

applicable.⁸ The OCC notes that stablecoin reserve deposits could be structured as the deposits of the stablecoin issuer itself or as deposits of the individual holder of such stablecoins, if the requirements for pass-through insurance are met.⁹

Furthermore, the letter notes the important role that contractual arrangements with the stablecoin issuer may have in mitigating risks to the bank, such as by specifying the respective responsibilities of the parties.¹⁰ Among the contractual arrangements suggested in the letter is an agreement between the bank and stablecoin issuer by which the bank may ensure that deposit balances held by the bank are always greater than or equal to the number of the stablecoins outstanding.¹¹ In the context of prepaid cards distributed and sold by third-party program managers, which the OCC views as an analogous activity, interagency guidance specifically provides that banks should enter into contracts allowing them to monitor the performance of and to audit the activities of third-party program managers.¹²

In a companion notice to the interpretive letter, the U.S. Securities and Exchange Commission's Strategic Hub for Innovation and Financial Technology Staff (the "FinHub Staff") issued (and SEC Commissioner Hester Peirce re-tweeted) a statement reminding market participants that a stablecoin may be considered a security under the federal securities laws, and such determination is "inherently a facts and circumstances determination."¹³ The statement encourages parties seeking to sell stablecoins and other digital products to consult with FinHub Staff to "help ensure that such digital assets are structured, marketed, and operated in compliance with the federal securities laws," and offers to engage with market participants to assist them and to "consider providing, if appropriate, a 'no-action' position regarding whether activities with respect to a specific digital asset may invoke the application of the federal securities laws."¹⁴

* * *

ENDNOTES

- 1 OCC Chief Counsel’s Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves, OCC Interpretive Letter #1172 (Oct. 2020) at 2 (the “Interpretive Letter”). In a footnote, the OCC notes that the types of activities discussed in the interpretive letter by such stablecoins “would not contribute to the global and systemic risks noted by the Financial Stability Board in its recent consultation.” *Id.* at 2, n.5.
- 2 *Id.* at 1, n.3 (“A hosted wallet is an account-based software program for storing cryptographic keys controlled by an identifiable third party. These parties receive, store, and transmit cryptocurrency transactions on behalf of their accountholders; the accountholder generally does not have access to the cryptographic keys themselves. In contrast, an un-hosted or personal wallet is one where an individual owner of a cryptocurrency maintains control of the cryptographic keys for accessing the underlying cryptocurrency.”).
- 3 Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers, OCC Interpretive Letter #1170 (Jul. 2020). For a summary, please refer to our Memorandum to Clients from [July 23, 2020](#).
- 4 Interpretive Letter at 3, n.14.
- 5 *Id.* at 3.
- 6 *Id.*
- 7 *Id.* at 2-3.
- 8 Interpretive Letter at 4. The OCC analogizes to prepaid cards, for which the OCC has explained that “stored value (electronic cash) issued by banks will be insured if the funds underlying the electronic cash remain in a customer’s account until it is transferred to a merchant or other third party, who in turn collects the funds from the customer’s bank. However, bank-issued electronic cash does not result in an insured deposit when the underlying funds are placed in a reserve or general liability account held by the issuing bank to pay merchants and other payees as they make claims for payments.” OCC Bulletin 1996-48 (Sept. 3, 1996).
- 9 Per the Interpretive Letter, “[t]he general requirements for pass through deposit insurance coverage are: (1) the account records at the bank must disclose the existence of the third party custodial relationship; (2) the bank’s records or records maintained by the custodian or other party must disclose the identities of the actual owners of the funds and the amount owned by each such owner; and (3) the deposits actually must be owned (under the agreements among the parties) by the named owners.” Interpretive Letter at 4, n.19. Other implications that arise when a holder of stablecoin is viewed as owning the stablecoin’s reserves are not discussed by the Interpretive Letter.
- 10 *Id.*
- 11 *Id.* at 5, n.26.
- 12 *Id.* See OCC Bulletin 2016-10, Prepaid Cards: Interagency Guidance to Issuing Banks on Applying Customer Identification Program Requirements to Holders of Prepaid Cards (Mar. 21, 2016).
- 13 SEC FinHub Staff Statement on OCC Interpretation (Sept. 21, 2020), available at <https://www.sec.gov/news/public-statement/sec-finhub-statement-occ-interpretation>.
- 14 *Id.*

SULLIVAN & CROMWELL LLP

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers listed below, or to any other Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.

CONTACTS

New York

Thomas C. Baxter Jr.	+1-212-558-4324	baxtert@sullcrom.com
Whitney A. Chatterjee	+1-212-558-4883	chatterjee@sullcrom.com
H. Rodgin Cohen	+1-212-558-3534	cohenhr@sullcrom.com
Elizabeth T. Davy	+1-212-558-7257	davve@sullcrom.com
Mitchell S. Eitel	+1-212-558-4960	eitem@sullcrom.com
Michael T. Escue	+1-212-558-3721	escuem@sullcrom.com
Jared M. Fishman	+1-212-558-1689	fishmanj@sullcrom.com
C. Andrew Gerlach	+1-212-558-4789	gerlacha@sullcrom.com
Wendy M. Goldberg	+1-212-558-7915	goldbergw@sullcrom.com
Shari D. Leventhal	+1-212-558-4354	leventhals@sullcrom.com
Marion Leydier	+1-212-558-7925	leydierm@sullcrom.com
Erik D. Lindauer	+1-212-558-3548	lindauere@sullcrom.com
Ryne V. Miller	+1-212-558-3268	millerry@sullcrom.com
Mark J. Menting	+1-212-558-4859	mentingm@sullcrom.com
Camille L. Orme	+1-212-558-3373	ormec@sullcrom.com
Stephen M. Salley	+1-212-558-4998	salleys@sullcrom.com
Rebecca J. Simmons	+1-212-558-3175	simmonsr@sullcrom.com
William D. Torchiana	+1-212-558-4056	torchianaw@sullcrom.com
Donald J. Toumey	+1-212-558-4077	toumeyd@sullcrom.com
Marc Trevino	+1-212-558-4239	trevinom@sullcrom.com
Benjamin H. Weiner	+1-212-558-7861	weinerb@sullcrom.com

SULLIVAN & CROMWELL LLP

Mark J. Welshimer	+1-212-558-3669	welshimerm@sullcrom.com
Michael M. Wiseman	+1-212-558-3846	wisemanm@sullcrom.com

Washington, D.C.

Eric J. Kadel, Jr.	+1-202-956-7640	kadelej@sullcrom.com
William F. Kroener III	+1-202-956-7095	kroenerw@sullcrom.com
Stephen H. Meyer	+1-202-956-7605	meyerst@sullcrom.com
Jennifer L. Sutton	+1-202-956-7060	suttonj@sullcrom.com
Andrea R. Tokheim	+1-202-956-7015	tokheima@sullcrom.com
Samuel R. Woodall III	+1-202-956-7584	woodalls@sullcrom.com

Los Angeles

Patrick S. Brown	+1-310-712-6603	brownp@sullcrom.com
William F. Kroener III	+1-310-712-6696	kroenerw@sullcrom.com

Paris

William D. Torchiana	+33-1-7304-5890	torchianaw@sullcrom.com
----------------------	-----------------	--

Tokyo

Keiji Hatano	+81-3-3213-6171	hatanok@sullcrom.com
--------------	-----------------	--
