**JULY 27, 2020**

For more information, contact:

J.C. Boggs
+1 202 626 2383
jboggs@kslaw.com

Daniel Kahan
+1 703 245 1003
dkahan@kslaw.com

George M. Williams jr
+1 212 556 2122
gwilliams@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue, NW
Washington, D.C. 20006-4707
Tel: +1 202 737 0500

New York
1185 Avenue of the Americas
New York, New York 10036-4003
Tel: +1 212 556 2100

# OCC Issues Guidance Permitting National Banks and Federal Savings Associations to Provide Crypto Custody

On July 22, 2020, the Office of the Comptroller of the Currency ("**OCC**") published an interpretative letter regarding national banks' and federal savings associations' authority to provide cryptocurrency custody services for customers.[1]

In the Interpretative Letter, the OCC first concludes that a national bank or federal savings association may provide these cryptocurrency custody services on behalf of customers, including by holding the unique cryptographic keys associated with cryptocurrency. Second, the OCC reaffirms that 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.[2]

The Interpretative Letter includes a helpful overview of the characteristics of cryptocurrencies and what it means to take "custody" of cryptocurrencies, including the use of various types of wallets.[3] Much of the discussion focuses on keeping custody of cryptocurrency access keys.

Turning to its analysis, the Interpretive Letter recognizes that "[n]ational banks have long provided safekeeping and custody services for a wide variety of customer assets, including both physical objects and electronic assets" and that such functions "are well established and extensively recognized as permissible activities for national banks."[4] Citing the OCC's existing Custody Handbook, the Interpretative Letter further observes that "[t]he 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."[5] The Interpretative Letter also notes that national banks have long been able to engage electronically in activities in which they are otherwise authorized to engage.

After concluding that cryptocurrency custody services fall within these existing permissible activities, the Interpretative Letter recognizes that providing such services is permissible in both non-fiduciary and fiduciary capacities, provided that if cryptocurrencies are held in a fiduciary capacity, such activities must be conducted in compliance with 12 C.F.R. Part 9, applicable state law, and any other applicable law (such as the instrument that created the fiduciary relationship).[6] Trust activities have long required special managerial and infrastructure capabilities on the part of banks that wish to provide such services.

Addressing risk management and security concerns, the Interpretive Letter advises banks that intend to engage in such activities to "develop and implement those activities consistent with sound risk management practices and align them with the bank's overall business plans and strategies as set forth in OCC guidance."[7] The Interpretive Letter goes on to emphasize that such activities must be conducted in a safe and sound manner, which requires the development of adequate systems in place (including policies, procedures, internal controls, and management information systems) before providing such services.[8] The Interpretative Letter also advises banks to consider "the risks associated with an individual account," such as anti-money laundering concerns, before banks agree to custody cryptocurrency for a particular customer.[9] Banks are further advised to "consult with OCC supervisors as appropriate prior to engaging in cryptocurrency custody activities."[10]

Banks that have sought to provide these services to customers will find comfort in the new guidance and may begin to work on the development of adequate systems to govern these services.

While some in the cryptocurrency community—particularly those who distrust the involvement of banks, exchanges, and other intermediaries in cryptocurrency markets—may regard the Interpretative Letter with skepticism, the new clarity will likely be welcomed by institutional cryptocurrency holders, particularly those that have responsibilities to others (such as investors) to store their assets securely. Others may also find that a certain amount of intermediation is useful in conducting their activities more effectively.

## ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 22 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our Privacy Notice.

| | | | | | |
|---|---|---|---|---|---|
| ABU DHABI | CHARLOTTE | GENEVA | MOSCOW | RIYADH | TOKYO |
| ATLANTA | CHICAGO | HOUSTON | NEW YORK | SAN FRANCISCO | WASHINGTON, D.C. |
| AUSTIN | DUBAI | LONDON | NORTHERN VIRGINIA | SILICON VALLEY | |
| BRUSSELS | FRANKFURT | LOS ANGELES | PARIS | SINGAPORE | |

[1] OCC Interpretative Letter #1170 (July 2020), *available at* https://occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf (the "**Interpretative Letter**").
[2] *Id.* at 1.
[3] *Id.* at 2-3.
[4] *Id.* at 6.
[5] *Id.* at 7 (citing Comptroller's Handbook on Custody Services (rev. Jan. 2002) at 7).
[6] *Id.* at 8-9.
[7] *Id.* at 9.
[8] *Id.* at 9-10.
[9] *Id.* at 10.
[10] *Id.*