Katten

FINANCIAL MARKETS AND FUNDS ADVISORY

Banking Agencies Begin Publishing Updated Crypto Guidance

April 2, 2025

On March 28, the Federal Deposit Insurance Corporation (FDIC) rescinded Biden administration guidance[1] related to state-chartered banks' participation in "crypto-related activities" and published a new interpretation of the scope of permissible crypto activity for the insured depository institutions for which it is the primary regulator (the Crypto Letter).[2] As discussed below, while similar to guidance issued by the Office of the Comptroller of the Currency (OCC) on March 7 with respect to national banks and federal savings banks,[3] the Crypto Letter reflects a seismic shift in the scope of enumerated crypto-related activities permitted to state-chartered banks across the United States, assuming that such activities are performed in a manner that is otherwise consistent with bank regulation.

The Crypto Letter

Notably, the Crypto Letter defines "crypto-related activities" to include "acting as crypto-asset custodians; maintaining stablecoin reserves; issuing crypto and other digital assets; acting as market makers or exchange or redemption agents; participating in blockchain- and distributed ledger-based settlement or payment systems, including performing node functions; as well as related activities such as finder activities and lending." Some of these powers are consistent with what the banking industry believed likely to be newly permitted by the Trump administration, such as acting as a cryptoasset custodian.

Custodial powers have long been permitted to insured depository institutions that satisfy certain statutory and procedural requirements. Other powers enumerated in the definition, however, such as issuing crypto and other digital assets, represent a breadth of authority that had not been widely anticipated in the banking industry given that such activities provide the potential for FDIC-supervised institutions to publicly offer payment mechanisms that could, potentially, compete with the US dollar. For example, if Bank of X issues a hypothetical "X coin" that can be used at merchants much like a credit or debit card (whether in an open-loop or closed-loop environment), such coin will function as a medium of exchange that could either be fully backed by US dollars (i.e., a payment stablecoin), or potentially backed by other assets, introducing a new form of privately issued currency into the payment ecosystem.

It is worth noting that Congress is currently considering several bills on payment stablecoins. These bills would create regulatory pathways for banks to issue payment stablecoins under appropriate regulatory oversight.

[1] The Biden administration guidance requiring prior FDIC notification before engaging in crypto-related activities was set forth at FDIC FIL-16-2022.

[2] *FDIC Clarifies Process for Banks to Engage in Crypto-Related Activities*, March 28, 2025, available at https://www.fdic.gov/news/financial-institution-letters/2025/fdic-clarifies-process-banks-engage-crypto-related?source=govdelivery&utm_medium=email&utm_source=govdelivery

[3] *OCC Letter Addressing Certain Crypto-Asset Activities*, March 7, 2025, available at https://www.occ.treas.gov/topics/charters-and-licensing/interpretations-and-actions/2025/int1183.pdf (the "OCC Crypto Letter").

However, the Crypto Letter further provides that traditional concepts underpinning bank supervision continue to apply to a bank that pursues participation in a crypto-related activity: namely, such activities must be performed in a manner that is consistent with safety and soundness principles as well as applicable laws and regulations. While the Crypto Letter is clear that prior approval from the FDIC is not required to engage in a crypto-related activity, before undertaking such activities, the insured depository institution must consider the existing risk rubric that governs all bank activities, including, but not limited to, "market and liquidity risk; operational and cybersecurity risks; consumer protection requirements; and anti-money laundering requirements."

Finally, the Crypto Letter notes that new interagency guidance related to crypto activities by insured depository institutions will be forthcoming from the federal banking regulators with respect to prior guidance issued by the Biden administration. This is consistent with action taken by the OCC in its publication of the OCC Crypto Letter that rescinded prior OCC guidance with respect to crypto activity and affirmed that national banks and federal savings banks may engage in cryptoasset custody, distributed ledger and stablecoin activities.

What This Means

While the Crypto Letter reflects a policy to permit broad participation in the crypto market by FDIC-supervised banks, there is no expectation that such banks will immediately enter the market with crypto-related products and services. Rather, policies, procedures and testing methodologies must be created to reflect safe and sound banking principles. Clearly, certain activities that "mirror" products currently offered by insured depository institutions, such as the custodying of crypto assets, will be the first activities retail and commercial customers are likely to see, given that the pivot to offering this type of additional fiduciary activity will not present significant operational and procedural hurdles assuming an institution currently offers such services. Lending against the value of a customer's crypto likely falls within the same analytical framework: banks have long loaned against the value of assets, including assets whose values fluctuate in the market.

Other enumerated activities, however, will require a longer "lead time" before they are brought to the market. In particular, building a blockchain-based payment system will require significant investment and effort given the multiple layers between consumer/customer, merchant, and payment system. For example, in order for a consumer to use crypto held at Bank X to buy coffee in the morning from the merchant in the office lobby, Bank X must build the technical infrastructure to connect its banking systems with blockchain networks. This infrastructure will need to allow the consumer to initiate payments, enable the bank to verify balances and process transfers and ensure that such crypto can be moved from the customer's account held at Bank X to the merchant's account held at Bank Y.

CONTACTS

For more information regarding these banking regulatory changes for cryptoasset customers, please contact your Katten attorney or any of the following authors.

Christina J. Grigorian
+1.202.625.3541
christina.grigorian@katten.com

Daniel J. Davis
+1.202.625.3644
daniel.davis@katten.com

Alexander C. Kim
+1.212.940.6535
alexander.kim@katten.com