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# CRYPTOCURRENCY DEVELOPMENTS: COMPTROLLER OF THE CURRENCY AFFIRMS THAT NATIONAL BANKS MAY HOLD STABLECOIN RESERVES

To Our Clients and Friends:

On September 21, 2020, the Office of the Comptroller of the Currency, the U.S. regulator of national banks, issued an interpretive letter that concluded that national banks may hold deposits that serve as reserves for certain stablecoin issuers (Stablecoin Letter).[1] The Stablecoin Letter's guidance is another example of the active role the OCC has recently taken in the cryptocurrency and financial technology (fintech) space.

## I. Prior Developments

Since becoming Acting Comptroller of the Currency on May 29th, Brian Brooks has made it clear that he views the OCC as taking the lead on technological developments in banking. For example, on July 22nd, the OCC issued an interpretive letter that concluded that national banks may provide "cryptocurrency custody services on behalf of customers, including by holding the unique cryptographic keys associated with cryptocurrency."[2] The July interpretive letter reaffirms the OCC's view that national banks may provide traditional banking services – i.e., custody – to any lawful business, including cryptocurrency businesses, "so long as they effectively manage the risks and comply with applicable law."[3] In July as well the OCC granted the first full-service national bank charter to a fintech company, stating that it represented "the evolution of banking and a new generation of banks that are born from innovation and built on technology intended to empower consumers and businesses."[4]

## II. What Are Stablecoins?

As the OCC explains, a stablecoin is "a type of cryptocurrency designed to have a stable value as compared with other types of cryptocurrency, which frequently experience significant volatility."[5] Cryptocurrencies often utilize cryptography and distributed ledger technology to act as a medium of exchange that is created and stored electronically. But unlike other cryptocurrencies like bitcoin and ether, a stablecoin is specifically designed to maintain a stable value by being backed by another asset with a relatively stable value, such as a fiat currency.

For example, during 2020, the value of one bitcoin in U.S. dollars has fluctuated from below $5,000 to $12,000. In contrast, one USD Coin – a stablecoin created by Centre Consortium (a collaboration between Coinbase and Circle Internet Financial) and traded on digital currency exchanges like Coinbase – can always be redeemed to the issuer for $1 (minus any fees where applicable), despite its price on third-party platforms fluctuating above $1 (having reached a high of $1.17) or below (having reached a low of $0.92).[6] This reduced volatility results from the stablecoin issuer holding in custody accounts fiat currency or other assets for each stablecoin issued (*e.g.*, USD Coin's issuer maintains in custody accounts at least $1 for every unit of USD Coin issued)[7] – other cryptocurrencies, such as bitcoin, typically do not maintain such a reserve.

Among other things, stablecoins (1) act as a digital store of value; (2) enable the exchange of one cryptocurrency for another without the need to either sell a cryptocurrency for fiat currency or buy it with fiat; and (3) maintain a more predictable and less volatile value compared to other cryptocurrencies, making it an attractive option as a medium of exchange for transactions such as remittances.

**III. The Stablecoin Letter**

The Stablecoin Letter addresses a national bank's authority to hold reserves only for a stablecoin backed on a one-to-one basis by a single fiat currency and held in a hosted wallet.[8] The OCC issued the Stablecoin Letter because certain bank customers, particularly stablecoin issuers, "may desire to place assets in a reserve account with a national bank to provide assurance that the issuer has sufficient assets backing the stablecoin."

In approving the activity, the OCC stated that national banks are expressly authorized to receive deposits and receiving deposits in a core banking activity. National banks are permitted to provide permissible banking services to any lawful business they choose, including cryptocurrency businesses, so long as they effectively manage the risks of those services and comply with applicable law.

The Stablecoin Letter also sets forth the compliance measures necessary for doing business with stablecoin issuer. National banks should conduct "sufficient due diligence commensurate with the risks associated with maintaining a relationship with a stablecoin issuer." Such due diligence should include a review to ensure compliance with the customer due diligence requirements under the Bank Secrecy Act and the customer identification requirements under § 326 of the USA PATRIOT Act. In addition, national banks must identify and verify the beneficial owners of legal entity customers opening accounts, comply with applicable federal securities laws, provide accurate and appropriate disclosures regarding deposit insurance coverage, and ensure that deposit activities comply with all other applicable laws and regulations.

Finally, drawing an analogy to audit agreements with program managers for bank-issued prepaid cards, the OCC advised national banks to enter into the necessary agreements with stablecoin issuers to allow the banks to verify at least daily that the reserve account balances for the fiat currency backing the stablecoins are always equal to or greater than the number of the stablecoin issuer's outstanding stablecoins.

**IV. Conclusion**

The Stablecoin Letter is another example of the OCC's interpreting the "business of banking" provision of the National Bank Act in the light of technological advancements. It therefore shows that the agency is seeking to take a lead on fintech banking issues. As part of the business of banking under the National Bank Act, holding deposits for stablecoin issuers should also be permissible for state-chartered banks under the "wild card" provisions of state banking statutes. The Stablecoin Letter is also strong evidence that cryptocurrencies continue to become more and more mainstream, and that traditional legal regimes can no longer shy away from considering them.

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[1] OCC Interpretive Letter No. 1172, at 1 (Sept. 21, 2020), available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1172.pdf. Note that references herein to "national banks" include Federal savings associations.

[2] OCC Interpretive Letter No. 1170, at 1 (July 22, 2020), available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf.

[3] *Id*.

[4] *Acting Comptroller of the Currency Presents Varo Bank, N.A. Its Charter* (July 31, 2020), available at https://occ.gov/news-issuances/news-releases/2020/nr-occ-2020-99.html (last visited Sept. 28, 2020).

[5] Stablecoin Letter at 1.

[6] *See* Circle USDC Risk Factors, available at https://support.usdc.circle.com/hc/en-us/articles/360001314526-Circle-USDC-Risk-Factors (last visited Sept. 28, 2020).

[7] USD Coin's reserves are verified monthly by Grant Thornton LLP and published on Circle Internet Financial's website, available at https://www.circle.com/en/usdc (last visited Sept. 28, 2020).

[8] Cryptocurrencies are held in "wallets," which are often software programs that store the cryptographic keys associated with a unique unit of a cryptocurrency. *See* OCC Interpretive Letter No. 1170, at 5. The OCC defines a "hosted wallet" as a wallet in which the stored cryptographic keys are controlled by an identifiable third party, on behalf of accountholders that do not generally have access to the cryptographic keys. *See* Letter at note 3.

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