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A New Era for Banking Digital Assets May Be on the Horizon

Four days into office, President Trump revoked the Biden Administration's Executive Order 14067, Ensuring Responsible Development of Digital Assets, and the U.S. Treasury Department's Framework for International Engagement on Digital Assets. The Trump Administration has called for prioritizing responsible growth and innovation of digital assets and the related blockchain technology industries, which includes industry access to the banking sector. The key mandates of the President's Executive Order on Digital Assets, Strengthening American Leadership in Digital Financial Technology, include:

- A comprehensive regulatory framework to be proposed within 180 days to address the issuance and operation of digital assets, market structure, consumer protections and risk management;
- The creation of a national digital asset reserve; and
- Immediate cessation of all research related to the development of a U.S. Central Bank Digital Currency (a digital asset controlled by and a direct liability of a central bank).

On the same day, the U.S. Securities and Exchange Commission (SEC) rescinded Staff Accounting Bulletin (SAB) No. 121, which had made it impractical for banks to provide digital asset custody services since first issued in March 2022.[1] Under the now-rescinded SAB 121, banks seeking to hold bitcoin or other crypto assets in a custodial capacity for their customers were required to record the custodial holdings as a liability on their balance sheets and hold a corresponding safeguarding asset to offset such liability.

In the wake of the Trump Administration's vocal pro-crypto agenda, many in the banking industry have had a renewed interest in what the federal banking regulators have to say. To recap, starting back in 2020, the Office of the Comptroller of the Currency (OCC) issued a trilogy of policy statements regarding types of digital asset services that fall within the statutory sphere of the "business of banking,"[2] such as providing cryptocurrency custody services, holding cash deposits to reserve against stablecoin tokens, and acting as nodes on distributed ledgers to verify and facilitate payment transactions.[3] Despite the OCC's statements, only Anchorage Digital Bank of Sioux Falls, South Dakota, successfully navigated its way through the application process only to soon after receive a consent order related to its Bank Secrecy Act (BSA) / Anti-Money Laundering (AML) program.[4] The Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) also issued early guidance on the ability of banks to engage in the crypto-industry, underscoring legal permissibility and requiring agency approval.[5]

In January 2023, the FDIC, Federal Reserve and OCC issued a joint policy statement to the banking industry emphasizing the need to develop appropriate risk management practices and for banks to be able to demonstrate to the regulators' satisfaction an ability to engage in crypto-activities in a safe and sound manner for those activities to be deemed permissible.[6] Of note, the agencies jointly pronounced that it was highly unlikely that a bank could issue or hold crypto-assets as principal in a way that could be demonstrated to be consistent with safe and sound banking practices.

Most recently, however, on February 5, 2025, in the wake of increased congressional scrutiny, litigation and numerous Freedom of Information Act (FOIA) requests, the FDIC has now publicly released documents related to its supervisory activities of 24 institutions that engaged, or sought to engage in, crypto-related activities.[7] Contemporaneous with this release of records, Acting Chairman Travis Hill acknowledged that the agency's prior messaging to the banking industry, as evidenced through the released records, could fairly be summarized to mean that "it would be extraordinarily difficult – if not impossible – to move forward." The messaging has changed:

"Looking forward" the FDIC is "*actively reevaluating our supervisory approach to crypto-related activities. This includes . . . providing a pathway for institutions to engage in crypto- and blockchain-related activities while still adhering to safety and soundness principles. The FDIC also looks forward to engaging with the President's Working Group on Digital Asset Markets*."

With respect to state-law developments, twenty-five states have adopted some or all of the 2022 amendments to the Uniform Commercial Code, which provide a statutory framework to perfect security interests in certain types of digital assets. Another eight states have legislation pending.[8] Wyoming has also now chartered four institutions under its Special Purpose Depository Institutions Act;[9] just this month Nebraska conditionally approved its first Digital Asset Depository Institution under the Nebraska Financial Innovation Act;[10] and the Texas Department of Banking has long interpreted its Texas Finance Code to allow state-chartered banks to custody virtual currencies.[11] Major financial institutions are responding to this new approach to digital assets. In late 2024, Bank of New York Mellon received regulatory approval from the SEC for digital asset custody and as recent as February 14, 2025, State Street and Citi Bank have announced they too are launching cryptocurrency custody services.

What's the takeaway for the banking industry? Regulatory frameworks – state and federal – and shifts in receptiveness are on the horizon. Innovation will always outpace legislation, but informed strategy can keep pace. Now is the time to gain knowledge, acquire expertise, and understand the risks so that banks can meaningfully evaluate where strategy and innovation align. Investing time now will empower banks to be prepared to make informed, strategic decisions as the crypto-gates continue to open to the banking industry.

This blog was drafted by Kirstin D. Kanski, William A. Powers, and Alex R. Schoephoerster, attorneys in the Minneapolis, Minnesota, Washington, D.C., and St. Cloud, Minnesota, offices of Spencer Fane. For more information, visit www.spencerfane.com.

[1] SEC.gov | Staff Accounting Bulletin No. 122.

[2] *See 12* U.S.C. § 24(Seventh).

[3] *See* OCC Interpretive Letter 1170 (Jul. 22, 2020), OCC Interpretive Letter 1172 (Sept. 21, 2020), OCC Interpretive Letter 1174 (Jan. 4, 2021).

[4] *In re* Anchorage Digital Bank, N.A., Sioux Falls, South Dakota, AA-ENF-2022-7 (#2022-010).

[5] Board of Governors of the Federal Reserve System (Aug. 6, 2022) (SR 22-6; CA 22-6); FDIC Financial Institution Letters (Apr. 7, 2022) (FIL-16-2022).

[6] Joint Statement on Crypto-Asset Risks to Banking Organizations (Jan. 3, 2023).

[7] FDIC Releases Documents Related to Supervision of Crypto-Related Activities (Feb. 5, 2025) | FDIC.gov

[8] Uniform Law Commission, UCC, 2022 Amendment Legislative Bill Tracking

[9] Wyo. Stat. § 13-12-101, *et seq.*

[10] Neb. Rev. St. § 8-3001, *et seq*.

[11] Texas Dep't of Bkg., Industry Notice 2021-03 (June 10, 2021) (citing Tex. Finance Code § 32.0001).

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