Interpretive Letter #1172

October 2020

OCC Chief Counsel's Interpretation on National Bank and Federal Savings Association Authority to Hold Stablecoin Reserves

September 21, 2020

I.   Introduction and Summary Conclusion

This letter addresses the authority of a national bank to hold deposits that serve as reserves for certain "stablecoins." Generally, 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. One type of stablecoin is backed by an asset such as a fiat currency. Reports suggest stablecoins have various applications, including the potential to enhance payments on a broad scale,[1] and are increasingly in demand.[2] As described further below, 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 situations where there is a hosted wallet.[3] For the reasons discussed below, we conclude that a national bank may hold such stablecoin "reserves" as a service to bank customers.[4] We are not presently addressing the authority to support stablecoin transactions involving un-hosted wallets. In addition, this letter only addresses the use of stablecoin backed on a 1:1 basis by a single fiat currency where the

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[1] See, e.g., Marc Di Maggio and Nicholas Platias, Is Stablecoin the Next Big Thing in E-Commerce?, Harv. Bus. Rev. (May 21, 2020), available at https://hbr.org/2020/05/is-stablecoin-the-next-big-thing-in-e-commerce.

[2] See, e.g., Antonio Madeira, On Solid Ground: Stablecoins Thriving Amid Financial Uncertainty, Cointelegraph.com (Aug. 2, 2020), available at https://cointelegraph.com/news/on-solid-ground-stablecoins-thriving-amid-financial-uncertainty.

[3] "Cryptocurrencies are generally held in 'wallets,' which are programs that store the cryptographic keys associated with a particular unit of digital currency." OCC Interpretive Letter No. 1170, at 5 (July 22, 2020), available at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf (IL 1170). 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.

[4] These conclusions apply only to the deposit activities of national banks and Federal savings associations (FSAs). This letter expresses no conclusion on the application of any other laws to the stablecoin activities discussed in this letter or on the permissibility of these activities for any institutions other than those supervised by the OCC.

bank verifies at least daily that reserve account balances are always equal to or greater than the number of the issuer's outstanding stablecoins.[5]

A bank providing services in support of a stablecoin project must comply with all applicable laws and regulations and ensure that it has instituted appropriate controls and conducted sufficient due diligence commensurate with the risks associated with maintaining a relationship with a stablecoin issuer. The due diligence process should facilitate an understanding of the risks of cryptocurrency and include a review for compliance with applicable laws and regulations, including those related to the Bank Secrecy Act (BSA) and anti-money laundering. In this regard, the review should include, but not be limited to, customer due diligence requirements under the BSA[6] and the customer identification requirements under section 326 of the USA PATRIOT Act.[7] A national bank or FSA must also identify and verify the beneficial owners of legal entity customers opening accounts.[8] A national bank or FSA must also comply with applicable federal securities laws.[9]

II. Stablecoin Reserves

Cryptocurrencies—also known as "digital currencies" or "virtual currencies"—are often designed to work as a medium of exchange and are created and stored electronically.[10] As we previously described, cryptocurrencies are enabled by two technologies: cryptography and distributed ledger technology.[11] Cryptography and distributed ledger technology are both rapidly evolving technologies. As described above, "stablecoin" often refers to a particular type of digital coin that is backed by another asset, such as a fiat currency.

Like cryptocurrencies more broadly, stablecoins are an evolving technology. Different types of stablecoins may share certain characteristics, but there are variations in the way various

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[5] The current stablecoin activities discussed in this letter would not contribute to the global and systemic risks noted by the Financial Stability Board in its recent consultation. See Fin. Stability Board, Addressing the Regulatory, Supervisory and Oversight Challenges Raised by "Global Stablecoin" Arrangements (Apr. 14, 2020), available at https://www.fsb.org/wp-content/uploads/P140420-1.pdf.

[6] 31 C.F.R. § 1020.210(b)(5).

[7] 12 C.F.R. § 21.21(c)(2); 31 C.F.R. § 1020.220. See also 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), available at https://occ.gov/news-issuances/bulletins/2016/bulletin-2016-10.html.

[8] 31 C.F.R. § 1010.230.

[9] We note that staff of the Securities and Exchange Commission (SEC) has issued a statement encouraging issuers of stablecoins of the type described herein to contact the staff with any questions they may have to help ensure that such stablecoins are structured, marketed, and operated in compliance with the federal securities laws. The statement notes that the staff stands ready to engage with market participants, and, depending on the particular facts and circumstances, to assist them and consider providing, if appropriate, a "no-action" position regarding whether activities with respect to a specific stablecoin may invoke the application of the federal securities laws. See SEC FinHub Staff Statement on OCC Interpretation (Sept. 21, 2020).

[10] The OCC recently described many features of cryptocurrency. See IL 1170.

[11] IL 1170, at 2.

cryptocurrencies described as "stablecoins" work. Cryptocurrencies referred to as "stablecoins" may be backed by a fiat currency, a commodity, or another cryptocurrency. Fiat-backed stablecoins are typically redeemable for the underlying fiat currency, where one unit of the stablecoin can be exchanged for one unit of the underlying fiat currency. Other types of cryptocurrencies described as "stablecoins" may be more complex, backed by commodities, cryptocurrencies, or other assets but with values that are pegged to a fiat currency or managed by algorithm. For purposes of this letter, we consider a "stablecoin" to be a unit of cryptocurrency associated with hosted wallets that is backed by a single fiat currency and redeemable by the holder of the stablecoin on a 1:1 basis for the underlying fiat currency upon submission of a redemption request to the issuer. We are only opining on those facts and circumstances at this time.

Companies that issue stablecoins often desire to place the funds backing the stablecoin, or reserve funds, with a U.S. bank. Public independent auditors' statements of several stablecoin issuers indicate reserve funds are placed as deposits with U.S. banks. Several of these issuers promote these reserves—and the fact that they are held by banks—to support the trustworthiness of their stablecoin. In light of the public interest in these reserve accounts, this letter addresses the legal authority of national banks to hold stablecoin reserves on behalf of customers.

III. Discussion

We understand that some stablecoin issuers may desire to place the cash reserves backing their issued stablecoin with a national bank. In the most basic example, a stablecoin issuer may seek to place its reserve funds in a deposit account with a national bank. National banks are expressly authorized to receive deposits.[12] Receiving deposits is recognized as a core banking activity.[13] As the OCC recently reaffirmed, national banks may provide permissible banking services to any lawful business they choose, including cryptocurrency businesses, so long as they effectively manage the risks and comply with applicable law, including those relating to the BSA and anti-money laundering.[14] Accordingly, national banks may receive deposits from stablecoin issuers, including deposits that constitute reserves for a stablecoin associated with hosted wallets. In connection with these activities, a national bank may also engage in any activity incidental to

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[12] 12 U.S.C. 24(Seventh).

[13] See, e.g., 12 C.F.R. § 5.20(e).

[14] See IL 1170, at 1. In IL 1170, the OCC reaffirmed its view that banks determine the levels and types of risks that they will assume. Banks that operate in compliance with applicable law, properly manage customer relationships and effectively mitigate risks by implementing controls commensurate with those risks are neither prohibited nor discouraged from providing banking services. As the federal banking agencies have previously stated, banks are encouraged to manage customer relationships and mitigate risks based on customer relationships rather than declining to provide banking services to entire categories of customers. See Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision, at 2 (July 22, 2019), available at https://www.occ.gov/news-issuances/news-releases/2019/nr-ia-2019-81a.pdf.

receiving deposits from stablecoin issuers.[15] Likewise, an FSA is authorized to take deposits,[16] including from an issuer of stablecoin associated with hosted wallets.

As with any deposit product, a national bank or FSA that accepts reserve accounts should be aware of the laws and regulations relating to deposit insurance coverage, including deposit insurance limits,[17] and the requirements for deposit insurance to "pass through" to an underlying depositor, if applicable.[18] Stablecoin reserve accounts could be structured as either deposits of the stablecoin issuer or as deposits of the individual stablecoin holder if the requirements for pass through insurance are met.[19] Accordingly, a national bank or FSA should provide accurate and appropriate disclosures regarding deposit insurance coverage. A national bank or FSA must ensure that its deposit activities comply with applicable laws and regulations, including those relating to the BSA and anti-money laundering. Specifically, a national bank or FSA must ensure that it establishes and maintains procedures reasonably designed to assure and monitor its compliance with the BSA and its implementing regulations, including but not limited to customer due diligence requirements under the BSA[20] and the customer identification requirements under section 326 of the USA PATRIOT Act.[21] A national bank or FSA must also identify and verify the beneficial owners of legal entity customers opening accounts.[22] A national bank or FSA must also comply with applicable federal securities laws.

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[15] 12 C.F.R. § 7.4007 (permitting "any activity incidental to receiving deposits, including issuing evidence of accounts, subject to such terms, conditions, and limitations prescribed by the Comptroller of the Currency and any other applicable Federal law").

[16] See 12 U.S.C. 1464(b).

[17] See generally 12 U.S.C. 1821; 12 C.F.R. Part 330.

[18] 12 C.F.R. Part 330; FDIC General Counsel's Op. No. 8 (Nov. 13, 2008), available at https://www.govinfo.gov/content/pkg/FR-2008-11-13/pdf/E8-26867.pdf. For example, in the context of prepaid cards, OCC guidance has explained that, according to FDIC General Counsel's Opinion No. 8, "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), https://www.occ.gov/news-issuances/bulletins/1996/bulletin-1996-48.html.

[19] 12 C.F.R. Part 330; FDIC General Counsel's Op. No. 8 (Nov. 13, 2008). The 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.

[20] 31 C.F.R. § 1020.210(b)(5).

[21] 12 C.F.R. § 21.21(c)(2); 31 C.F.R. § 1020.220. See also 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).

[22] 31 C.F.R. § 1010.230.

New bank activities should be developed and implemented consistently with sound risk management principles and should align with banks' overall business plans and strategies.[23] Bank management should establish appropriate risk management processes for new activity development and effectively identify, measure, monitor, and control the risks associated with new activities. In particular, reserves associated with stablecoins could entail significant liquidity risks. The OCC expects all banks to manage liquidity risk with sophistication equal to the risks undertaken and complexity of exposures.[24] A bank may also enter into appropriate contractual agreements with a stablecoin issuer governing the terms and conditions of the services that the bank provides to the issuer.[25] Such agreements may include contractual restrictions or requirements with respect to the assets held in the reserve account. The agreement may also specify the respective responsibilities of the parties, such as the steps the parties will take to ensure the appropriate party will be deemed the issuer or obligor of the stablecoin. For example, the bank should have appropriate agreements in place with an issuer to verify and ensure that the deposit balances held by the bank for the issuer are always equal to or greater than the number of outstanding stablecoins issued by the issuer. Such agreements should include mechanisms to allow the bank to verify the number of outstanding stablecoins on a regular basis.[26] In the analogous context of prepaid cards distributed and sold by third-party program managers, interagency guidance specifically contemplates that banks would enter into contracts with third-party program managers permitting banks to audit the third-party program managers.[27]

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[23] See OCC Bulletin 2017-43, New, Modified, or Expanded Bank Products and Services: Risk Management Principles, available at https://www.occ.gov/news-issuances/bulletins/2017/bulletin-2017-43.html.

[24] See Comptroller's Handbook on Liquidity (June 2012), at 4, available at https://occ.gov/publications-and-resources/publications/comptrollers-handbook/files/liquidity/pub-ch-liquidity.pdf. For example, a critical component of an institution's ability to effectively respond to potential liquidity stress is the availability of a cushion of unencumbered highly liquid assets without legal, regulatory, or operational impediments that can be sold or pledged to obtain funds in a range of stress scenarios. Id. at 30.

[25] OCC guidance has previously recognized the importance of contracts in establishing responsibilities and liability in the context of prepaid cards. In describing the responsibilities of national banks participating in then-emergent prepaid card systems, the OCC said: "A bank should be clear as to who bears the responsibility at each stage of an electronic cash transaction. Thus far, transactional rules for some electronic cash systems are not well established by current law. Accordingly, in many important respects, the transactional rules for such systems must be established by contract." OCC Bulletin 1996-48 (Sept. 3, 1996). See also 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). Similarly, a bank that receives deposits from a stablecoin issuer should enter into appropriate contracts to define the responsibilities of the parties.

[26] Banks are subject to capital and reserve requirements intended to ensure that banks have sufficient liquidity and are able to meet the needs of customers, including by satisfying withdrawals and cashing checks. See generally, 12 C.F.R. Part 204 (reserve requirements); 12 C.F.R. Part 3 (capital requirements). See also Comptroller's Handbook on Cash Accounts (Mar. 1998), available at https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/cash-accounts/pub-ch-cash-accounts.pdf; Comptroller's Handbook on Depository Services (Aug. 2010), available at https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/depository-services/pub-ch-depository-services.pdf.

[27] 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).

A bank should consider all relevant risk factors, including liquidity risk and compliance risk, before entering any agreement or relationship with a stablecoin issuer.

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