Banking and Cryptocurrency: Policy Issues

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SUMMARY

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The rapid growth in value of cryptocurrencies and digital assets (hereinafter, crypto) has led to growing banking needs for the crypto industry and growing interest in new potential business opportunities from the banking industry. Crypto offers profit opportunities and poses risks to banks. The failure of FTX, a major crypto exchange, and closure of two banks (Signature and Silvergate) that experienced losses due to their involvement with crypto clients in 2023 contributed to a change in regulatory approach that effectively made it more difficult for banks to engage in crypto activities (either by banking crypto firms or allowing clients to transact in crypto).

Bank involvement with crypto can fall into three categories. First, banks can provide traditional banking services, such as lending and deposit taking, to crypto firms. Second, banks can provide crypto services, such as payment applications and tokenization. Third, crypto firms can seek to acquire banks or bank charters.

Traditional banking services provided to crypto firms (if performed safely and soundly) are acceptable to regulators under the general philosophy that regulators should not discriminate against any particular legal industry. Nevertheless, some crypto market participants have expressed concern that they are having trouble accessing traditional banking services because of de-risking concerns, which they have referred to as "Operation Chokepoint 2.0."

Bank involvement in crypto activities faces a two-prong regulatory test. First, an activity must be permissible under law—Congress has limited banks' activities related or incidental to the business of banking. (Certain nonbank subsidiaries can also engage in activities that are financial in nature.) Second, an activity must be safe and sound. Federal banking regulators have significant discretion over both findings. As agency leadership changed following changes in the Administration, policies have shifted. Agency leadership appointed by President Trump approved banks' conducting several specific activities involving crypto so long as they could conduct them on a safe and sound basis. Agency leadership appointed by President Biden required case-by-case supervisory approval before a bank could undertake any crypto activity, and expressed public skepticism that several categories of activities could ever be undertaken on a safe and sound basis. Another philosophical shift in how banks are allowed to engage with crypto may be forthcoming. In January 2025, President Trump rescinded a Biden-era executive order and issued a new one supporting the growth and use of digital assets.

Crypto firms could seek federal bank charters from the Office of the Comptroller of the Currency (OCC) or state charters. Charters can be of limited purpose—prohibiting deposit taking, for example. The OCC has granted at least three provisional charters (one of which was made permanent) to limited purpose banks involved in crypto activities. A few states, such as Wyoming and New York, have created charters to attract crypto firms. Once a firm has been granted a state charter, federal regulators have jurisdiction only if the firm seeks a master account from the Fed, Fed membership, or approval to accept insured deposits. To date, no state-chartered firm has successfully obtained any of these.

The 118th Congress considered legislation to create an overarching regulatory framework for crypto (H.R. 4763) and a regulatory framework for a type of crypto called stablecoins (H.R. 4766). In the absence of such frameworks, bank regulators have mostly used guidance and a case-by-case approval process to set de facto crypto policy for banks. Congress can continue to defer to the bank regulators, but if it wishes for a more durable approach to limit or expand bank involvement in crypto, it could legislate within a broader framework or just for banks. The case for or against greater banking involvement in crypto can be posed as: would it make banks riskier or crypto safer, and what is the ideal tradeoff between the two?

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Introduction

Cryptocurrency was originally designed as an alternative to traditional banking and financial services. However, in the past decade, banks have expressed interest in offering services related to cryptocurrencies and other digital assets (hereinafter, crypto). Further, some crypto firms have sought bank or special depository charters at the federal and state levels. This overlap has presented policymakers with a challenge in deciding whether and how crypto fits into the traditional bank regulatory regime.

Members of Congress have diverse views on crypto, with some viewing crypto as a new technology with great potential that should be fostered and others wary of the risks posed to investors and the financial system. Within both of those camps, Members disagree on how crypto should be regulated, and what role (if any) banks should play in the crypto industry.

This report focuses on the overlap between banks and crypto firms and products, with specific attention paid to how federal bank regulators (the Federal Reserve (Fed), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)) are facilitating—or in some cases restricting—the assimilation of these financial services in the industry. It provides an overview of the relationship of banks to crypto and how regulators have treated that relationship over time, policy options, and legislative activity in the 118th Congress.

This report assumes a basic familiarity with crypto. For background on how crypto works, see CRS Report R47425, *Cryptocurrency: Selected Policy Issues*, by Paul Tierno.[1]

Background

Crypto was established in 2009 as a form of electronic money and payments that would decentralize payments and reduce reliance on large institutions in financial transactions. Widescale adoption in payments has eluded the technology, in part because of its inability to achieve scale and (with the exception of stablecoins) market volatility. Therefore, crypto has mostly been used as a speculative asset, with investors focused on profiting from price volatility. Despite low adoption for payments, the industry has grown rapidly and underlying technologies could provide new applications for financial activity, making them of interest to banks. Further, crypto evolved to create new financial institutions (such as exchanges) and products (such as stablecoins), some of which have led to bank-like structures that may be able to achieve widescale adoption.

Despite crypto's origins as an alternative to traditional financial intermediaries such as banks, the landscape has evolved to depend on exchanges, a new form of a traditional institutional intermediary. Not long after the first cryptocurrency was created in 2009, crypto exchanges formed, creating a marketplace where they could be traded. Exchanges allow customers to buy and sell cryptocurrency by accepting or returning fiat currency (U.S. dollars or other government-issued currency) in exchange for crypto. Additionally, exchanges allow customers to exchange one cryptocurrency for another. While exchanges facilitate trade of these new financial products, they rely on traditional financial institutions to provide them with banking services necessary to operate. With the rise of exchanges as the dominant intermediary in the crypto marketplace, the

[1] CRS Report R47425, *Cryptocurrency: Selected Policy Issues*, by Paul Tierno, provides a background on cryptocurrency and relevant topics, including a description of the underlying technology, their potential uses as payments systems and investments, how they may be transferred among users, the market for crypto and the challenge they pose to fiat currencies, and their potential for use in illicit finance and for money laundering purposes and other regulatory issues, among others.

cryptocurrency industry has evolved in the past fifteen years in a manner that has facilitated something more symbiotic, albeit not cooperative, between crypto firms and banking institutions. When customers of exchanges wish to convert dollars to cryptocurrencies and vice versa, dollars must ultimately flow through the banking system.

Similar products and adjacent uses may also require ties to traditional banking. Cryptocurrencies fall under a broader category of products, generically referred to as digital assets, that use similar technology, such as blockchain (i.e., a digital ledger). Included under this broader heading are stablecoins, which use some of the same underlying technological components of cryptocurrencies—such as blockchains—but pegging the token at 1:1 to a specific fiat currency, such as the U.S. dollar.[2] As such, stablecoins may also require traditional banking services. Further, banks have found benefits to adopting certain aspects of the technology underlying cryptocurrency (such as blockchain technology) and have started providing regular commercial banking services to crypto firms, which may expand crypto's customer base.

Challenges to Regulating Banks' Crypto Activities

Crypto exposure played a role in the liquidation of two banks (Silvergate and Signature) in 2023 (see text box), underlying the potential risks posed by crypto. Some of the features that make crypto an appealing technology or financial product may also be impediments to regulatory compliance for banks. For example, crypto transactions are protected by cryptography and facilitated via blockchain in a decentralized fashion.[3] They can also be interoperable with other systems and programmable with smart contracts. Combined, these aspects of the technology may improve accessibility and bank flexibility, and they may increase transaction speed by potentially reducing the need for layers of oversight, lowering the number of intermediaries, and combining various legs of a transaction into a single transaction. Such networks are also permissionless and pseudonymous, which—while reducing barriers to entry and increasing accessibility—also makes it more difficult to know exactly who is conducting financial transactions and may impede compliance with Bank Secrecy Act (BSA, P.L. 91-508) and anti-money laundering (collectively BSA/AML) requirements of traditional financial institutions.[4]

Similarly, the crypto industry to date has been prone to scams and hacking that pose risks to banks' consumer protection mandates. Furthermore, price volatility and sudden outflows of funds pose safety and soundness risk to banks. The FTX bankruptcy illustrated that even the largest participants in the crypto industry do not necessarily operate with the basic internal controls required of traditional financial firms.[5] In the absence of any overarching regulatory framework, federal regulators, such as the Securities and Exchange Commission (SEC) and the Financial Crimes Enforcement Network (FinCEN), have attempted to apply U.S. regulation to the crypto industry through enforcement actions against specific actors, but this approach is inherently incremental and its reach is mostly limited to domestic participants. The approach has over the

[2] For more on stablecoins, see CRS In Focus IF12450, *Stablecoin Policy Issues for the 118th Congress*, by Paul Tierno, and CRS In Focus IF11968, *Stablecoins: Background and Policy Issues*, by Eva Su.

[3] For more on the different technological features of crypto, see CRS Report R47425, *Cryptocurrency: Selected Policy Issues*, by Paul Tierno.

[4] The Bank Secrecy Act (12 U.S.C. 1951 et seq. and 31 U.S.C. 5311 et seq.) is the framework of laws that aims to reduce money-laundering and the financing of terrorism by requiring financial institutions to adopt a series of risk-based programs.

[5] As another example, Coinbase discloses in its 10-K that the potential "[l]oss of a critical banking … relationship" and "failure to safeguard our customers' fiat currencies … could adversely impact [its] business, operating results, and financial condition." Coinbase Global, Inc., "Form 10-K," p. 125, February 15, 2024, at https://investor.coinbase.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=17280851.

years led to dozens of enforcement actions and billions of dollars in penalties by various regulators against both smaller and large profile participants, including various high-dollar penalties and judgements, such as $4.5 billion judgement against Terraform Labs (who issued an algorithmic stablecoin) in 2024 and a more than $4 billion judgement against Binance (an exchange) in 2023.[6]

[6] SEC, "SEC Announces Enforcement Results for Fiscal Year 2024," press release, November 22, 2024, https://www.sec.gov/newsroom/press-releases/2024-186, and DOJ, "Binance and CEO Plead Guilty to Federal Charges in $4B Resolution," November 21, 2023, at https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution.

Crypto's Role in 2023 Bank Failures[7]

Silvergate Bank and Signature Bank provided banking services to cryptocurrency firms in the form of holding the deposits of and/or making loans to crypto companies. The banks' level of involvement with crypto firms varied. Silvergate's deposit base was concentrated among crypto participants. At the time of its 2022 third-quarter report—its last before opting for a voluntary liquidation—crypto client deposits represented around 90% of total deposits. At Signature, reserves backing digital assets accounted for 20% of deposits at the end of 2022.[8] Both banks made concerted efforts to appeal to the digital assets industry. Silvergate, in particular, which was founded in 1988, began focusing on the crypto industry in 2013.[9]

While it is tempting to look for causal relationships between banking failures and specific, high-profile crypto industry failures, the bank failures were more accurately the result of exposure to the broader crypto industry. While these banks did work with high-profile crypto companies that experienced failures, including Celsius and FTX, exposure to those was somewhat limited. At Silvergate, exposure to FTX was limited to holding deposits, which were less than 10% of Silvergate's total. Celsius reportedly held $130 million at Signature, which in July 2022 represented little more than 0.1% of Signature's total deposits. While FTX held deposits at Signature, those also represented around 0.1% of Signature's deposits.[10] In a hearing by the House Committee on Financial Services, Subcommittee on Digital Assets, Financial Technology and Inclusion, New York State Department of Financial Services Superintendent Adrienne Harris explained that attributing Signature's failure to crypto was a "misnomer" and that crypto withdrawals during the bank run were proportional to the bank's total crypto deposits.[11]

While the banks appear to have withstood direct exposures to specific crypto firms, they nevertheless experienced significant depletion of deposits as the steady series of failures deepened the crypto market downturn. After reaching an all-time high at the time of around $3 trillion in November 2021, crypto lost more than two-thirds of its market capitalization by December 2022. As digital asset prices fell, centralized crypto platforms and stablecoin issuers experienced redemptions, likely causing them to draw down deposits held at these banks. To meet withdrawal demand, banks sold ostensibly safe securities for losses, affecting their solvency. In the fourth quarter of 2022, Silvergate's deposits fell by more than half, hastening a drop that began earlier in the year. Signature's deposits fell by around 15% over the same period. So, in this case, losses were not realized on crypto-related assets, but crypto deposit withdrawals caused banks to sell other assets at a loss. Economists refer to this as concentration risk: Silvergate and, to a lesser extent, Signature exposed themselves to undiversified risk to the crypto industry, and when that industry experienced losses and contraction, those banks were more exposed than their peers were. Further, fears of concentration risk may trigger debilitating runs by other depositors. At Signature, uninsured depositors without crypto ties may have run in part because they feared that Signature's crypto exposures would cause its failure, imposing losses on them.[12]

[7] For background information, see Office of the Inspector General, Federal Reserve, *Review of the Supervision of Silvergate Bank, 2023-SR-B-014R* , September 27, 2023, https://oig.federalreserve.gov/reports/board-review-silvergate-summary-sep2023.pdf; and FDIC, "FDIC'S Supervision of Signature Bank," April 28, 2023, at https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf.

[8] Silvergate Capital Corporation, "10-Q," p. 56, November 7, 2022, at https://silvergate.com/wp-content/uploads/2023/10/quarterly1172022.pdf.

[9] FDIC, "FDIC'S Supervision of Signature Bank," p. 14; Federal Reserve, *Review of the Supervision of Silvergate Bank, 2023-SR-B-014R*, p. 1; and Silvergate Capital Corporation, "10-Q," p. 38.

[10] Signature Bank, "Signature Bank Provides Digital Asset Banking Update," November 15, 2022, at https://www.businesswire.com/news/home/20221115006076/en/Signature-Bank-Provides-Digital-Asset-Banking-Update.

[11] U.S. Congress, House Financial Services Committee, *Understanding Stablecoins' Role in Payments and the Need for Legislation*, 118th Cong., 1st sess., April 19, 2023, at https://www.youtube.com/live/ti0CDUxTAWI&t=1h18m57s, beginning at 1:18:57.

[12] See also Gary B. Gorton & Jeffery Y. Zhang, "Bank Runs During Crypto Winter," *Harvard Business Law Review*, Vol. 14, 2024, https://journals.law.harvard.edu/hblr/wp-content/uploads/sites/87/2024/10/02_HLB_14_2_Gary-B.-Gorton-Jeffery-Y.-Zhang.pdf.

Areas of Bank Involvement in Crypto

A bank is required to be chartered by a state or federal agency, which can take different forms and specifies what activities it can engage in. A traditional commercial bank performs deposit taking and lending services at a minimum.[13] However, banks can also provide a broad and diverse set of services related to the "business of banking," as will be discussed below, such as white-labeling bank services for nonbank financial companies, facilitating payments, providing recordkeeping, and safeguarding assets.[14] In addition, some firms with nontraditional business models can receive special purpose bank charters, as will also be discussed later.

There are three main ways the banking system can interact with crypto:

1. A bank can provide traditional commercial banking services to crypto firms and crypto firms' customers. A crypto firm can also partner with a bank to provide banking services to crypto customers by white-labeling bank deposit taking or lending activities on behalf of a crypto firm.
2. A bank could create its own crypto functions and blockchain applications, such as issuing crypto or operating an exchange, or the bank can partner with crypto firms to provide/develop crypto services, or the bank can own a crypto firm.
3. Alternatively, a crypto firm can seek a banking charter at the federal or state level. Some state and federal charters issued by bank regulators may be available to crypto firms. Some states have created special charters that sit adjacent to the banking charter for the purposes of attracting crypto firms to the state.

Federal banking regulators have identified areas where (traditional or crypto) banks could seek to engage in crypto-related activities, such as issuing payment stablecoins, providing custody services, facilitating crypto transactions for customers, making loans using crypto as collateral, and activities that result in banks holding crypto on their own balance sheets.[15]

The next sections provide details on some of the main ways banks interact with crypto, and how regulators have addressed them. The text provides illustrative examples from the news and company releases, but the overall scope or magnitude is unknown. Regulators do not report on activity regularly or disclose each time they approve a bank engaging in a crypto activity, and the publicly available "call reports" banks file with regulators are not detailed enough to include crypto-related activities.[16] Banks may publicly disclose their crypto activities, but do not necessarily do so systematically or fully. According to a February 2024 FDIC Office of Inspector

[13] Certain banks have special charters that allow for a limited set of banking activities. For more information see CRS Report R47014, *An Analysis of Bank Charters and Selected Policy Issues*, by Andrew P. Scott.

[14] White-labelling is practice whereby a bank or other service provider offers an unbranded version of its (banking) service to customers through a company with whom it is partnering, usually in an integrated manner.

[15] Board of Governors of the Federal Reserve System, FDIC, OCC, "Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps," November 23, 2021, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20211123a1.pdf.

[16] There are examples where the Fed has acknowledged that it has approved such activities, such as crypto custody services by the Bank of New York Mellon. In that case, the Fed stated that risks are being addressed primarily through the supervisory process. Defendant Board Of Governors Of The Federal Reserve System's Response To Plaintiff's Notice And Submission Of Supplemental Authority, Custodia Bank, Inc., Plaintiff, v. Board Of Governors Of The Federal Reserve System & Federal Reserve Bank Of Kansas City, Case 1:22-cv-00125-SWS Document 99, October 19, 2022, https://assets.law360news.com/1541000/1541860/https-ecf-wyd-uscourts-gov-doc1-20712233928.pdf.

General report, 42 FDIC-insured institutions had ongoing or planned crypto asset activities. This figure is down from 136 reported in the previous year's OIG report.[17]

Banking Services for Crypto Firms and Customers

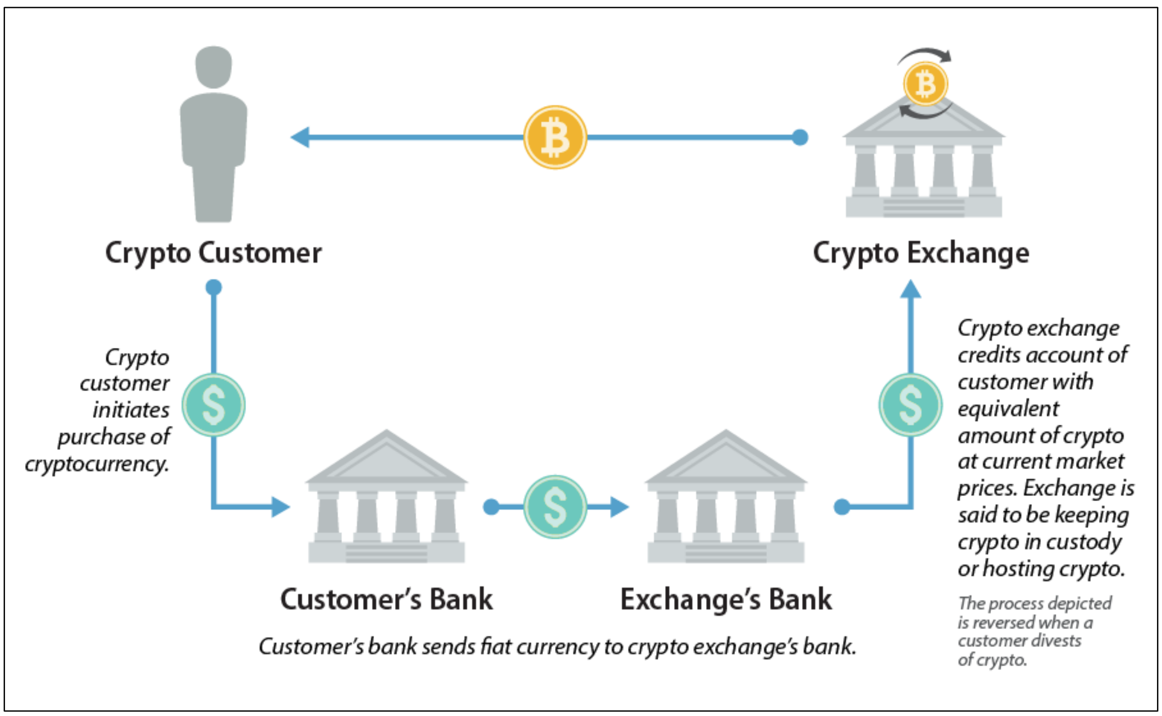
This section analyzes the main ways banks provide traditional banking services to crypto firms and their customers. Specifically, this section focuses on core banking services (such as bank accounts and loans) and custody services of crypto assets for crypto exchanges.

Loans and Accounts for Crypto Firms

To facilitate the transfer of crypto for fiat currency, crypto exchanges must hold bank accounts. Exchanges hold deposit accounts with the fiat that backs the value of the cryptocurrencies trading on the exchanges. Exchanges allow consumers to exchange fiat for crypto using debit cards or by directly connecting their bank accounts to the platforms. Conversely, when a customer decides to withdraw crypto currency from the exchange, the exchange sells crypto for fiat, and the exchange facilitates a transfer of cash proceeds from the exchange's bank account to the customer's bank account.

Figure 1. Relationship Between Banks and Crypto Exchanges

Simplified Example of Customer Purchasing Bitcoin Through a Crypto Exchange



Source: CRS.

Stablecoin operators accept fiat currency, which also travels through the banking system, from customers and issue stablecoins in return. The stablecoin market is currently valued at more than

[17] FDIC Office of Inspector General, *Top Management and Performance Challenges Facing the Federal Deposit Insurance Corporation*, February 2024, at https://www.fdicoig.gov/sites/default/files/reports/2024-05/TMPC-Final-Feb24%20508%20Compliant.pdf. This report did not include this figure before 2023.

$207.6 billion.[18] There are no federal regulations stating how stablecoin issuers must store the customer proceeds that back the coins (frequently referred to as reserves). However, some stablecoin issuers may choose to deposit some portion of the reserves backing the stablecoins at depository institutions.

Crypto firms may also need access to credit. Banks can also make loans to crypto firms, as they do to other businesses. Banks often seek collateral to back loans so that they can obtain something of value in case of default, and crypto firms' most valuable asset is often their digital asset holdings. The text box below provides examples of banks that have offered loans or deposits services to crypto firms.

Examples of Traditional Banking Services to Crypto Firms

According to promotional material, Coinbase, the largest U.S. crypto exchange, stores client cash in part "in FDIC-insured bank accounts."[19] According to regulatory filings, at the end of 2023, the company held more than $4.5 billion of its clients' cash.[20]

Similarly, stablecoin issuers hold some stablecoin reserves in accounts at banks, as was made clear during the various bank runs that occurred in early 2023. At the end of February 2023, Circle, the company that operates the stablecoin USDC, stated in unregulated attestations that it held more than $10.6 billion of its $42.5 billion (or roughly 25%) of its reserves at banks.[21] Currently, Circle maintains more than $6 billion of its reserves at banks, or about 14.5%.[22]

Silvergate offered Bitcoin-collateralized loans to industry participants. At the end of September 2022, the bank held $302 million in Bitcoin-collateralized loans (of a $1.5 billion commitment) against which borrowers had posted $769.9 million in Bitcoin as collateral.[23] Signature Bank also previously offered digital asset collateralized loans, but it stated in its last annual report before its failure that it no longer made crypto-backed loans, made loans to the crypto industry, or held crypto assets.[24] In 2021, Signature Bank described offering a "loan product collateralized by certain cryptocurrencies which currently include Bitcoin," that was "full recourse and

[18] See CoinGecko, "Stablecoins by Market Capitalization," https://www.coingecko.com/en/categories/stablecoins; figure accessed on December 13, 2024.

[19] Coinbase Inc., "How is Client Cash Stored at Coinbase?" accessed on August 1, 2024, at https://help.coinbase.com/en/coinbase/other-topics/other/client-cash. According to the material they also hold funds in "U.S. government money market funds."

[20] Coinbase Global, Inc., "Form 10-K," p. 125 February 15, 2024, at https://investor.coinbase.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=17280851. See "customer custodial funds."

[21] Circle Internet Financial LLC, "Independent Accountants' Report and USDC Reserve Report," p. 4 March 30, 2023, at https://www.circle.com/hubfs/USDCAttestationReports/2023%20USDC_Circle%20Examination%20Report%20February%202023.pdf. This document is an attestation. Attestations are monthly documents provided by stablecoin companies. They are not mandated by law and are criticized as lacking the formality of true audits. See ttps://x.com/jerallaire/status/1634650306234515460?s=20. This period of time was particularly tumultuous for some of Circle's partner banks—Signature Bank, Silicon Valley Bank (SVB) and Silvergate Bank, all of which experienced runs or other problems in the first quarter of 2023 that resulted in their closures. At the height of the SVB and Signature Bank runs, Circle's chief executive officer, Jeremy Allaire, tweeted that Circle "took action to reduce bank risk and deposited $5.4bn with BNY Mellon." Taken with Circle's February 2023 figures (published in March), the statistics reported in this tweet imply a drop of $900 million in cash from the end February to the date of the tweet (March 11, 2023). According to the tweet, Circle moved $5.4 billion to BNY Mellon. After the move, according to various sources, $3.3 billion remained at SVB, and $1 billion remained at Customers Bank.

[22] See Circle, "USDC Reserve Report," as of December 31, 2024 Independent Accountants' Report downloaded from "Transparency & Stability" at https://www.circle.com/transparency.

[23] Silvergate Capital Corporation, "Form 10-Q," pp. 14, 51, November 7, 2022, at https://silvergate.com/wp-content/uploads/2023/10/quarterly1172022.pdf.

[24] See 2021 and 2022 Annual Reports at Signature Bank, "10-K,"pp. 8, March 1, 2023, https://efr.fdic.gov/fcxweb/efr/fcxservlet/PublicEfrFileDownload?instFlngId=11266&instFlngAtchId=1&fileType=instFlng [direct download]; and Signature Bank, "10-K,"pp. 7-8, 10, 49 February 28, 2022, https://efr.fdic.gov/fcxweb/efr/fcxservlet/PublicEfrFileDownload?instFlngId=7994&instFlngAtchId=1&fileType=instFlng [direct download].

underwritten to the client's financial statements," and "only offered to select institutional clients within the digital asset ecosystem."[25]

Providing Custody Services

Many banks offer traditional fiduciary and custody services, such as managing trust agreements and safekeeping assets. Both full-service commercial banks and limited purpose banks, including trust banks, hold in custody assets of significant value for their customers. For example, banks held around $34 trillion in assets in fiduciary as of June 2024.[26] Trust services, such as custody services, can also be provided to crypto firms. Trust banks may provide deposit services to cryptocurrency platforms or retail customers, and store and safeguard digital assets.[27] Custody banks may also provide other administrative services, such as transfer agency.[28] Custodian banks can custody digital assets, typically by safeguarding the digital keys needed to access holdings. Currently, the amount of digital assets custodied by banks is unclear, and, according to reporting, digital asset native firms dominate crypto custody.[29] The text box provides examples of banks offering custody services.

Examples of Banks Providing Custody Services for Crypto Firms

The Bank of New York Mellon (BNY) reportedly acts as transfer agent—a custodial service—for some bitcoin exchange-traded funds.[30] Also, in October 2022, BNY announced that it would permit select clients to hold and transfer Bitcoin and Ether.[31] While the press release that announced that BNY's service "bridges digital and traditional asset custody," it is not clear what specific types of activities this advertised service would entail, whether or how it would deviate from the bank's traditional custodial services, and how much activity BNY has undertaken since its original announcement.[32] State Street Bank was reportedly considering offering this service as early as 2022, and reportedly partnered with a "digital asset infrastructure provider" to provide "digital assets capabilities.[33]

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[25] See Signature Bank, "Form 10-K," p. 8, December 31, 2021, at https://efr.fdic.gov/fcxweb/efr/fcxservlet/PublicEfrFileDownload?instFlngId=7994&instFlngAtchId=1&fileType=instFlng.

[26] FDIC, BankFindSuite, accessed 10/16/2024, at https://banks.data.fdic.gov/bankfind-suite/peergroup/standard.

[27] See CRS In Focus IF11997, *Bank Custody, Trust Banks, and Cryptocurrency*, by Andrew P. Scott.

[28] The Clearing House, *The Custody Services of Banks*, p. 9, July 28, 2016, at https://www.theclearinghouse.org/research/Articles/2016/07/20160728-tch-white-paper-the-custody-services-of-banks.

[29] Harrison Miller, "Most Bitcoin ETFs Keep All Their Eggs in One Basket. Is That Risky?," *Investor's Business Daily*, February 22, 2024, at https://www.investors.com/news/bitcoin-etfs-keep-almost-all-their-eggs-in-one-basket-is-that-a-bad-thing/.

[30] See for example the Franklin Templeton Bitcoin exchange-traded funds (ETF) at https://www.franklintempleton.com/investments/options/exchange-traded-funds/products/39639/SINGLCLASS/franklin-bitcoin-etf/EZBC. Some traditional financial institutions have been approved to operate publicly-traded ETFs backed by bitcoin, allowing retail investors to invest in bitcoin without directly interacting with crypto exchanges or the blockchain. See CRS In Focus IF12573, *SEC Approves Bitcoin Exchange-Traded Products (ETPs)*, by Eva Su.

[31] BNY Mellon, "BNY Mellon Launches New Digital Asset Custody Platform," press release, October 11, 2022, https://www.bnymellon.com/us/en/about-us/newsroom/press-release/bny-mellon-launches-new-digital-asset-custody-platform-130305.html.

[32] BNY Mellon, "BNY Mellon Launches New Digital Asset Custody Platform." As will be discussed below, BNY received a waiver from SAB-121 requirements in order to facilitate its crypto custody services.

[33] Yueqi Yang, "Wall Street Courts Crypto Custody, but with Fingers Crossed," *Bloomberg*, October 27, 2022, https://www.bloomberg.com/news/newsletters/2022-10-27/bny-mellon-bk-state-street-stt-court-crypto-custody-with-fingers-crossed; and State Street, "State Street Announces Agreement with Taurus to Deliver Full Service Digital Platform for Institutional Investors," press release, August 20, 2024, at https://investors.statestreet.com/investor-news-events/press-releases/news-details/2024/State-Street-Announces-Agreement-with-Taurus-to-Deliver-Full-Service-Digital-Platform-for-Institutional-Investors/default.aspx.

Some crypto firms, such as stablecoin issuers, also have traditional assets that need custodying. For example, Circle advertises that its portfolio of U.S. Treasury securities is custodied at BNY.[34]

Banks Developing Cryptocurrency Applications

If permitted, banks or bank subsidiaries could conceivably operate retail or wholesale crypto operations, such as bespoke services needed by crypto firms or investors. Banks could issue stablecoins. Banks and bank subsidiaries are unlikely to be permitted to directly own or operate crypto exchanges. Whether a nonbank subsidiary of a financial holding company (FHC, a bank holding company that has been approved to engage in a broader set of activities) or a financial subsidiary of a bank can own or operate a crypto exchange under existing regulation is an open question that hinges on legally permissible activities, as will be discussed below.[35] It is an area that may be subject to change based on policymakers at federal regulators.

Crypto Payment Applications

Prior to their failures, Silvergate Bank and Signature Bank both provided payment networks that facilitated real-time fiat payments among crypto clients. In regulatory documentation, Silvergate described its Silvergate Exchange Network as a "proprietary, virtually instantaneous payment network for participants in the digital currency industry which serves as a platform for the development of additional products and services."[36] Silvergate credited its network with its deposit surge, noting that between 2014 and 2021, the share of Silvergate's crypto firm deposits increased from 1% of total deposits to a high of more than 98% at the end of 2021.[37] Signature operated Signet, which it described as a "state-of-the-art" "proprietary block-chain based payment solution…to allow for real-time payments and help to connect participants in the ecosystem by offering real-time execution, 24/7/365" and "through an asset tokenization and redemption process."[38] The bank said that Signet was partly responsible for its increase in deposits.[39] Deposits from the crypto industry proved to be volatile, contributing to both banks' failure.

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[34] "Transparency and Stability," Circle, as of November 21, 2024, at https://www.circle.com/transparency. "The portfolio of the Circle Reserve Fund, which can contain short-dated US Treasuries, overnight US Treasury repurchase agreements, and cash, is custodied at The Bank of New York Mellon and is managed by BlackRock."

[35] CRS did not identify any examples of regulators approving or rejecting such an arrangement, but this is not publicly reported collectively. Subsidiaries of FHCs and financial subsidiaries of banks do not own and operate traditional securities exchanges, although they could be members of mutually owned exchanges. Subsidiaries can operate as registered broker-dealers, and broker-dealers are allowed to operate alternative trading systems (ATS), some of which are sometimes called "dark pools," which allow clients to buy and trade securities outside of a traditional exchange. The SEC requires notification, but not approval, for a broker-dealer to operate an ATS. If bank regulators allowed broker-dealers that were subsidiaries of banks or FHCs to buy and sell crypto, the broker-dealer could presumably operate an ATS that would act in the same role as a crypto exchange. See SEC, *Alternative Trading Systems ("ATS") List*, https://www.sec.gov/foia-services/frequently-requested-documents/alternative-trading-system-ats-list.

[36] Silvergate Capital Corporation, "10-K," p. 4, February 28, 2022, p. 4, https://silvergate.com/wp-content/uploads/2023/10/annual2282022.pdf.

[37] Silvergate Capital Corporation, "10-K," pp. 6, 50, February 28, 2022.

[38] Signature Bank, "10-K," pp. 7-8, 10, 49 February 28, 2022, https://efr.fdic.gov/fcxweb/efr/fcxservlet/PublicEfrFileDownload?instFlngId=7994&instFlngAtchId=1&fileType=instFlng [direct download].

[39] See for example, Signature Bank, "10-K," pp. 7 10, February 28, 2022.

Tokenized Deposits, Stablecoins, and Permissioned Blockchains

Tokenization refers to a form of digitized finance in which real-world financial assets—such as securities, bank deposits, and real estate—are recorded and traded on a programmable platform, such as a blockchain.[40] The term has become a byword for how discussions about blockchains have shifted from cryptocurrency—one of their primary uses—to other applications. Proponents claim that tokenization may combine all of the functions involved in transacting traditional or real-world assets—storing, recording, and transacting—on the blockchain.

For example, some banks are experimenting with tokenized deposits (see text box). In essence, tokenized deposits are bank deposits that have been made available on a permissioned blockchain that only approved individuals can access. There are a few possible ways a tokenized deposit could work. One form would resemble how a stablecoin issued by a bank could be used in payments (discussed below). The tokenized deposit holder would hold a claim on the issuer. The holder would not require permission to transfer the claim to another owner, as there is no need for the issuer to record the transfer except when it is ultimately redeemed. Other tokenized deposits could look similar to traditional account deposits issued by banks and other depository institutions. The tokenized deposits would be liabilities for issuing banks, and unlike stablecoins, a transfer would require debiting one account and crediting another as in the traditional banking model. Such tokenized deposits would be another method—on par with checks, debit cards, and Automated Clearing House transfers—that bank customers could use to access their deposits. Another "wholesale" version would be accessible and transferable only to customers of a financial institution or a consortium of participating financial institutions.

Banks could also potentially issue stablecoins. Stablecoins are a specific type of digital asset that use some of the technological components of cryptocurrency and aim to maintain a stable value with an asset, usually a fiat (i.e., government-issued) currency. While crypto values fluctuate based on market forces, dollar stablecoins, for example, aim to maintain a 1:1 value with the U.S. dollar. There are not clear rules for how stablecoins must maintain the peg and they may attempt to match their value to the dollar in different ways, including by holding dollars or other assets denominated in dollars.

Examples of Banks Using Tokenization

J.P. Morgan has created a system for wholesale payments, named Kinexys (previously JPM Coin). The system allows J.P. Morgan clients to transfer "[d]ollars held on deposit" at the bank within the system using a permissioned blockchain.[41] One of the bank's earliest tokenization efforts was an intraday repo system that provided on-chain liquidity to bank clients.[42] According to some of the bank's promotional material, cash and collateral is tokenized prior to trades, which allows clients to get liquidity quickly and the bank to operate with expanded operating hours.

[40] Iñaki Aldasoro, Sebastian Doerr, and Leonardo Gambacorta, et al., *The Tokenisation Continuum*, Bank for International Settlements, April 11, 2023, https://www.bis.org/publ/bisbull72.pdf. For more on tokenization, see CRS In Focus IF12670, *Tokenized Assets*, by Paul Tierno.

[41] J.P. Morgan, "Digital Solutions Enabling Instant Transfer and Clearing of Multi-Bank, Multi-Currency Assets on a Permissioned Distributed Ledger," last accessed on September 18, 2024, https://www.jpmorgan.com/onyx/coin-system. J.P. Morgan is also one of several traditional financial firms that has been active in tokenizing money market and mutual funds. See Monique Mulima, "Stablecoin Issuer Tether Moves Into Tokenizing Stocks and Bonds," *Bloomberg, November 14, 2024*, at https://www.bgov.com/next/news/SMYA9KT0AFB4; and Ian Allison, "Fidelity International Tokenizes Money Market Fund on JPMorgan's Blockchain," *CoinDesk*, June 10, 2024, at https://www.coindesk.com/business/2024/06/10/fidelity-international-tokenizes-money-market-fund-on-jpmorgans-blockchain.

[42] Miriam Cross, "The Budding Promise of Tokenization in Banking," *American Banker*, February 24, 2024, at https://www.americanbanker.com/news/the-budding-promise-of-tokenization-in-banking.

Citi also introduced Citi Token Services, a digital assets program with various functions that reportedly allows individuals to tokenize deposits to facilitate cross-border payments. It uses digital ledger technology—the backbone of crypto—to replace letters of credit and bank guarantees of trade finance with tokenization and smart contracts.[43]

Wells Fargo announced in 2019 that it launched an internal settlement service of cross-border payments using distributed ledger technology.[44] In addition to certain commercial bank enterprises, the Bank for International Settlements Innovation Hub provides a forum and technical assistance to various international commercial and central banks developing tokenization and digital asset programs.[45]

Regulation of Bank Activities Involving Crypto

To date, there is no overarching framework for bank participation in crypto, nor is there an explicit regulatory framework for crypto markets more generally. To date, the bank regulators have not promulgated any rules through the notice-and-comment process to regulate how banks use crypto. Instead, regulators are relying on guidance and interpretation within the existing regulatory framework and making decisions on a case-by-case basis through the supervisory process. This is not uncommon—Congress sets the broad parameters of regulation in statute, but has provided regulators discretion to determine how specific activities fit within those parameters. Regulators use decisions from earlier cases as precedent to decide novel issues, with the accumulation of decisions over time forming a broader policy approach. But sometimes a regulator changes approaches, particularly under new leadership. Compared to rulemaking, this approach is less transparent and provides less opportunity for congressional and public input.[46]

Bank regulators have taken an ambiguous posture toward crypto activity. Regulators have expressed concern regarding crypto and the potential for it to spark runs and spread risk to the broader financial system. At the same time, they seem keen to portray an openness to the new technologies, and various regulators have established offices focused on innovation.[47] In the past decade or so, federal bank regulators developed guidance and policy to provide clarity to the banking system on permissible crypto activities. However, as leadership has changed and crypto markets have risen and fallen, some agencies have changed their positions on the risk-benefit trade-off of crypto, such that it may not be entirely clear what banks might expect from regulators in the long term.

Another change may be forthcoming. On January 23, 2025, President Trump issued E.O. 14178, *Strengthening American Leadership in Digital Financial Technology*.[48] The order stated that the

[43] Miriam Cross, "The Budding Promise of Tokenization in Banking," *American Banker*, and Catherine Leffert, "Citi Expands Digital Asset Services with Blockchain-Based Deposit Token," *American Banker,* September 19, 2023, at https://www.americanbanker.com/news/citi-expands-digital-asset-services-with-blockchain-based-deposit-token. The Citi websites of these programs suggest they may still be in pilot or test phases.

[44] Wells Fargo, "Wells Fargo to Pilot Internal Settlement Service Using Distributed Ledger Technology," press release, September 17, 2019, https://newsroom.wf.com/English/news-releases/news-release-details/2019/Wells-Fargo-to-Pilot-Internal-Settlement-Service-Using-Distributed-Ledger-Technology/default.aspx.

[45] See Bank for International Settlements, "BIS Innovation Hub Projects," https://www.bis.org/about/bisih/projects.htm.

[46] Some decisions specific to individual banks have been made public, but are difficult for the public to track and are not written for a lay audience.

[47] See for example the Federal Reserve Bank of New York Innovation Center, https://www.newyorkfed.org/aboutthefed/nyic.

[48] Executive Order 14178, "Strengthening American Leadership in Digital Financial Technology," 90 *Federal Register 8647,* January 31, 2025, https://www.federalregister.gov/documents/2025/01/31/2025-02123/strengthening-american-leadership-in-digital-financial-technology.

administration intends to "support the responsible growth and use of digital assets, blockchain technology, and related technologies."[49] The order aims to support the technology by protecting individual and business access and ability to program on blockchains, promoting the development and growth of "lawful" dollar-backed stablecoins, protecting individual and corporate access to banking; providing regulatory clarity on various financial technologies; and prohibiting the issuance of U.S. central bank digital currencies. The order also revoked the Biden Administration's E.O. 14067, *Ensuring Responsible Development of Digital Assets*, and Treasury's *Framework for International Engagement on Digital Assets*, both from 2022.[50]

When considering whether and how the banking system can engage with cryptocurrency, regulators have three main pillars of concerns[51]:

1. **Safety and soundness.** Crypto poses the types of risks for which banks are closely regulated, including the risk of losses that could undermine a bank's safety and soundness. Because banks are protected by a federal backstop, safety and soundness risks to banks are ultimately borne by taxpayers. In addition to credit risk, crypto potentially poses liquidity risk, operational risk, reputational risk, and cyber risk to banks. Regulators are to consider whether crypto activity is germane to banking, and whether it can be done in a manner that is both profitable and prudent for the bank's financial wellbeing.
2. **Consumer protection**. While bank regulators cannot regulate nonbanks for consumer protection, they can ensure that bank products linked to crypto comply with various consumer banking laws, such as fair lending laws and prohibitions against unfair, deceptive, or abusive acts or practices. They can require banks and fintech partners to accurately define how and whether holdings are protected by deposit insurance. Regulators can also make clear where payment protections for unauthorized transactions are not valid. For example, if a digital wallet offers multiple payment options, a debit card would be covered by provisions of Regulation E,[52] but crypto transfers would not.
3. **Anti-money laundering (AML).** Regulations for illicit money transactions are promulgated by FinCEN, the Treasury Bureau responsible for implementing the Bank Secrecy Act. Much of the AML legal framework is built around reporting and recordkeeping for certain transactions. Given the pseudonymous nature of cryptocurrency, compliance among crypto products can be difficult for financial institutions to achieve, and difficult for regulatory agencies to enforce. Supervisory authority for bank compliance with AML is delegated to the bank regulators. Thus, a bank that wants to use crypto products would need to demonstrate its capacity to comply with AML rules, and if a bank wanted to partner with a crypto firm, the bank would need to ensure that the partner was compliant as well. An inability to confirm compliance in this area could lead to

[49] Executive Order 14178, "Strengthening American Leadership in Digital Financial Technology."

[50] Executive Order 14067, "Ensuring Responsible Development of Digital Assets," 87 *Federal Register* 14143, March 14, 2022, https://www.federalregister.gov/documents/2022/03/14/2022-05471/ensuring-responsible-development-of-digital-assets; and U.S. Treasury, *Framework for International Engagement on Digital Assets*, July 7, 2022, https://home.treasury.gov/news/press-releases/jy0854.

[51] Board of Governors of the Federal Reserve System, FDIC, and OCC, "Joint Statement on Crypto-Asset Risks to Banking Organizations," https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230103a1.pdf.

[52] Regulation E implements the Electronic Fund Transfer Act and protects individual consumers who engage in electronic fund transfers. It mandates consumer disclosures, limits consumer liability for unauthorized transfers, and maintains procedures for resolving errors.

de-risking (also called de-banking), whereby banks drop certain commercial relationships, leaving those most likely to be noncompliant outside of the regulatory framework of the banking system.

Bank regulators have broad authority to block or restrict any bank activity that is not consistent with these three principles. Whether a bank provides a service directly or partners with a third-party service provider, such as a crypto firm, the activity is regulated in the same way. The Bank Service Company Act (P.L. 87-856) applies bank regulations and examination requirements to bank service companies that partner with banks.

Bank regulators can regulate a bank's participation in a market or the products that a bank offers, but bank entry into crypto activities would not give bank regulators authority to regulate risk in the underlying crypto markets, as is true for any industry. Lack of regulation in the underlying crypto market inherently limits the extent that risks can be effectively managed by banks or bank regulators: If certain crypto products are inherently prone to large and volatile losses, scams, and weak AML controls, then banks may be unable to prove that their participation is compatible with the goals of bank regulation. (Two regulatory developments affecting crypto and banking taken by entities other than the bank regulators are discussed in **Appendix A**.)

Regulation of Traditional Banking Services Provided to the Crypto Industry

A blanket ban on providing traditional banking services to crypto firms would have been particularly problematic because of controversies over whether banks can deny services to specific industries. Under then-Acting Comptroller of the Currency Brian Brooks, the OCC promulgated a "fair access" rule to codify guidance that a bank should make risk-based assessments on individual customers (rather than broader decisions about groups of customers) when providing financial services, but after Brooks stepped down the rule was paused before it went into effect. However, the OCC stated at the time that guidance "stating that banks should avoid termination of broad categories of customers without assessing individual customer risk remains in effect."[53]

Nevertheless, some crypto market participants have expressed concern that they are having trouble accessing traditional banking services because of de-risking concerns, which they have referred to as "Operation Chokepoint 2.0."[54] To "de-risk," banks may close accounts to avoid reputational, legal, or regulatory risk, such AML violations.[55] In this case, the regulators have repeatedly emphasized that banks "are neither prohibited nor discouraged from providing banking

[53]The OCC proposed the rule in November 2020 and finalized the rule on January 14, 2021. See OCC, "OCC Finalizes Rule Requiring Large Banks to Provide Fair Access to Bank Services, Capital, and Credit," January 14, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-8.html; OCC, "OCC Puts Hold on Fair Access Rule," January 28, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-14.html; CRS Legal Sidebar LSB10571, *Office of the Comptroller of the Currency's Fair Access to Financial Services Rule*, by M. Maureen Murphy.

[54] See, for example, Alternative Investment Management Association, *The Debanking Dilemma*, https://www.aima.org/compass/insights/digital-assets/the-debanking-dilemma.html. a 2012-2017 Operation Choke Point was a Department of Justice (DOJ) initiative that targeted consumer fraud facilitated by banks and third-party payment processors (TPPPs) that resulted in unauthorized transfers from consumers' bank accounts. Critics alleged that Operation Chokepoint abused legal authorities to pressure banks to terminate relationships with lawful—but politically disfavored—businesses. See Victoria Guida, "Justice Department to End Obama-era 'Operation Choke Point,'" August 17, 2017, https://www.politico.com/story/2017/08/17/trump-reverses-obama-operation-chokepoint-241767.

[55] Operation Choke Point was a controversial 2012-2017 Department of Justice (DOJ) initiative that targeted consumer fraud facilitated by banks and third-party payment processors (TPPPs) that resulted in unauthorized transfers from consumers' bank accounts. See CRS In Focus IF12886, *De-Banking/De-Risking: Issues for the 119th Congress*, by Andrew P. Scott.

services to customers of any specific class or type, as permitted by law or regulation."[56] However, the regulators also emphasized their "significant safety and soundness concerns with business models that are concentrated in crypto-asset-related activities or have concentrated exposures to the crypto-asset sector."[57] For example, if digital assets are used as collateral for a loan, then that collateral may be viewed as more volatile (and therefore offering less protection to the bank) than traditional collateral is.

E.O. 14178, *Strengthening American Leadership in Digital Financial Technology*,[58] stated that the Trump Administration intends to "support the responsible growth and use of digital assets, blockchain technology, and related technologies."[59] The order mentioned banks only in the context of ensuring that law-abiding crypto firms did not experience de-risking.

The regulators also identified traditional deposits by crypto firms that depend on customer activity or deposits that are stablecoin reserves as posing "heightened liquidity risks to banking organizations due to the unpredictability of the scale and timing of deposit inflows and outflows."[60] If stablecoins are prone to runs, as the Financial Stability Oversight Council and others have warned,[61] then deposits backing stablecoins could be prone to sudden withdrawals that could, in turn, cause a liquidity problem for the bank.

Regulation of Bank Participation in Crypto Market Activities

A bank cannot engage in novel activities, unless it has gained approval from its primary regulator. Approval is based on two factors: (1) whether the activity legally is permissible and (2) whether it is compatible with the goals of bank regulation (e.g., whether it can be done in a safe and sound manner).[62] If the bank's regulator found that those two conditions were met, a bank or bank holding company could engage in permitted crypto activities directly or own a firm engaged in permitted crypto activities as a legally separate financial subsidiary.

Permissible Activities

By statute, banks and bank holding companies are allowed to engage only in activities that are related to or "incidental to" the "business of banking."[63] A bank can engage in permissible activities directly or own a subsidiary that does so or be affiliated with a firm that does so through joint ownership by the same parent holding company.

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[56] Board of Governors of the Federal Reserve System, FDIC, and OCC, "Joint Statement on Crypto-Asset Risks to Banking Organizations," January 3, 2023, at https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230103a1.pdf.

[57] Board of Governors of the Federal Reserve System, FDIC, and OCC, "Joint Statement on Crypto-Asset Risks to Banking Organizations."

[58] Executive Order 14178, "Strengthening American Leadership in Digital Financial Technology," 90 *Federal Register 8647*, January 31, 2025, https://www.federalregister.gov/documents/2025/01/31/2025-02123/strengthening-american-leadership-in-digital-financial-technology.

[59] Executive Order 14178, "Strengthening American Leadership in Digital Financial Technology."

[60] Board of Governors of the Federal Reserve System, FDIC, and OCC, "Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities," February 23, 2023, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230223a1.pdf.

[61] Financial Stability Oversight Council, *Report on Digital Asset Financial Stability Risks and Regulation*, October 3, 2022, https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.

[62] 12 C.F.R. 7.1000-7.1030.

[63] 12 U.S.C. 24 (Seventh). Permissible activities for bank holding companies are at 12 U.S.C. §1843(c)(8).

Outside of the banking subsidiary, the financial subsidiaries of banks and the nonbank subsidiaries of financial holding companies (FHC)[64] are permitted to engage in a broader set of activities—those that are financial in nature, incidental to a financial activity, or complementary to a financial activity.[65] A bank's financial subsidiaries would be regulated by the bank's primary regulator, whereas the nonbank subsidiaries of a BHC or a FHC would be regulated by the Fed. However, if a nonbank subsidiary has a primary regulator, such as the SEC or Commodity Futures Trading Commission (CFTC), the Fed's authority is very limited. Either way, the Fed's regulatory role is mostly to ensure that the nonbank subsidiary of a BHC or FHC does not put the bank subsidiary at risk, not to regulate the nonbank subsidiary like a bank.

For the permissible activities of either banks and BHCs or financial subsidiaries and FHCs, Congress has identified some specific activities explicitly in statute, but has largely provided regulators discretion to identify others. Activities that are not explicitly permitted must be approved by the bank regulators.[66] In theory, some crypto activities might be viewed as a subset of activities that have already been approved in the past. Others might be viewed as novel activities that could not be engaged in without regulatory approval. There is a long-established pattern of the regulators defining a wide array of activities as permissible, including when reasonable arguments could be made for and against. As such, whether crypto activities are related to the business of banking (and eligible for banks and BHCs) is arguably in the eye of the beholder, and is likely to depend on the exact nature of the activity. Whether they are financial in nature (and thus eligible for financial subsidiaries and FHCs) depends first on whether crypto assets are considered financial assets. Given the extensive list of activities that have been found to be related to the business of banking or financial in nature already, this bar may not be a high one.[67]

Each regulator approves permissible activities for banks under its jurisdiction. The regulators have developed similar, but not identical, approved lists (see text box).

[64] A FHC is a type of bank holding company that has been approved to engage in a broader set of activities.

[65] Activities that are financial in nature are laid out in Title 12, Section 225.86, of the *Code of Federal Regulations*. A few activities can be performed by FHCs, but not financial subsidiaries, but these are unlikely to be relevant to crypto activities. For more information on FHCs, see CRS Report R48291, *Bank Holding Companies: Background and Issues for Congress*, by Marc Labonte.

[66] Relevant to crypto, Title 12, Section 1843(k)(5), of the *U.S. Code* requires the Fed to determine whether a specific group of activities is permissible for FHCs, including "Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities." Under Title 12, Section 225.86, of the *Code of Federal Regulations*, a bank that wishes to engage in those activities must seek written permission from the Fed. By statute, the Fed is required to consult with the Treasury Secretary before reaching a decision.

[67] One explicit statutory prohibition on activities worth noting is the Volcker Rule, which bans banks and BHCs from proprietary trading, meaning that banks could not hold as principal or transact in any crypto or digital asset or any derivative based on crypto for the bank's own profit. The Volcker Rule provides an explicit exception to the ban for other types of capital market activities, however, such as market making and hedging.

Permissible Activities by Regulator

The **OCC** determines permissible activities for national banks and maintains guidance on which activities have been approved.[68] It evaluates requests by banks to engage in new activities on a case-by-case basis. Activities can be approved only if they can be conducted safely and soundly.[69]

The **FDIC** allows a state-chartered bank under its jurisdiction to engage in activities approved by the OCC as well as additional activities that have been approved by the bank's state regulator if the FDIC determines that the activity does not pose a significant risk to the Deposit Insurance Fund and if the bank meets capital standards. The FDIC characterizes state laws on permissible activities as diverse.[70] The FDIC reviews these additional activities on a case-by-case basis, and has approved numerous activities.

For state-chartered banks under its jurisdiction, the **Fed's** approach is to defer to the OCC and FDIC where those regulators have made a determination on what activity is permissible under law and laid out limitations surrounding the activity. The Fed has stated that where there is a "clear and compelling rationale" it could deviate from standards set by the OCC and FDIC and approve an activity, but it stated that to date it has not done so for any crypto activity.[71] When the OCC or FDIC has not made a determination, a bank cannot carry out an activity until the Fed has granted approval. In any case, the Fed will grant approval only when it is satisfied that the activity can be carried out in a safe and sound manner. Separately, the Fed determines permissible activities for BHCs and FHCs (and their nonbank subsidiaries) by regulation.

Leadership Changes and Policy Changes

Bank regulators have consistently maintained that banks can conduct crypto activities only if they are legally permissible and conducted in a safe and sound manner. However, how agencies—particularly the OCC—have applied that reasoning has varied across leadership. For example, in 2021, then-Acting Comptroller of the Currency Michael Hsu effectively reversed previous leadership's policies.

Under Comptroller Otting and Acting Comptroller Brooks, between 2017 to 2020, the OCC took a relatively favorable view toward crypto based on finding that certain activities were legally permissible.[72] In addition to granting the three provisional charters (discussed below), the OCC issued a series of interpretive letters in response to requests from banks that clarified a set of crypto activities in which banks could engage. These letters suggested to banks that they could provide custody services to crypto customers, provide banking services to stablecoin issuers (such as holding a stablecoin's cash reserves as bank deposits), and use certain crypto technologies such

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[68] OCC, *Activities Permissible for National Banks and Federal Savings Associations, Cumulative*, October 2017, https://www.occ.gov/publications-and-resources/publications/banker-education/files/activities-permissible-nat-banks-fed-savings-associations.html.

[69] 12 C.F.R. 7.1000-7.1030.

[70] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, *Report to the Congress and the Financial Stability Oversight Council Pursuant to Section 620 of the Dodd-Frank Act*, September 2016, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160908a1.pdf.

[71] The Fed refers to this as a "rebuttable presumption" that an activity is not permitted if the FDIC or OCC have found it to not be permitted. Board of Governors of the Federal Reserve System, "Policy Statement on Section 9(13) of the Federal Reserve Act," 88 *Federal Register* 7848, February 7, 2023, https://www.govinfo.gov/content/pkg/FR-2023-02-07/pdf/2023-02192.pdf.

[72] For example, the OCC issued an advanced notice of proposed rulemaking to ensure that it fosters a "regulatory and supervisory framework that enables banks to adapt to rapidly changing trends and technology developments in the financial marketplace." It included questions on whether there were barriers to bank involvement in crypto activities and whether guidance was needed for clarification on crypto and blockchain technology. No further regulatory action has been taken to date. OCC, *National Bank and Federal Savings Association Digital Activities: Advance Notice of Proposed Rulemaking*, June 4, 2020, https://occ.gov/news-issuances/bulletins/2020/bulletin-2020-59.html.

as stablecoins and distributed ledgers to facilitate certain payments.[73] The letters argued that some of these activities were simply variations of already-approved activities.[74] This earlier guidance stated that a bank can engage in such crypto activity only to the extent it can do so in a "safe and sound manner." The earlier interpretive letters stated that "A bank should consult with OCC supervisors, as appropriate, prior to engaging in" permissible crypto activities.[75]

After a few banks experienced crypto-related losses and deposit withdrawals and leadership changed, the regulators under Acting Comptroller Hsu, FDIC Chair Gruenberg, and Fed Vice Chair Barr primarily took a more wary approach to banks' participation in crypto markets rooted in their interpretation of safety and soundness. Thus, instead of blanket approval or disapproval of specific crypto-related activities, regulators have required banks to demonstrate on a case-by-case basis that they can engage in given activities in a safe and sound manner. In addition, banks must demonstrate that the activity is legally permissible (as discussed above) and that they are complying with all applicable laws and regulations.[76]

The banking agencies have since identified a number of risks widely associated with crypto that they believe cannot easily be mitigated, including the risk of fraud, legal uncertainty, contagion, price volatility, unfair and deceptive practices, and inaccurate and misleading representations. These create high hurdles for regulatory approval, placing the "burden of proof" on banks to demonstrate that these concerns have been adequately addressed. More specifically, they "believe that issuing or holding as principal crypto-assets that are issued, stored, or transferred on an open, public, and/or decentralized network, or similar system is highly likely to be inconsistent with safe and sound banking practices."[77] Each regulator has released guidance confirming this approach (see text box).

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[73] An overview of these letters is provided in the OCC November 23, 2021 interpretive letter concerning bank crypto activity; see OCC, "OCC Clarifies Bank Authority to Engage in Certain Cryptocurrency Activities and Authority of OCC to Charter National Trust Banks," November 23, 2021, at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-121.html. As noted above, typically, an OCC finding that an activity is permissible would apply to banks regulated by the Fed and the FDIC as well.

[74] For example, one letter found that "providing cryptocurrency custody services, including holding the unique cryptographic keys associated with cryptocurrency, is a modern form of these traditional bank activities ... this is a permissible form of a traditional banking activity that national banks are authorized to perform.... " OCC, Interpretive Letter #1170, July 2020, https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf. Likewise, in approving stablecoins, the OCC found that "stablecoins represent new technological means of carrying out bank-permissible payment activities.... The OCC has repeatedly recognized that banks may conduct permissible payment activities using new and evolving technologies." OCC, Interpretive Letter 1174, January 4, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf. As discussed above, the current comptroller has effectively limited this finding.

[75] See, for example, OCC, Interpretive Letter 1174, January 4, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf.

[76] Board of Governors of the Federal Reserve System, FDIC, and OCC, "Joint Statement on Crypto-Asset Risks to Banking Organizations," January 3, 2023, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20230103a1.pdf.

[77] Board of Governors of the Federal Reserve System, FDIC, and OCC, "Joint Statement on Crypto-Asset Risks to Banking Organizations."

Recent Regulatory Guidance on Crypto

In 2021, the **OCC** issued further guidance that effectively walked back the seemingly pro-crypto position of the previous comptroller. Although it did not rescind the earlier interpretive letters, this guidance stated that a bank can engage in such crypto activity only if it can convince its supervisor that it can do so in a "safe and sound manner." Further, before engaging in any crypto activity, the new guidance stated that, "a bank should notify its supervisory office, in writing, of the proposed activities and should receive written notification of the supervisory non-objection."[78] The new guidance does not reverse the earlier finding that specific crypto activities are legally permissible, but states generally that "a proposed activity is not legally permissible if the bank lacks the capacity to conduct the activity in a safe and sound manner."[79]

In 2022, the **FDIC** informed banks under its jurisdiction that the banks must notify their regulators before engaging in crypto-related activities. The letter focuses on identifying key safety and soundness, financial stability, and consumer protection risks that banks must address and notify the FDIC of before engaging in crypto activity.[80]

The **Fed** issued guidance in 2022 that lays out that banks cannot engage in crypto activities until the activities have been explicitly approved by their regulators.[81] In later guidance, the Fed specifically stated that it will "presumptively prohibit" banks from holding most crypto assets as principal (as opposed to holding it on behalf of a customer), as it has not found any statutory authority for banks to do so and does not believe that banks could do so in a safe and sound manner.[82]

Although the regulators' official position is that activities will be approved if they can demonstrate that safety and soundness concerns are adequately addressed, one law firm characterized this position, with the exception of custody activities, as setting "such a high bar that banks have effectively been barred from engaging in most of these activities."[83] Acting FDIC Chair Travis Hill characterized attempts by FDIC-regulated banks to get activities approved

> were almost universally met with resistance, ranging from repeated requests for further information, to multi-month periods of silence as institutions waited for responses, to directives from supervisors to pause, suspend, or refrain from expanding all crypto- or blockchain-related activity. Both individually and collectively, these and other actions sent the message to banks that it would be extraordinarily difficult—if not impossible—to move forward. As a result, the vast majority of banks simply stopped trying.

[78] OCC, Interpretive Letter #1179: Chief Counsel's Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank, November 2021, at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf.

[79] OCC, *Interpretive Letter #1179: Chief Counsel's Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank.*

[80] FDIC, "Notification of Engaging in Crypto-Related Activities," April 7, 2022, at https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html. As a result of a Freedom of Information Act request, a number of letters from the FDIC to banks were released in 2024 and 2025 that required them to cease a crypto activity or wait to begin engaging in a crypto activity until the FDIC had made an evaluation on the legal permissibility and safety and soundness of those activities. The letters are available at https://downloads.ctfassets.net/c5bd0wqjc7v0/6y0GZ2y2LzOZi1gUnCTtxh/55bf6ae9665ca12b9fe7bdfb3ebe746b/-26-1-_Exhibit_A_-_Redacted_Pause_Letters.pdf. See also https://fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervision-crypto-related-activities#:~:text=%E2%80%9CPreviously%2C%20the%20FDIC%20released%2025,additional%20institutions%20beyond%20those%2024.

[81] Federal Reserve, "Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations," August 16, 2022, https://www.federalreserve.gov/supervisionreg/srletters/SR2206.htm.

[82] Board of Governors of the Federal Reserve System, "Policy Statement on Section 9(13)."

[83] Davis Polk, *Seven Crypto Policies The Federal Banking Agencies Are Likely To Revisit*, November 11, 2024, https://www.davispolk.com/insights/client-update/seven-crypto-policies-federal-banking-agencies-are-likely-revisit.

Supervision

All three regulators have focused on novel activities, but only the Fed has set up a dedicated supervisory group.[84] In August 2023, the Fed created a Novel Activities Supervision Program as a dedicated group to supervise banks' technology-driven partnerships, crypto activities, use of distributed ledger technology, and provision of banking services to crypto and fintech firms. The group supervises banks alongside its existing supervisory team.[85]

Crypto Firms Seeking Banking Charters

In addition to traditional banks providing banking services to crypto, some new entrant firms have sought federal or state charters to provide crypto specific services. Instead of banks engaging in crypto, in a sense, crypto firms are seeking to engage in banking. Federal and state regulators grant charters to financial businesses that seek to offer banking services. It is common for companies with different lines of business to seek to acquire banking charters or existing banks, and regulators follow statutory guidelines when reviewing applications for charters. There are a variety of bank charters offered at the state and federal levels, but conceptually, the main charters are full-service bank charters and limited purpose bank charters. To date, the preferred tack of crypto firms has been to seek limited purpose charters. The next section details the types of limited purpose charters that have been of interest to crypto firms.

Another option is for a crypto firm to provide banking services by purchasing a controlling stake in an existing bank, subject to Federal Reserve approval.[86] (Noncontrolling stakes by investors are

[84] For example, the OCC has created an Office of Financial Technology.

[85] Federal Reserve, "Creation of Novel Activities Supervision Program," August 8, 2023, https://www.federalreserve.gov/supervisionreg/srletters/SR2307.htm.

[86] There is an example of a crypto firm taking an ownership stake in a bank, but it is unclear if it was a controlling stake that would have required regulatory approval. In 2022, FBH, a BHC that owns Farmington (later Moonstone) Bank, announced that Alameda Research Ventures, a "crypto hedge fund" that was part of the FTX Group, was investing $11.5 million in private equity funding in FBH. According to court filings by the firm hired to recover assets in FTX's bankruptcy, FTX group received "an approximately 10% interest in FBH" in exchange for this investment, "meaning Plaintiff paid an amount equal to double the bank's entire reported net worth for just a 10% interest." Soon after, the one-branch bank in rural Washington changed its name to Moonstone and changed its business model to focus on cryptocurrencies, cannabis, and banking-as-a service. FTX also held deposits at Moonstone Bank. In 2023, the Fed issued a cease-and-desist order to FBH to wind down Moonstone because it had violated a condition of the original regulatory approval of FBH's purchase of Moonstone—that it would not change its business model (digital assets were explicitly included as an example). Legally, Alameda could take a controlling stake in FBH only if approved by the Fed under the Change in Bank Control Act approval process. CRS was unable to locate any notification of approval by the Fed. Determination of control is complex and case specific, but the first litmus test is whether the investor has at least 25% of any class of voting securities or is the only investor with at least 10% of any class of voting securities that are registered with the SEC. The bankruptcy filing claims that "Plaintiff did not receive reasonably equivalent value in exchange for the foregoing payment as the investment was virtually worthless, including because, among other reasons, Plaintiff's investment for a 10% interest was double the reported value of the bank, and Defendants' business plan for Farmington centered on (business model) transformations that violated the conditions that the Federal Reserve had placed on FBH's acquisition of Farmington." When FBH purchased Farmington in 2021, it was 100% owned by Jean Chalopin, who was a defendant described in the legal filing as FBH's principal shareholder and the company's President and Chairman. See FTX TRADING LTD., et al., CLIFTON BAY INVESTMENTS LLC f/k/a ALAMEDA RESEARCH VENTURES LLC, Plaintiff, v. FARMINGTON STATE CORPORATION (f/k/a FARMINGTON STATE BANK, d/b/a GENIOME BANK, d/b/a MOONSTONE BANK), FBH CORPORATION, and JEAN CHALOPIN, Defendants. Chapter 11, Case No. 22-11068 (JTD) IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, filed November 8, 2024, https://restructuring.ra.kroll.com/FTX/ExternalCall-DownloadPDF?id1=MzIyNDY5Mg==&id2=0&cid=0; In the Matter of FARMINGTON STATE BANK, Farmington, Washington and FBH CORPORATION, Baltimore, Maryland, Docket No. 23-005-B-HC, 23-005-B-SM, Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended and Section (continued...)

not subject to regulatory approval and are not necessarily publicly disclosed.) In the process of doing so, it would become a BHC and become subject to Federal Reserve oversight and the regulatory requirements of the Bank Holding Company Act. Generally, firms engaged in permissible financial activities (discussed above) may own banks if they qualify as FHCs and their applications are approved by the Fed under the statutory guidelines.[87] For example, the holding company and its nonbank subsidiaries must be able to serve as a source of strength to the bank and not pose a safety and soundness risk to the bank.[88]

Federal Charters

At the federal level, the OCC grants national bank charters, including to trusts.[89] In the past few years, three firms specializing in crypto services applied for and received conditional national bank charters. Anchorage Trust Company received conditional approval in January 2021; Protego was granted conditional approval in February 2021; and Paxos was granted preliminary conditional approval in April 2021.[90] (Protego's conditional charter expired in February 2023,[91] and Paxos's conditional charter expired in March 2023.[92]) To date, Anchorage—which was the

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30A.04.450 of the Revised Code of Washington, July 18, 2023, https://www.federalreserve.gov/newsevents/pressreleases/files/enf20230817a1.pdf; UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK, UNITED STATES OF AMERICA, - v. -SAMUEL BANKMAN-FRIED a/k/a "SBF," Defendant. GOVERNMENT'S FORFEITURE BILL OF PARTICULARS, 22 Cr. 673 (LAK), January 20, 2023, https://storage.courtlistener.com/recap/gov.uscourts.nysd.590940/gov.uscourts.nysd.590940.49.0.pdf; Moonstone Bank, "FBH Corp. raises $11.5M in private equity funding from Alameda Research Ventures," press release, July 22, 2022, https://web.archive.org/web/20221123140831/https://www.moonstonebank.com/post/fbh-corp-raises-11-5m-in-private-equity-funding-from-alameda-research-ventures.

[87] In other words, a firm's crypto activities would need to be approved as financial in nature before the firm could purchase a bank.

[88] For more information see CRS Report R48291, *Bank Holding Companies: Background and Issues for Congress*, by Marc Labonte.

[89] For more on the differences between commercial bank charters and trust bank charters, see CRS Report R47014, *An Analysis of Bank Charters and Selected Policy Issues*, by Andrew P. Scott. In January 2021, the OCC issued guidance outlining cases where it would allow national trust banks to perform activities that states had made legally permissible. This is relevant to crypto given some states' efforts to attract crypto firms through special purpose trust charters. In November 2021, the OCC issued new guidance clarifying that the OCC would not approve a crypto activity solely because it was permissible in state law. See OCC, "OCC Chief Counsel's Interpretation on National Trust Banks, Interpretive Letter #1176, January 11, 2021, https://occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1176.pdf; OCC, "OCC Clarifies Bank Authority to Engage in Certain Cryptocurrency Activities and Authority of OCC to Charter National Trust Banks," Interpretive Letter #1179, November 23, 2021, at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-121.html.

[90] Letter from Stephen A. Lybarger, Deputy Comptroller Licensing, OCC, to Nathan McCauley, President & Director, Anchorage Trust Company, Application by Anchorage Trust Company, Sioux Falls, South Dakota to Convert to a National Trust Bank Application for Residency Waiver on January 13, 2021, at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6a.pdf; Letter from Stephen A. Lybarger, Deputy Comptroller Licensing, OCC, to Greg Gilman, Founder & Executive Chair Audaces Fortuna Inc., Application by Protego Trust Company, Seattle, Washington, to Convert to a National Trust Bank Application for Director Residency Waiver, February 4, 2021, at https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19a.pdf; Letter from Stephen A. Lybarger, Deputy Comptroller Licensing, OCC, to Daniel Burstein, General Counsel and Chief Compliance Officer, Paxos, Application to Charter Paxos National Trust, New York, New York OCC Control Number: 2020-NE-Charter-318305 OCC Charter Number: 25252, April 23, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-49a.pdf.

[91] Schwartz, Leo, Yahoo!finance, "Crypto bank Protego didn't meet all requirements for national trust charter, OCC says," March 17, 2023, at https://finance.yahoo.com/news/crypto-bank-protego-didn-t-165413484.html.

[92] OCC, "Details For OCC Control Number: 2020-NE-Charter-318305," last accessed on September 18, 2024, at https://apps.occ.gov/CAAS_CATS/CAAS_Details.aspx?FilingTypeID=2&FilingID=318305&FilingSubtypeID=1093. See also, Stephanie Murray, "Paxos's National Banking Charter Application Expired, But it May Try Again," *The*

(continued...)

recipient of an OCC-issued consent order in April 2022 regarding its failure to adopt an AML compliance program—is the only crypto firm to successfully convert from a conditional charter to a permanent trust bank charter from the OCC.[93]

These approvals all generally permitted the chartered entities to perform services associated with digital assets permitted of national banks, including custody of digital assets, and staking and governance services for digital assets.[94] The approvals came with various conditions, including that the firms limit their business to the operations of a trust company. For example, a charter might be conditional on the firm not accepting deposits.[95]

State Charters

Most states have separate licensing programs for nonbank financial firms.[96] This means crypto firms can operate at the state level as nonbank financial companies. However, they can also seek bank charters. Similar to the OCC, state jurisdictions offer a variety of bank charters, including trust charters. Some states have encouraged crypto firms to register in their states by creating special charters for crypto firms. Both New York and Wyoming have well-defined state regulatory frameworks for crypto, including in the form of limited or special purpose trust or depository charters (see the text box below). With difficulties in obtaining federal charters and encouragement from certain states, these state charters have proved to be the most successful way for crypto firms to obtain charters so far.

Firms with state charters would not necessarily be regulated by or need permission to operate from federal regulators, unless they wanted to take specific actions such as:

1. Accept customer deposits (which a limited or special purpose charter would often rule out), which would require FDIC insurance that would subject them to FDIC supervision;
2. Become members of the Federal Reserve system, which would subject them to Fed supervision; or
3. Obtain Fed master accounts, which requires approval by the Fed. Although they would not be regulated by the Fed, they would have to demonstrate to the Fed that they did not pose a risk to the payment system, the Fed, or the broader financial system, to gain approval.

If a state chartered crypto firm did have a primary federal regulator, then it would become subject to federal regulation, including ones discussed above such as limits on permissible activities.

Block, April 7, 2023, at https://www.theblock.co/post/225442/paxos-national-charter-application-expired?modal=newsletter.

[93] OCC, *OCC Issues Consent Order Against Anchorage Digital Bank*, April 21, 2022, at https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-41.html?ref=community.cable.tech.

[94] *Staking* refers to the practice in "proof of stake" blockchain consensus mechanisms whereby validators of blockchain transactions lock a certain quantity of a digital asset as a pledge that they will follow certain protocols. Failure to follow such protocols could lead to seizure of these assets.

[95] OCC, Conditional Approval #1261, February 25, 2021, p. 3, at https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/ca1261.pdf.

[96] For example, money transmitters are registered as money services businesses. For more on nonbank money services registration, seeCRS Report R46486, *Telegraphs, Steamships, and Virtual Currency: An Analysis of Money Transmitter Regulation*, by Andrew P. Scott.

Banking Charters in New York and Wyoming

New York

As of March 2024, twelve entities held limited purpose trust charters in New York.[97] Limited purpose trust charters are one of three designations that crypto companies can hold in New York State, in addition to virtual currency license and money transmitter licenses. According to the New York State Department of Financial Services—the agency that regulates crypto firms and other financial institutions—the informational criteria and application process requirements for limited purpose trust charter are similar to those of full services bank or trust company charters, except that limited purpose trust charters are not required to have a "minimum level of capitalization or FDIC insurance."[98] Limited purpose trust companies usually cannot take deposits or offer loans, except as arising from the exercise of fiduciary duties. Once the company is established, the New York State Department of Financial Services sets its minimum capital levels.

Wyoming

In Wyoming, special depository institutions (SPDIs) are a recent concept devised by the Wyoming Banking Division to accommodate crypto. SPDIs are described by the Wyoming Banking Division as "fully-reserved banks that receive deposits and conduct other activity incidental to the business of banking, including custody, asset servicing, fiduciary asset management, and related activities."[99] To be a fully reserved bank, "SPDIs must also have their customer deposits of fiat currency at all times backed 100% or more by unencumbered liquid assets, which include U.S. currency and level 1 high-quality liquid assets."[100] The Division of Banking notes that "SPDIs will likely focus on digital assets, such as virtual currencies, digital securities and digital consumer assets," "may elect to provide custodial services for digital assets," and "may also conduct activity under Wyoming regulations tailored to digital assets, which address issues such as technology controls, transaction handling, and custody operations for digital assets."[101]

The Division of Banking has approved four SPDI charters, according to its website, but only two—Kraken and Custodia—have filed call reports in Wyoming this year so far. Custodia offers certain services that focuses on digital assets, such as custody. While Custodia had previously claimed to offer digital banking including deposits and payments, with eligibility "to connect directly with the Federal Reserve payment system, removing middlemen," its approval for a master account at the Federal Reserve was rejected (see "Fed Master Accounts") and it was reportedly required to rely on "go-between banking relationships."[102] In November 2024, the bank announced it had lost its banking partner, and would limit its activities.[103] Kraken offers fiat deposit accounts and qualified digital asset custody for institutional clients.

Fed Membership

State-chartered banks, including those with nontraditional charters, can apply to become state member banks, in which case the Fed would become their primary federal regulator. (All

[97] New York State Department of Financial Services, "Regulated Entities," press release, March 25, 2024, https://www.dfs.ny.gov/virtual_currency_businesses.

[98] New York State Department of Financial Services, "Organization of a Limited Purpose Trust Company," https://www.dfs.ny.gov/apps_and_licensing/banks_and_trusts/procedure_certificate_merit_trust_comp.

[99] Wyoming Division of Banking, "Special Purpose Depository Institutions," press release, September 23, 2024, https://wyomingbankingdivision.wyo.gov/banks-and-trust-companies/special-purpose-depository-institutions.

[100] Wyoming Division of Banking, "Special Purpose Depository Institutions." State law determines whether state-chartered banks are required to obtain FDIC deposit insurance. Under Wyoming law, "all banks, except special purpose depository institutions, shall obtain insurance of their deposits by the United States and shall subscribe for insurance of deposit accounts by the federal deposit insurance corporation (FDIC)." See Title 13, Chapter 1, Article 1 (13-2-103) of Wyoming Banks, Banking and Finance General Provisions, at https://wyoleg.gov/statutes/compress/title13.pdf.

[101] Wyoming Division of Banking, "Special Purpose Depository Institutions."

[102] Custodia, "About: Why customers prefer to deal with a real bank," last accessed on September18, https://custodiabank.com/about/. For bank partnerships, see Crystal Kim, "Unlikely Bedfellows Line Up Behind Custodia Bank," *Axios*, July 8, 2024 at https://www.axios.com/2024/07/08/federal-reserve-custodia-bank-don-verrilli-paul-clement.

[103] Kyle Campbell, "Custodia Battens Down Hatches As It Awaits Trump Crypto Pivot," *American Banker*, November 21, 2024, https://www.americanbanker.com/news/custodia-battens-down-hatches-as-it-awaits-trump-crypto-pivot. See also https://x.com/CaitlinLong_/status/1854735324141752598.

federally chartered banks are automatically members of the Fed, but the OCC is their primary regulator.) One benefit of a crypto firm becoming a state member bank is that it increases its likelihood of being granted a master account (discussed in the next section.)

Custodia (a Wyoming SPDI) applied to become a state member bank, stating in its application that it did not intend to seek federal deposit insurance. In 2023, the Fed denied Custodia's membership application. Some of the Fed's reasons for denial were specific to deficiencies it identified in Custodia's application, but some had broader implications for crypto firms becoming state member banks. In its denial, the Fed stated that Custodia had

> an unprecedented business model that presents heightened risks involving activities that no state member bank previously has been approved to conduct.… Given the speculative and volatile nature of the crypto-asset ecosystem, the Board does not believe that this business model is consistent with the purposes of the Federal Reserve Act.[104]

The denial also stated that

> the future earnings prospects of the business model that Custodia has proposed—that is, an uninsured, undiversified, crypto-asset-focused business model featuring a number of novel and untested activities posing heightened risks—is inconsistent with approval.[105]

Fed Master Accounts

Some crypto firms are interested in being granted Fed master accounts, which would provide direct access to the traditional payment system. (Without a master account, a payment must be routed through a bank with a master account to complete transactions with outside parties.)[106] In response to an increase in applications from crypto and other nontraditional banks, the Fed issued final guidance in August 2022 through the notice-and-comment process explaining how it would evaluate master account applications.[107] According to the guidance, by law, the Fed may grant master accounts only to firms that meet the statutory definition of *member bank* or *depository institution*.[108] For eligible institutions, applicants must be in compliance with relevant laws and regulatory requirements related to payments, AML, sanctions, and risk management, among others; be financially healthy; and not pose risk to the Fed or financial stability. For example, a master account holder would pose risk to the Fed if the Fed granted it access to intraday credit. Currently, the Fed offers intraday credit to eligible payment system participants when they have daylight overdrafts in their master accounts that potentially exposes the Fed to default losses.[109]

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[104] Federal Reserve System, "Custodia Bank, Inc. Cheyenne, Wyoming, Order Denying Application for Membership," January 27, 2023, https://www.federalreserve.gov/newsevents/pressreleases/files/orders20230324a1.pdf.

[105] Federal Reserve System, "Custodia Bank, Inc. Cheyenne, Wyoming, Order Denying Application for Membership."

[106] For more information, see CRS Insight IN12031, *Federal Reserve: Master Accounts and the Payment System*, by Marc Labonte.

[107] Federal Reserve, "Guidelines for Evaluating Account and Services Requests," 87 *Federal Register* 51099, August 19, 2022, https://www.federalreserve.gov/newsevents/pressreleases/files/other20220815a1.pdf.

[108] A small number of nonbank entities are explicitly permitted to have master accounts by law—designated financial market utilities, certain government-sponsored enterprises, the U.S. Treasury, and certain official international organizations.

[109] Federal Reserve System, *Overview Of The Federal Reserve's Payment System Risk Policy On Intraday Credit*, July 20, 2023, https://www.federalreserve.gov/paymentsystems/psr_relpolicies.htm. Currently, eligibility is limited to institutions that are eligible for discount window borrowing, in good financial condition, and in compliance with the Fed's payment system policy. Some other master account holders may access intraday credit subject to a penalty fee. In addition, institutions may have occasional overnight overdrafts subject to a penalty fee. Some have questioned whether risks to the Fed could be avoided by prohibiting these firms from accessing intraday credit. See Davis Polk, *District* (continued...)

Assuming an applicant is legally eligible, the final guidance separates applicants into three tiers, with each tier receiving progressively more scrutiny before approval. Applicants that are federally insured depository institutions receive the least scrutiny, institutions that are not federally insured but are subject to prudential supervision by federal banking agencies or have holding companies that are supervised by the Fed receive more scrutiny, and eligible institutions with a state or federal charters that do not meet the criteria above (federally insured deposits, federal prudential supervision, or a holding company supervised by the Fed) receive the most scrutiny. The Fed's rationale for this tiered application process is based on how closely regulated the institution is federally and how much information is available to the Fed about the institution.

Two applicants have had their requests for master accounts rejected since December 2022—Custodia and a fintech firm. In addition, at least two crypto firms (Kraken Financial and Protego) have applications currently pending and three have withdrawn their applications (Bankwyse, Commercium Financial, and Paxos).[110] Kraken, Bankwyse, and Commercium Financial have Wyoming SPDI charters, Protego has a Washington state trust charter, and Paxos has a New York limited purpose trust charter.[111]

Custodia has filed a lawsuit against the Fed for rejecting its master account application.[112] Custodia lost its case in District Court, but has appealed the case to the Court of Appeals in 2024.[113] The District Court found that the Fed has discretion to reject applicants:

> [U]nless the Federal Reserve Banks possess discretion to deny or reject a master account application, state chartering laws would be the only layer of insulation for the U.S. financial system. And in that scenario, one can readily foresee a 'race to the bottom' among states and politicians to attract business by reducing state chartering burdens through lax legislation, allowing minimally regulated institutions to gain ready access to the central bank's balance sheet and Federal Reserve services. As [the Federal Reserve Bank of Kansas City] accurately notes, '[t]he Wyoming Division of Banking …has many purposes and aims, but protecting the national financial system and implementing national monetary policy are not among them…. States lack not only the mission but also the resources to protect national interests.'[114]

In the context of crypto applicants, there is a policy tradeoff between the desire to foster innovation and mitigate risks—which may be poorly understood—to the Fed and financial stability posed by innovation. The lack of an explicit, comprehensive federal regulatory system for payments leaves the Fed reliant on rules within the payment systems it operates and federal regulation of banks to manage payment risks.[115] At the same time, the dual state-federal banking

courts refuse to order Federal Reserve to grant master accounts to Custodia and PayServices, April 10, 2024, https://www.davispolk.com/insights/client-update/district-courts-refuse-order-federal-reserve-grant-master-accounts-custodia.

[110] CRS search of Fed master accounts database at https://www.federalreserve.gov/paymentsystems/master-account-and-services-database-access-requests.htm.

[111] Bank Reg Blog, "Talking Tier 3 Master Account Requests," June 17, 2023, https://bankregblog.substack.com/p/talking-tier-3-master-account-requests.

[112] Kyle Campbell, "Custodia Amends Fed Lawsuit, Alleges 'Coordinated Effort' to Deny Master Account," *American Banker*, February 17, 2023, https://www.americanbanker.com/news/custodia-amends-fed-lawsuit-alleges-coordinated-effort-to-deny-master-account.

[113] https://www.courtlistener.com/docket/68486662/custodia-bank-v-federal-reserve-board-of-governors/.

[114] United States District Court District Of Wyoming Custodia Bank, Inc., Plaintiff, v. Federal Reserve Board Of Governors, And Federal Reserve Bank Of Kansas City, Case No. 22-Cv-125-Sws, March 29, 2024, https://storage.courtlistener.com/recap/gov.uscourts.wyd.61107/gov.uscourts.wyd.61107.317.0.pdf.

[115] There are a limited number of federal laws pertaining to payments, most dealing with consumer protection issues or (continued...)

system can result in limited federal oversight when a state-chartered institution does not have federal deposit insurance.[116] As a result, the Fed could find itself with limited ability to monitor or mitigate risks after a master account has been granted to an institution with no primary federal regulator.

Policy Issues

Legislation or Deference to Regulators?

Bank regulators can dictate—and have dictated—the permitted level of bank involvement in crypto markets under their existing statutory authority. If Congress believes this authority is sufficiently flexible, it may wish to continue to defer to the regulators—it is the sort of "in the weeds" policymaking on which Congress often (but not always) defers to regulators. However, leadership at the bank regulators may have different appetites than Congress toward the risk-innovation tradeoff posed by crypto, in which case Congress might legislate to change the current permitted level of bank involvement. In addition, leadership changes can result in policy changes, and previous personnel changes have resulted in significant policy changes for banking and crypto. If Congress wishes to lock in a given level of bank involvement in crypto markets—anywhere on the spectrum from a total ban to unlimited involvement—and avoid regulatory u-turns, it can do so through legislation.

The debate about whether and to what extent banks should be allowed to participate in crypto markets is a subset of the broader debate about how crypto markets should be regulated. In the absence of an overarching statutory framework, various financial market regulators have taken an ad hoc, uncoordinated (between agencies), and piecemeal approach to regulating crypto based on existing authority that predates the invention of crypto. To some, the (now-rescinded) SEC Accounting Bulletin 121 (SAB–121, see **Appendix B** for more information) provides an example of the uncertainty that can prevail when there is a lack of coordination and harmonization among regulators. If publicly-listed banks had been required to follow SAB-121, it would have triggered capital requirements that likely would have made custodying of crypto economically infeasible. Although this bulletin had major implications for bank regulatory policy, it was not authored jointly with the bank regulators, and was subsequently addressed through case-by-case exemptions.

The crypto industry has achieved rapid growth under this ad hoc approach, but legislation could impose a unified blueprint of how crypto markets would function and be regulated. Legislation could create a framework where crypto is officially encouraged or limited in the conventional financial system. As the industry evolves and leadership at the regulators changes, an ad hoc approach is likely to continue to evolve in unpredictable ways. Congress could decide where banks fit within that framework. Even if Congress implements a broader regulatory framework, it may still decide to defer to bank regulators on finding the right balance for bank involvement.

Absent policy changes (via legislation, rulemaking, or de facto changes through enforcement) by others, bank regulators have no jurisdiction to tackle the safety and soundness, consumer protection, AML, and financial stability risks in underlying crypto markets. Former Fed Vice

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preventing illicit activity. The Fed manages payment system risk, in part, through its own policy. See Federal Reserve, *Policy on Payment System Risk*, March 19, 2021, https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.

[116] State-chartered depository institutions with federal insurance are subject to federal regulation comparable to nationally chartered institutions. For more information on charters, see CRS Report R47014, *An Analysis of Bank Charters and Selected Policy Issues*, by Andrew P. Scott.

Chair Brainard argued, "It is important for banks to engage with beneficial innovation and upgrade capabilities in digital finance, but until there is a strong regulatory framework for crypto finance, bank involvement might further entrench a riskier and less compliant ecosystem."[117] There is no way to eliminate risks posed by some products that are inherently volatile, pseudonymous, and decentralized, so a legislative framework does not ensure that the conditions for compatibility with bank regulatory mandates would be met.

Sometimes regulators or Congress decide that the risk-benefit trade-off of an activity is not favorable and impose blanket bans on bank participation in certain activities or asset classes. For example, they could determine that crypto is not a legally permissible activity for banks. Alternatively, regulators or Congress could set regulatory requirements around crypto that make it attractive or unattractive for bank participation. When an activity is highly risky, regulators can permit it but set the cost of regulatory compliance unattractively high. For example, capital standards on crypto exposures could be set high enough to absorb large potential losses—at some point those requirements would be too high for the exposures to be financially viable.[118] However, attempting to calibrate bank use of crypto through regulation in the absence of a broader legal framework might still leave banks in the position of engaging in activities involving assets whose underlying legal status remains unclear.

A downside to a blanket ban is that some activities pose different risks and benefits and have a different relationship to the core business of banking than others. For example, custody services for crypto could be viewed as a natural extension of other bank custody activities and do not expose a bank to losses when prices fall (although it still entails other risks), as opposed to, say, trading crypto. Direct bank exposure to crypto poses different risks than facilitating customer activity does. Some activities, such as stablecoin issuance, may be more likely to receive federal safety net protection—explicitly through deposit insurance or because a run may lead to emergency federal guarantees or backstops.[119] Instead of regulating crypto uniformly, Fed Vice Chair Barr has called for ensuring that "crypto activity inside banks is well regulated, based on the principle of same risk, same activity, same regulation, regardless of the technology used for the activity."[120]

One key question is whether a regulatory distinction should be made between bank involvement with outside crypto products and banks' use of some of the underlying technology, such as blockchain technology, to develop their own products. FDIC Vice Chair Hill has argued that bank regulators "need to distinguish between 'crypto' and the use by banks of blockchain and distributed ledger technologies. I do not think banks interested in the latter, insofar as it simply represents a new way of recording ownership and transferring value, should need to go through the same [regulatory] gauntlet as banks interested in crypto."[121] The possibilities for crypto and banking need not be binary. Bank regulators can, and have, considered activities on a case-by-case basis, and their views have evolved as leadership has changed.

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[117] Fed Vice Chair Lael Brainard, "Crypto-Assets and Decentralized Finance through a Financial Stability Lens Speech," *Federal Reserve*, July 8, 2022, https://www.federalreserve.gov/newsevents/speech/brainard20220708a.htm.

[118] For an explanation, see the "Basel Standards" section above.

[119] In considering the likelihood that assistance would be offered, it can be noted that the federal government and banking regulators have repeatedly offered emergency guarantees and backstops to previously unprotected financial institutions, markets, or products during the 2008 financial crisis and the COVID-19 pandemic, and shielded banks from new sources of losses during the 2023 large bank failures.

[120] Fed Vice Chair for Supervision Michael S. Barr, Speech, September 7, 2022, https://www.federalreserve.gov/newsevents/speech/barr20220907a.htm.

[121] FDIC Vice Chair Hill, Speech, March 11, 2024, https://www.fdic.gov/news/speeches/2024/spmar1124.html.

Finally, evaluating the utility of congressional action is hindered by the limited transparency on bank involvement in crypto activities, as discussed above.[122] Congress could require a study by the bank regulators, the regulators' Inspectors General, or the Government Accountability Office if it wished to better understand the scope and the magnitude of the relationship.

Crypto and the Dual Banking System

Absent federal legislation, crypto is likely to keep encroaching on banking through state policy, including by states granting banking charters to crypto firms. States may have different policy objectives than the federal government that lead them to encourage crypto in banking, and currently do not have the same resources, incentive, or technical sophistication to regulate it. There are entry points that give federal policymakers jurisdiction to regulate state-chartered banks—namely, if those banks seek deposit insurance, membership in the Federal Reserve system, or direct access to the Fed's payment system through a master account. (Access to a master account does not grant the Fed regulatory jurisdiction, but does allow it to impose stipulations on the account holder.) When they have jurisdiction, federal regulators can effectively preempt state policies that are inconsistent with federal regulation. Currently, federal regulators have limited jurisdiction over state-chartered banks willing to forgo those entry points, however, although federal AML law applies. In that case, whether it is still a concern for federal policymakers is open to debate. For example, such a firm's interconnectedness with the banking system is limited.

Crypto and the Bank Regulatory Perimeter

Questions about crypto and banking can be viewed through the lens of a longstanding debate about which side of the bank "regulatory perimeter" financial activities should happen on. With the exception of insured deposits, many financial activities can potentially be undertaken by banks (and other financial institutions directly supervised for safety and soundness) or nonbank financial firms—hence, similar activities can take place on either side (or both sides) of the perimeter, and may be regulated differently depending which side of the perimeter they take place on.[123]

On one side of the debate, it is argued that risky products should be kept outside of the bank regulatory perimeter, where the risks they pose are less likely to cause broader financial instability or trigger taxpayer bailouts, directly or through access to the federal safety net. Risks posed by crypto may have no implications for financial stability if kept outside of the banking system, but bank failures are a known source of financial instability, so crypto losses could be a source of systemic risk if brought inside the regulatory perimeter. Welcoming a product inside the regulatory perimeter could also give banks, consumers, and investors the false impression that the product is safer than it is, increasing potential risks.

On the other side of the debate, it is argued that risks posed by products can be better managed by banks with sophisticated risk management controls closely overseen by federal supervisors

[122] CRS did not locate any data or descriptive information from the three banking regulators on bank involvement in crypto. As noted above, the FDIC's inspector general has included (but is not required to include) the total number of FDIC-insured institutions that had ongoing or planned crypto asset activities. See FDIC Office of Inspector General, *Top Management and Performance Challenges Facing the Federal Deposit Insurance Corporation*, February 2024, at https://www.fdicoig.gov/sites/default/files/reports/2024-05/TMPC-Final-Feb24%20508%20Compliant.pdf.

[123] Nicholas K. Tabor, Katherine E. Di Lucido, and Jeffery Y. Zhang, *A Brief History of the U.S. Regulatory Perimeter*, Federal Reserve Finance and Economics Discussion Series (FEDS), August 2021, https://www.federalreserve.gov/econres/feds/a-brief-history-of-the-u-s-regulatory-perimeter.htm.

experienced in containing risk. Former Comptroller of the Currency Hsu asserted, "Today no crypto firm is subject to comprehensive consolidated supervision. This means that there are gaps in supervision, and risks can build out of the sight and reach of regulators."[124] Thus, it is argued, welcoming a product inside the regulatory perimeter can better contain risks and crowd out bad actors. (Taking this argument to its extreme, some argue that certain activities, such as stablecoin issuance, should be done only by banks or entities regulated by federal bank regulators.[125]) This supposes that banks and their regulators are effective at managing novel risks, which some would dispute given repeated bank scandals and failures in recent decades.

Arguments are also made by both sides of the debate about competition, with banks arguing that they cannot compete with other financial institutions unless they are allowed to enter new financial markets, and other financial institutions arguing that banks should be kept out because they have an unfair advantage due to their access to federal backstops or, in the case of the largest banks, their perceived "too big to fail" status.[126] Crypto markets have flourished with minimal bank involvement thus far, but banks have access to a large pool of capital that could potentially expand the size and reach of crypto markets.

Risk is not the only factor to consider when deciding whether an activity belongs inside or outside the regulatory perimeter. Banks can operate only with a charter, are highly regulated, and receive access to federal backstops because of the importance of banking to the financial system, the economy, and consumers. The reason banks are limited to activities that are related to the "business of banking" is the idea that these activities help banks better perform their core functions. No bright philosophical line can be drawn on what fits within the scope of the business of banking. If crypto is not considered to be a financial activity that generates credit for U.S. businesses and households or provides any social value, it is not within the business of banking.[127] If crypto (or any given crypto-related activity) is considered to be applying new technology to traditional banking services, it is within the business of banking.

A key question about bringing any activity within the regulatory perimeter is whether it will then implicitly (e.g., by increasing the probability of bank failures) or explicitly (e.g., through deposit insurance or discount window access) increase taxpayer exposure through the federal safety net. One option currently used for some other non-bank products is to isolate those activities in separate legal subsidiaries through an FHC or a financial subsidiary. This provides some, but not complete, protection of the insured depository institution from financial losses, while offering

[124] Acting Comptroller Michael J. Hsu, Remarks before the Federal Reserve Bank of Philadelphia Fifth Annual Fintech Conference, November 16, 2021, https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-117.pdf.

[125] For example, a 2021 report issued by the Treasury and regulators called for legislation allowing only insured depositories to issue payment stablecoins. Today, stablecoins available to consumers are generally issued by nonbanks. Other proposals call for banks to issue payment stablecoins in competition with nonbank issuers. Under existing authority, bank regulators may be able to allow banks to issue payment stablecoins but could not prevent nonbanks from issuing them. See President's Working Group on Financial Markets, *Report on Stablecoins*, November 2021, https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf. See also Wilmarth, Arthur E. Jr., "We Must Protect Investors and Our Banking System from the Crypto Industry," Washington University Law Review, vol. 101, no. 1, 2023, pp. 235-326.

[126] A bank is considered "too big to fail" if its failure could lead to financial instability. See CRS In Focus IF12755, *"Too Big to Fail" Financial Institutions: Policy Issues*, by Marc Labonte.

[127] For example, one law professor argued that the main purpose of the crypto industry—to speculate on changes in the price of crypto—is akin to gambling, and gambling is not considered to be a financial activity or related to the business of banking. It is a legal and legitimate industry, but it is not regulated as a financial product or covered by financial laws, such as consumer protection laws. Like gambling, he calls for a total separation of crypto services from regulated financial institutions. See Todd H. Baker, "Let's Stop Treating Crypto Trading as If It Were Finance," CLS Blue Sky Blog, November 29, 2022 https://clsbluesky.law.columbia.edu/2022/11/29/lets-stop-treating-crypto-as-if-it-were-finance/.

some of the benefits to banks and their customers of integration. But if crypto products cannot meet the safety and soundness test for bank approval, then FHCs and financial subsidiaries are also prohibited from engaging in activities that are not safe and sound, lest they undermine the financial health of their bank affiliates.[128]

Crypto and AML Policy

All financial institutions are subject to BSA/AML laws and their implementing regulations, which include "Know Your Customer" and customer identification programs, reporting, and record keeping requirements.[129] BSA/AML requirements of banks, money services businesses (as many crypto firms are licensed), and other financial institutions are roughly similar.[130] There is a perception, however, that compliance among crypto firms is considerably weaker than more traditional firms.[131] In addition, it is practically difficult to apply BSA/AML laws, as currently configured, to transactions conveyed across public blockchains—referred to as "on-chain activity"—as it is pseudonymous and permissionless.[132] Users are not identified by their real names and do not register with government issued identification, and the only binding constraint on interaction with the network is access to an internet connection and certain software. For these reasons, while certain entities operating in this manner are subject to BSA/AML requirements, a 2023 Treasury report characterizes compliance and enforcement as incomplete.[133] In addition, touchpoints between public blockchains and the formal financial system (the so called on- and off- ramps between hosted and unhosted wallets) are not regulated.

Such perceptions and practical considerations may create impediments to bank BSA/AML compliance or introduce risks should banks choose to partner with or acquire crypto firms or otherwise engage with pseudonymous blockchain based cryptocurrencies. In light of such potential impediments, regulators or legislators may face the need to assess what level of operational risk inherent in these various functions should be welcomed into the banking system.

Stablecoins

Among various types of digital assets, stablecoins hold the greatest potential for use in payments outside of crypto trading because of their relatively stable value, which would give them a direct

[128] 12 U.S.C. 1843(k).

[129] The Bank Secrecy Act (12 U.S.C. 1951 et seq. and 31 U.S.C. 5311 et seq.) is the framework of laws that aims to reduce money-laundering and the financing of terrorism by requiring financial institutions to adopt a series of risk-based programs.

[130] In a 2019 guidance document, FinCEN addressed how BSA/AML rules are applicable to crypto firms. FinCEN, *FIN-2019-G001, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, May 9, 2019, at https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.

[131] See for example OCC, *OCC Issues Consent Order Against Anchorage Digital Bank*, April 21, 2022, https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-41.html. U.S. Department of Justice, "Binance and CEO Plead Guilty to Federal Charges in $4B Resolution," *Press Release,* November 21, 2023, at https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution.

[132] See "On-Chain Transactions" section from CRS Report R47425, *Cryptocurrency: Selected Policy Issues*, by Paul Tierno.

[133] For requirements of decentralized (on-chain) applications, see FinCEN, *FIN-2019-G001, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, May 9, 2019. For compliance and enforcement, see U.S. Treasury, *Illicit Finance Risk Assessment of Decentralized Finance,* April 2023, pp. 1 and 16, at https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf.

overlap with the business of banking.[134] They also pose the greatest potential systemic risk if their use were ever to become widespread—their commitment to maintain a stable value creates run risk because any stablecoin holder that can sell before the peg to the dollar (or other currency) breaks will avoid losses. Bank regulators are experienced at addressing run risk because uninsured depositors also face similar incentives to run if they think a bank might fail.

There is currently no federal regulatory framework specific to stablecoins. Stablecoin operators are currently required to register with FinCEN and may be subject to state money services business regulations that are not comparable to bank regulation. Their potential use in payments and the presence of run risk has resulted in a robust debate about whether stablecoins belong inside or outside the bank regulatory perimeter—or both. Policy questions include (1) should stablecoins be issued by banks or nonbanks or both?[135] (2) should they be subject to bank-like regulation and should they be under the jurisdiction of the bank regulators? (3) what legal separation should exist between stablecoins and their issuers? (4) and should they be federally insured?

Some of the issues policy makers may consider when determining whether stablecoins should be issued by banks or nonbanks include the fact that they may subject to runs; allowing banks to issue them would expand the regulatory perimeter; bank regulation involves institution-based prudential supervision that does not currently apply to stablecoins and is not found in some other financial markets; and stablecoin issuers may face challenges implementing AML requirements effectively.

According to the Financial Stability Oversight Council's 2024 Annual Report, stablecoins remain "acutely vulnerable to runs."[136] For example, during a liquidity crisis at Silicon Valley Bank in 2023, Circle's stablecoin USDC fell to $0.88 when the market learned that Circle had deposited $3.3 billion (more than 7.5%) of USDC reserves into the bank.[137] For bank deposits, run risk is

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[134]" Christopher J. Waller, *Centralized and Decentralized Finance: Substitutes or Complements?*, Federal Reserve, October 18, 2024, https://www.federalreserve.gov/newsevents/speech/waller20241018a.htm: "If appropriate guardrails can be erected to minimize run risk and mitigate other risks, such as their potential use in illicit finance, then stablecoins may have benefits in payments and by serving as a safe asset on a variety of new trading platforms."

[135] Some banks already issue *tokenized deposits*—bank deposits that can be accessed and used on privately-controlled blockchains—that, like stablecoins, may facilitate payments. This raises the issue of whether there is a significant difference between tokenized deposits and stablecoins. This is a matter of convention and interpretation. Some commentators apply axioms about the traditional financial world to the world of crypto, implying bigger differences. In research, the Bank for International Settlements suggests that tokenized deposits are distinguished from stablecoins because they would settle with central bank money, participants with access to deposits that settle using interbank transfers and central bank money have access to credit from the institution, and tokenized deposits do not trade the way stablecoins do on a secondary market.

However, there is not a broader formal legal definition or formal set of legal requirements for stablecoin issuers. Purely by convention, stablecoins issuers hold certain assets—which have recently become composed of higher quality—against which they issue stablecoin liabilities at a 1:1 ratio with an underlying asset, such as the U.S. dollar. While stablecoins are traditionally issued by nonbanks, and only banks are able to hold (tokenized) deposits, the former condition is purely a function of circumstance.

[136] Financial Stability Oversight Council, *2024 Annual Report*, p. 8, December 6, 2024, https://home.treasury.gov/system/files/261/FSOC2024AnnualReport.pdf.

[137] Gracy Chen, "USDC Depegged Because of Silicon Valley Bank, but It's Not Going to Default," *Coin Telegraph*, March 13, 2023, at https://cointelegraph.com/news/usdc-depegged-but-it-s-not-going-to-default; and Circle Internet Financial LLC, "Independent Accountants' Report and USDC Reserve Report," p. 2, March 31, 2023, https://6778953.fs1.hubspotusercontent-na1.net/hubfs/6778953/USDCAttestationReports/2023/2023%20USDC_Circle%20Examination%20Report%20March%202023.pdf ; and https://x.com/jerallaire/status/1634650306234515460?s=20. The figure of $3.3 billion is based on the tweet. The percentage of greater than 7.4% was calculated using $3.3 billion (from the referenced tweet) as a share of $43.744 billion of USDC in circulation as of March 6, 2024, from page 2 of the March 31, 2023, attestation.

mitigated through liquidity regulation, deposit insurance, and access to the discount window. If these policies are not applied to stablecoins—whether they are issued by banks or nonbanks—they will remain subject to heightened run risk and a potential source of instability and potential contagion. At present, this run risk may be exacerbated by severe concentration—nearly 70% of the market is dominated by one stablecoin issuer—which could amplify runs, and disrupt crypto and traditional markets.[138] On the other hand, permitting banks to operate stablecoins would also expand the regulatory perimeter. Extending the federal safety net to stablecoins would create new taxpayer exposures. To the extent stablecoins are used in crypto transactions, stablecoins could introduce volatility and risk into the banking system.

Bank deposits are protected up to $250,000 by the Deposit Insurance Fund. The FDIC oversees the fund. The FDIC has issued an advisory clarifying that deposit insurance does not apply to digital assets.[139] However, the President's Working Group on Financial Markets Report on Stablecoins suggested that "with respect to stablecoin issuers, legislation should provide for … potentially, access to appropriate components of the federal safety net," which may include FDIC insurance.[140] Legislators may therefore consider whether deposit insurance would apply to stablecoins issued by banks, if permitted, and whether to extend insurance to nonbanks. If legislation were to omit stablecoins from deposit insurance protection, Congress may consider what priority to give stablecoin holders in the event of a failure.[141] Congress could also consider what role the existence or absence of deposit insurance guarantees may have on issuers' decisions when selecting among potential types of licensure/charters; competition among issuers with different licenses; moral hazard and the need for safety and soundness regulations to protect the deposit insurance fund; and consumers' decision-making when choosing among stablecoins. Similarly, access to deposit insurance may influence legislation or regulation regarding whether stablecoins backed by deposit insurance need to have 100% reserves.

Finally, current stablecoin arrangements create relatively weak AML controls compared to banks. While stablecoin operators and exchanges are required to implement BSA/AML rules, their implementation has been criticized as lax (see "Crypto and AML Policy" above). Moreover, stablecoins can be off-ramped to self-custody wallets where their use is subject to fewer checks. If banks were to issue stablecoins, uploading and downloading bank-issued stablecoins to unhosted wallets where they could be used on public blockchains and exchanged among users that have not been identified or checked for money laundering concerns is inconsistent with existing bank regulation and would likely need to be reconsidered.

Whether stablecoin operators should be subject to bank-like regulation and be under the jurisdiction of bank regulators depends to some extent on their level of adoption for payments and therefore the level of risk they may introduce to the payments and broader financial landscape. While stablecoins "have a relatively small footprint in the U.S. economy," according the Fed, the

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[138] Financial Stability Oversight Council, *2024 Annual Report*, p. 8. As of December 6, 2024, Tether's market capitalization was $136.9 billion of a total stablecoin market capitalization of $202.2 billion, according to https://www.coingecko.com/en/categories/stablecoins.

[139] FDIC, *Advisory to FDIC-Insured Institutions Regarding Deposit Insurance and Dealings with Crypto Companies*, July 20, 2022, at https://www.fdic.gov/news/financial-institution-letters/2022/fil22035.html.

[140] President's Working Group on Financial Markets, FDIC, and OCC, *Report on Stablecoins*, p. 16, November 1, 2021, https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf.

[141] In a bank resolution, the FDIC guarantees insured deposits at insured depository institutions up to the $250,000 limit. If the resolved bank has any retained net worth, deposits above the insurance limit are repaid before secured creditors, who are repaid before unsecured creditors. If uninsured, stablecoin holders would face lower potential losses if they were secured creditors—secured by the assets backing the stablecoin and segregated from the rest of the company—than if they were unsecured creditors.

risk to financial stability could increase if they scaled significantly.[142] This potential—along with aforementioned concentration risk implies that current regulation outside of the bank regulatory framework, with few disclosure requirements and no prudential requirements—may be inadequate to address potential associated risks.

The status quo and bank regulation are not the only two options for regulating stablecoins. For example, money market mutual funds aim to maintain a stable $1 value of shares and are regulated by the SEC without explicit access to the federal safety net, providing one alternative regulatory model to banking. Money market mutual funds are not federally insured and are fully backed by liquid, low-risk assets, but have still occasionally faced runs that have resulted in ad hoc emergency federal support to stabilize financial markets.[143]

Legislative Action in the 118th Congress

Several bills regarding crypto were introduced in the 118th Congress. This section discusses the provisions relevant to banking for bills involving crypto that passed one chamber or were reported out of committee.

Crypto Regulatory Framework

On May 22, 2024, the House passed H.R. 4763, the Financial Innovation and Technology for the 21st Century Act, which would have created an overarching framework for the regulation of crypto, with the CFTC and SEC splitting regulatory responsibilities depending on an asset's level of decentralization. Among other things, it would have confirmed that banks may provide custody services for crypto and other digital assets and prohibit the bank regulators from imposing capital requirements that would discourage banks from offering custody services for crypto.[144] The bill would also have permitted banks to act as digital asset clearing agencies.

Stablecoins

Some Members of Congress from both parties on both the House Financial Services Committee and the Senate Banking Committee, as well as the Treasury and banking regulators,[145] have called for legislation to regulate payment stablecoins. However, there is disagreement on how to regulate them and what types of firms should be allowed to issue them. H.R. 4766, the Clarity for Payment Stablecoins Act of 2023, was reported by the House Financial Services Committee on May 7, 2024.[146] It would have provided a regulatory framework specific to payment stablecoins. The bill would have allowed banks and credit unions to issue stablecoins through subsidiaries subject to federal regulations. Bank and credit union subsidiaries would have been under the

[142] Federal Reserve, *Financial Stability Report*, November 2024, p. 41, https://www.federalreserve.gov/publications/files/financial-stability-report-20241122.pdf; and Financial Stability Oversight Council, *2024 Annual Report*, p. 8.

[143] CRS Report R47309, *Money Market Mutual Funds: Policy Concerns and Reform Options*, by Eva Su

[144] For more information, see CRS Insight IN12223, *An Overview of H.R. 4763, Financial Innovation and Technology for the 21st Century Act*, by Paul Tierno and Eva Su.

[145] President's Working Group on Financial Markets, FDIC, and OCC, *Report on Stablecoins*, November 1, 2021, https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf.

[146] U.S. Congress, House Financial Services Committee, *Clarity For Payment Stablecoins Act of 2023*, 118th Cong., 2nd sess., May 7, 2024, H.Rept. 118-492, at https://www.congress.gov/congressional-report/118th-congress/house-report/492. An amendment in the nature of a substitute was ordered to be reported on July 27, 2024.

supervision of their primary regulators, including the Fed for state member banks. The bill would also have given the Fed rulemaking authority over nonbanks that issue stablecoins.

State regulators would presumably be permitted to approve state qualified payment stablecoin issuers[147] and be responsible for their supervision and enforcement, whereas the Fed would be responsible for writing regulations for these institutions. However, the bill would have given state regulators the option of ceding their supervision and enforcement authorities to the Fed. The Fed would also be allowed to take enforcement actions against state issuers in "exigent" circumstances, a term the Fed would be required to define within 180 days of the bill's enactment. It is unclear how the Fed's authority for rulemaking of state qualified payment stablecoins issuers would interact with a clause of the bill that would have granted state preemption of federal law.

Additional Legislation

The SEC's Office of the Chief Accountant (OCA) issued Staff Accounting Bulletin-121 (SAB-121) on safeguarding crypto (see **Appendix B** for more details). In response to a congressional request, the Government Accountability Office issued an opinion on October 31, 2023 determining that the bulletin met the definition of *rule* under the Congressional Review Act (CRA) and should have been submitted to Congress for review.[148] The House passed H.J.Res. 109 on May 9, 2024, to overturn SAB-121 under the CRA and the Senate passed it on May 16, 2024, but President Biden vetoed it on May 31, 2024. Efforts to overturn the veto failed in the House on July 11, 2024. The SEC issued SAB-122, rescinding SAB-121, on January 23, 2025.[149]

In July 2023, the Senate passed S.Amdt. 1000 to the National Defense Authorization Act for Fiscal Year 2024. The amendment would have required federal bank regulators, in conjunction with Conference of State Bank Supervisors, to institute risk-based crypto exams for financial institutions to assess "adequacy of reporting obligations and anti-money laundering programs," and "compliance of those institutions with anti-money laundering and countering the financing of terrorism requirements." Financial institutions, as defined in Title 31 of the *Code of Federal Regulations* and Title 31, Section 5312, of the *U.S. Code*—the sections of code and statute to which the amendment allude—include banks. As such, proposed risk focused exams would have applied to banks. The amendment was included in S. 2226, which was passed by the Senate on July 27, 2023. P.L. 118-31, the final version of the FY2024 National Defense Authorization Act, did not include this amendment language.

Concluding Observations

- The banking industry is tightly regulated due to its access to federal backstops and the potential to spread risk through financial system. Bank regulators tend to

[147] This is not explicit in the bill.

[148] U.S. Government Accountability Office, *Securities and Exchange Commission—Applicability of the Congressional Review Act to Staff Accounting Bulletin*, B-334540, October 31, 2023, https://www.gao.gov/products/b-334540. 5 U.S.C. §§801-808. The Congressional Review Act requires agencies to report the issuance of rules to Congress and provides Congress with special fast-track procedures to overturn a rule. For more on CRA and SAB-121, see CRS Insight IN12358, *Potential Disapproval of SEC Staff Accounting Bulletin No. 121 Under the Congressional Review Act*, by Maeve P. Carey, Andrew P. Scott, and Paul Tierno. For more on the CRA, including a summary of these fast-track procedures, see CRS In Focus IF10023, *The Congressional Review Act (CRA): A Brief Overview*, by Maeve P. Carey and Christopher M. Davis; and CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*, by Maeve P. Carey and Christopher M. Davis.

[149] Securities and Exchange Commission, "Staff Accounting Bulletin No. 122," January 23, 2025, https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122.

take a cautious approach when authorizing new activity, such as crypto operations. Potential concerns for policymakers include the safety and soundness of crypto activities, and exposure to volatility in crypto values. Further, several high-profile scandals involving collapses in crypto firms, crypto scams, and thefts point to the dangers that crypto could pose for banks and their customers if risks are not properly managed.

- Given the pseudonymous nature of cryptocurrency, AML/BSA compliance among crypto products can be difficult for financial institutions to achieve—and difficult for regulatory agencies to enforce.
- Absent policy changes (via legislation, rulemaking, or de facto changes through enforcement) by others, bank regulators have no jurisdiction to tackle the safety and soundness, consumer protection, AML, and financial stability risks in underlying crypto markets. Instead, regulators can only assess whether they believe banks can manage those risks effectively.
- Broadly, the openness of federal bank regulators to potential bank participation in crypto markets has waxed and waned in recent years in response to changes in agency leadership and crypto market events. Following the failure of one of the largest crypto exchanges (FTX) in 2022[150] and the liquidation of two banks (Silvergate and Signature) with crypto exposure in 2023, the bank regulators' approach to crypto arguably shifted from openness to greater caution and skepticism.
- A bank cannot engage in novel activities, unless it has gained approval from its primary regulator. Approval is based on two factors: (1) whether the activity legally is permissible and (2) whether it is compatible with the goals of bank regulation (e.g., whether it can be done in a safe and sound manner).
    - How agencies—particularly the OCC—have applied that reasoning has varied across leadership, shifting from approving a number of crypto activities to a requirement that banks seek approval before starting an activity. Although the regulators' official position in recent years was that activities will be approved if they can demonstrate that safety and soundness concerns are adequately addressed, one law firm characterized this position, with the exception of custody activities, as setting "such a high bar that banks have effectively been barred from engaging in most of these activities."
    - E.O. 14178's goal of promoting digital assets may mark the onset of another policy shift. Its practical ramifications for federal banking agencies have yet to be seen, but it explicitly called for ending bank de-risking for legitimate crypto firms and activities.
- State charters have proved to be the most successful way for crypto firms to enter banking so far. Firms with state charters would not necessarily be regulated by federal regulators if they did not accept deposits or seek Fed membership. Firms may desire a state charter to gain a Fed master account. The Fed may deny master account applicants, but does not gain regulatory jurisdiction over the firm by granting an account.
- There is little transparency on bank involvement in crypto activities (standard regulatory reporting does not provide this level of detail). Congress could require

[150] See CRS Insight IN12047, *What Happened at FTX and What Does It Mean for Crypto?*, by Paul Tierno.

a study by the bank regulators, the regulators' Inspectors General, or the Government Accountability Office if it wished to better understand the scope and the magnitude of the relationship.

- Whether it favors a permissive or restrictive approach, Congress can define the relationship between crypto and banking through legislation, potentially as part of broader legislation to create a regulatory framework governing crypto markets. Alternatively, it can continue to defer to the preferences of the bank regulators.

Appendix A. Basel Standards

One way that banks are regulated for safety and soundness is through capital requirements.[151] Through risk-weighted capital requirements, regulators attempt to match the amount of capital required to back an activity (called a "risk weight") to the riskiness of that activity. Although U.S. regulators have not yet determined under what circumstances banks could hold crypto assets on their balance sheets, the Basel Committee on Bank Supervision (an international forum to devise regulatory standards, often referred to as the "Basel Committee" or "BCBS") is in the process of formulating international capital standards for bank exposures to crypto. In 2022, the Basel Committee issued standards on the prudential treatment of bank exposures to crypto, with a planned implementation date that was extended until January 2026.[152] The standard included a new 1,250% risk-weight for crypto asset exposures, which would presumably disincentivize banks from holding too much crypto, as it would need to hold a dollar of capital for each dollar of exposure in most cases.[153] In July 2024, the Basel Committee published a disclosure framework for bank crypto-assets, as well as amendments to the 2022 standards mentioned above. The disclosure framework, if implemented in the United States, would require banks to disclose information on their crypto activities and their capital and liquidity requirements for crypto exposures. The amendments aim to clarify the criteria for certain regulatory treatments of stablecoins.[154]

Typically, U.S. bank regulators have implemented (modified versions of) Basel standards through the domestic rulemaking process. The U.S. regulators have been active participants in formulating these standards but, to date, have not indicated whether they intend to implement these standards (or modify them before implementing them) in the future.[155]

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[151] See CRS Report R47447, *Bank Capital Requirements: A Primer and Policy Issues*, by Andrew P. Scott and Marc Labonte.

[152] Skadden, Arps, Slate, Meagher & Flom LLP, "Bank Capital Standards for Cryptoasset Exposures Under the Basel Framework," August 12, 2024, at https://www.skadden.com/insights/publications/2024/08/bank-capital-standards-for-cryptoasset.

[153] One of the main capital requirements is that banks hold capital of at least 8% of their risk-weighted assets. As $1 of crypto would carry a 1,250% risk-weight, the bank would have to hold 8% of $12.50 in risk-weighted assets, or $1 in capital.

[154] BIS, "Basel Committee publishes final disclosure framework for banks' cryptoasset exposures and targeted amendments to its cryptoasset standard," July 17, 2024, at https://www.bis.org/press/p240717.htm.

[155] See Financial Stability Oversight Council, *Report on Digital Asset Financial Stability Risks and Regulation*, October 2022, https://home.treasury.gov/news/press-releases/jy0986; Michael J. Hsu, Acting Comptroller of the Currency, "Don't Chase," speech, October 11, 2022, https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-126.pdf. Acting Comptroller Hsu indicated that the standards would be relevant to the U.S. regulators only if it was "determined permissible for U.S. banks to bring crypto-assets or other crypto-asset exposures onto their balance sheets."

Appendix B. SEC Staff Accounting Bulletin 121 and 122

Publicly traded banks must comply with generally accepted accounting principles standards.[156] Responding to the influx of firms safeguarding platform users' crypto assets and maintaining crypto keys and other information necessary to access crypto assets, the SEC's Office of the Chief Accountant (OCA) issued Staff Accounting Bulletin-121 (SAB-121).[157] SAB-121 noted that the safeguarding service provided by firms involves "unique risks and uncertainties not present in arrangements to safeguard assets that are not crypto-assets," and seeks to provide clarity on how such businesses should account for that obligation. SAB-121 conveyed its view through a series of examples: the main one described an entity that operates a platform that allows its users to transact in crypto and also provides safeguarding services for crypto assets and crypto keys, as well as maintaining records of the amount of crypto held for the benefit of each platform user. SAB-121 states that, "as long as [the firm] is responsible for safeguarding the crypto-assets held for its platform users, including maintaining the cryptographic key information necessary to access the crypto-assets, the staff believes that [the firm] should present a liability on its balance sheet to reflect its obligation to safeguard the crypto-assets held for its platform users ... " and that "it would be appropriate for [the firm] to recognize an asset at the same time that it recognizes the safeguarding liability, measured at initial recognition and each reporting date at the fair value of the crypto-assets held for its platform users."[158] If publicly-listed banks had been required to follow SAB-121, it would have triggered capital requirements that likely would have made custodying of crypto economically infeasible. Formal guidance from bank regulators regarding implementation of SAB-121 was limited.[159]

As discussed in "Additional Legislation" in the report, the 118th Congress voted to rescind SAB-121, but did not successfully override the President's veto. Since then, in September 2024, the SEC's Chief Accountant addressed how "[i]n certain cases, entities have demonstrated how the specific risks and uncertainties involved in their fact patterns are different than those contemplated in SAB 121," and that the OCA "has not objected to an entity's conclusion that its

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[156] According to Hsu, there are currently over 600 publicly traded banks. Publicly traded banks are mostly larger banks. See OCC, "Acting Comptroller Issues Statement on the FDIC's Proposals Related to Change in Bank Control Act," News Release 2024-43, April 25, 2024, https://www.occ.gov/news-issuances/news-releases/2024/nr-occ-2024-43.html.

[157] According to its website, the OCA is "responsible for accounting and auditing matters arising in the Commission's administration of the federal securities laws, particularly with respect to accounting policy determinations." The OCA issues various forms of public guidance and communication, including Staff Accounting Bulletins; Staff Letters; Accounting, Auditing Enforcement Releases; and support documents regarding auditor independence. SABs "reflect the Commission staff's view regarding accounting-related disclosure practices," and are described as "interpretations and policies followed by the Division of Corporation Finance" and the OCA. See Securities and Exchange Commission, "Office of the Chief Accountant," accessed on May 6, 2024, https://www.sec.gov/page/oca-landing; Securities and Exchange Commission, "Office of the Chief Accountant"; and Securities and Exchange Commission, "Selected Staff Accounting Bulletins," accessed on May 6, 2024, https://www.sec.gov/regulation/staff-interpretations/accounting-bulletins.

[158] Securities and Exchange Commission, Staff Accounting Bulletin No. 121, April 11, 2022, at https://www.federalregister.gov/documents/2022/04/11/2022-07196/staff-accounting-bulletin-no-121.

[159] The Federal Financial Institutions Examination Council, a standard-setting body for the federal banking regulators, noted that the banking agencies are reviewing SAB-121's implications for how banks should file relevant regulatory data, and stated that in the meantime, banks should file their call reports consistent with the bulletin's guidance, if they believe it is "appropriate" to do so. Federal Financial Institutions Examination Council, *Supplemental Instructions—June 2022 Call Report Materials*, *Second 2022 Call*, *Number 300*, June 30, 2022, at https://www.fdic.gov/sites/default/files/2024-03/fil22029a.pdf. Call Reports are reports required to be completed by banks on a quarterly basis that include balance sheet and income statement details and bank financial condition.

arrangement was not within the scope of SAB 121 and that it should not recognize a liability for an obligation to safeguard crypto-assets held for others." [160] The OCA noted that the non-objections were based on specific fact patterns, including for certain holding companies and brokers and dealers, and that it may not make the same conclusions for cases with different fact patterns.[161] According to press reports, BNY was one of the financial institutions to receive a waiver from SAB-121 (See "Providing Custody Services" above.)[162]

The SEC issued SAB-122, rescinding SAB-121, on January 23, 2025.[163] Nevertheless, it is illustrative of two broader points about crypto and banking policy. First, other regulators can sometimes influence bank regulatory policy without the formal involvement of the bank regulators. Second, the episode provides an example of the uneven and sometimes disjointed guidance banks have received from regulators.

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[160] Paul Munter, *Remarks before the 2024 AICPA and CIMA Conference on Banks and Savings Institutions: Accounting for Crypto-Asset Safeguarding Obligations—A Facts-Based Analysis*, SEC, September 9, 2024, at https://www.sec.gov/newsroom/speeches-statements/munter-speech-safeguarding-crypto-assets-09-09-24.

[161] Paul Munter, *Remarks before the 2024 AICPA and CIMA Conference on Banks and Savings Institutions: Accounting for Crypto-Asset Safeguarding Obligations—A Facts-Based Analysis*. The speech also highlighted how it is conceivable that some covered institutions' uses of distributed ledger technology felt outside the remit of SAB-121.

[162] Jason Brett, "BNY Identified as First Bank to Receive SEC Exemption From SAB 121," *Unchained*, September 20, 2024, at https://unchainedcrypto.com/bank-of-new-york-mellon-identified-as-first-bank-to-receive-sec-exemption-from-sab-121/.

[163] Securities and Exchange Commission, "Staff Accounting Bulletin No. 122," January 23, 2025, https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122.

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