

Bank Regulator Clarifies Crypto Custody Rules

July 23, 2020

On July 22, 2020, the Office of the Comptroller of the Currency (OCC) published an [interpretive letter](#) clarifying the authority of national banks and certain federal savings associations (FSAs) to provide their customers with cryptocurrency custody solutions. The OCC letter permits covered institutions to provide cryptocurrency custody solutions to customers, “including by holding the unique cryptographic keys associated with cryptocurrency,” and reaffirms that such institutions may provide permissible banking services to cryptocurrency companies.

The letter comes in response to a bank requesting clarity with respect to existing laws and regulations surrounding the provision of cryptocurrency custody services. The OCC letter recognizes that there is a significant demand for such services because of the unique and irreplaceable nature of cryptocurrency private keys, and the possibility that such keys can be used to sign an immutable transaction on a particular blockchain. The letter further recognizes that banks, by their nature, are favorable candidates to provide such services and that investment managers may wish to make cryptocurrency transactions on behalf of customers and use banks as the custodian in connection with providing such investment advisory services.

The OCC letter recognizes that banks have historically provided safekeeping services, and that as technology has become more ubiquitous, banks have been permitted to provide such services in connection with electronic or digital matters including escrowing encryption keys used in connection with digital certificates and providing secure web-based document storage, retrieval, and collaboration of documents and files containing personal information or valuable confidential trade or business information. See 12 C.F.R. §§ 7.5002(a)(4), 7.5005(a). Traditionally, these services have been provided on a fiduciary and non-fiduciary basis. Moreover, the OCC generally has not prohibited banks from providing custody services for any particular type of asset, as long as the bank has the capability to hold the asset and the assets are not illegal in the jurisdiction where they will be held. See OCC Custody Handbook at p. 7.

Recognizing the long-standing authority of banks to provide related custody and safekeeping services, the OCC found that national banks and FSAs would be permitted to provide cryptocurrency

custody solutions on a fiduciary or non-fiduciary basis pursuant to subpart E of part 7 of the OCC's regulations.

National banks or FSAs desiring to engage in the provision of such services must still carefully tailor various customer-facing agreements to ensure that the decentralized and immutable nature of certain cryptocurrencies is adequately addressed. Banks and FSAs must also consider the effect of network disruptions, hard and soft forks, and airdrops with respect to securities, commodities, consumer protection, and tax laws and regulations, among others. Carlton Fields' Blockchain and Digital Currency Practice has been at the forefront of identifying and advising banks and FSAs on cutting-edge technology issues since the inception of the blockchain industry and encourages all institutions interested in providing cryptocurrency-related services to customers to ensure that all aspects of applicable law and regulations are adequately addressed.

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