

November 24, 2021

Federal Banking Agencies Release Joint Statement on Crypto-Asset “Policy Sprint” Initiative

Federal Reserve, FDIC and OCC Provide Update Regarding Crypto-Asset Regulation, Including Proposed Regulatory Roadmap for 2022.

SUMMARY

On November 23, 2021, the federal bank regulators released a joint statement summarizing the work undertaken so far with respect to the agencies’ so-called “policy sprint” regarding crypto-assets. The statement notes a focus on advancing the agencies’ understanding of banks’ potential involvement in crypto-asset-related activities and identifies a number of areas where the agencies intend to provide additional regulatory clarity in 2022. These areas include the permissibility of crypto-asset-related activities and the agencies’ expectations with respect to those activities.

THE JOINT STATEMENT

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (the “OCC”) released their Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps (the “Joint Statement”) on November 23, 2021.¹ Recognizing that the crypto-asset sector² presents opportunities and risks for banking organizations, their customers and the U.S. financial system, the agencies seek to provide “coordinated and timely clarity where appropriate” to advance their regulatory goals, including (i) the promotion of safety and soundness, (ii) consumer protection and (iii) compliance with applicable laws and regulations, including with respect to anti-money laundering and illicit finance.³

The Joint Report notes that staff at the agencies focused first on developing the agencies’ collective knowledge and understanding of banking organizations’ potential involvement with crypto-assets, including:

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(i) developing a commonly understood vocabulary using consistent terms regarding the use of crypto-assets by banking organizations, (ii) identifying and assessing key risks related to potential crypto-asset activities by banking organizations and (iii) analyzing the applicability of existing regulations and guidance and identifying areas that may benefit from additional clarification by the agencies.⁴ The agencies reviewed crypto-asset activities in which they believe banking organizations may be interested in participating, including: (i) crypto-asset custody,⁵ (ii) facilitation of the purchase and sale of crypto-assets by their customers, (iii) loans collateralized by crypto-assets, (iv) payments activities, including stablecoins⁶ and (v) activities that could result in a banking organization holding crypto-assets on its balance sheet.⁷

Based on this foundational work, the agencies intend to “provide greater clarity on whether certain activities related to crypto-assets conducted by banking organizations are legally permissible, and expectations for safety and soundness, consumer protection, and compliance with existing laws and regulations” in 2022. The agencies also note that they will continue to evaluate the application of bank capital and liquidity standards to crypto-assets, including engagement with the Basel Committee on Banking Supervision.⁸

On the same day that the Joint Statement was released, the OCC separately released an interpretive letter regarding (i) the authority of a bank to engage in certain cryptocurrency activities, and the requirement to obtain a notice of supervisory non-objection before relying on that authority and (ii) the authority of the OCC to charter a national trust bank.⁹ The release of the Joint Statement, together with the OCC’s release of that interpretive letter, demonstrates the regulators’ increasing focus on crypto-assets, but indicates that substantive regulatory developments will not occur until sometime next year.

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ENDNOTES

- 1 Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps, Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (November 23, 2021), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20211123a1.pdf>.
- 2 The Joint Statement notes that the agencies understand the term “crypto-asset” to refer “generally to any digital asset implemented using cryptographic techniques.” *Id.* at 1.
- 3 *Id.*
- 4 *Id.*
- 5 The Joint Statement notes that “[t]raditional custody services in this context include facilitating the customer’s exchange of crypto-assets and fiat currency, transaction settlement, trade execution, recordkeeping, valuation, tax services, and reporting” and that ancillary custody services “could potentially include staking, facilitating crypto-asset lending, and distributed ledger technology governance services. The agencies may seek additional information on these activities through a request for information, prior to providing any further clarity on these activities.” *Id.* at 2.
- 6 For further information on the President’s Working Group on Financial Market’s Report on Stablecoins, see Sullivan & Cromwell’s November 5, 2021 memo to clients at <https://www.sullcrom.com/files/upload/sc-publication-presidents-working-group-on-financial-markets-issues-report-on-stablecoins.pdf>.
- 7 Joint Statement at 1-2.
- 8 *Id.* See also Basel Committee on Banking Supervision, Consultative Document on the Prudential Treatment of Cryptoasset Exposures (September 10, 2021), <https://www.bis.org/bcbs/publ/d519.htm>.
- 9 OCC Interpretive Letter #1179 (November 18, 2021), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>. The letter makes clear that banks already engaged in cryptocurrency, distributed ledger, or stablecoin activities as of the date of publication of the interpretive letter do not need to obtain supervisory non-objection. However, the OCC expects that a bank that has commenced such activity will have provided notice to its supervisory office. The OCC notes that it will examine such activities as part of its ongoing supervisory process.

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