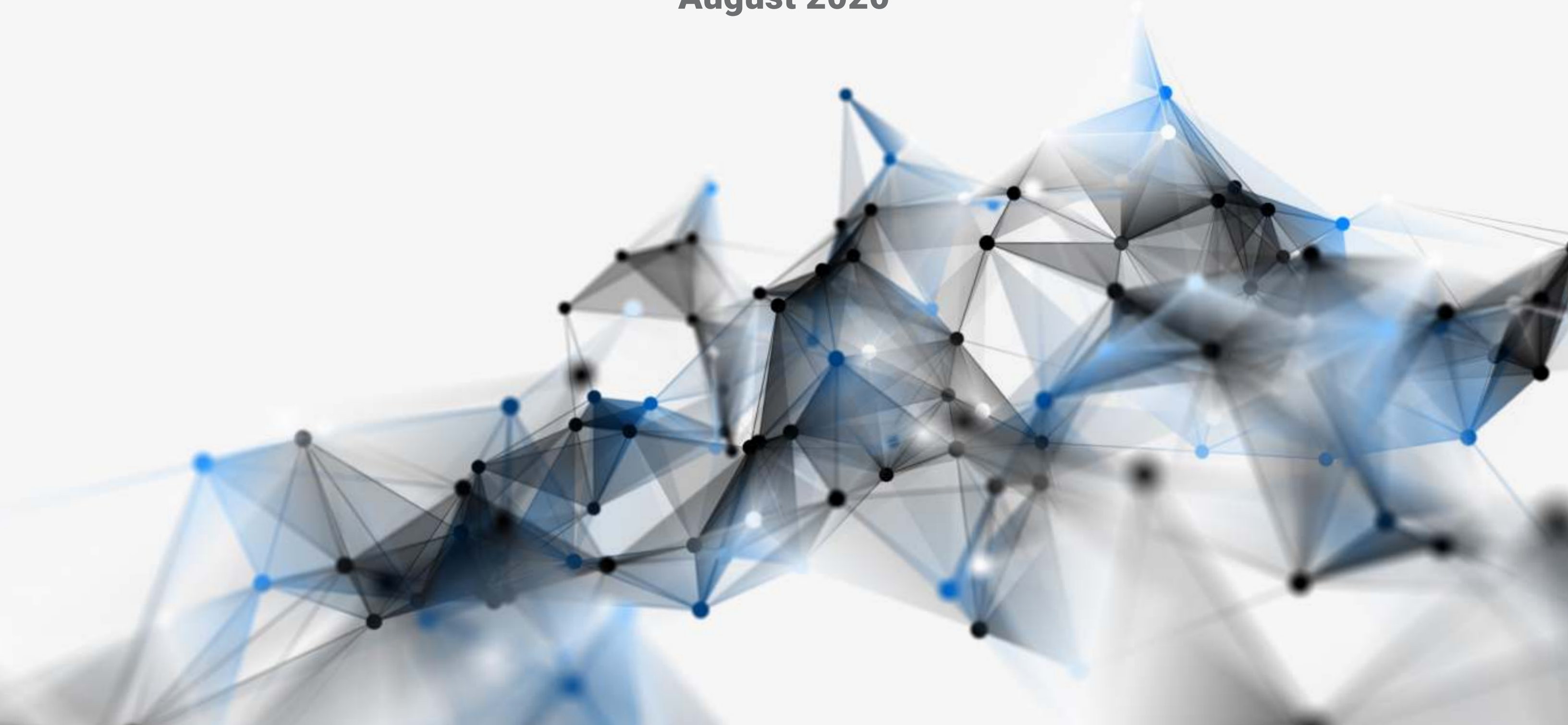
BLOCKCHAIN ASSOCIATION

Comments on the Office of the Comptroller of the Currency's Advanced Notice of Proposed Rulemaking on "National Bank and Federal Savings Association Digital Activities"

August 2020



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August 3, 2020

Re: National Bank and Federal Savings Association Digital Activities (Docket ID OCC-2019-0028)

Dear Acting Comptroller Brooks:

The Blockchain Association[1] appreciates the opportunity to provide this comment on the Office of the Comptroller of the Currency's (OCC) advanced notice of proposed rulemaking (ANPR) on "national bank and federal savings association digital activities."[2] Shortly after assuming your current position, you said that "the OCC can build on its foundation of innovation to provide banks and thrifts the regulatory certainty, the flexible framework, and oversight that allows them to evolve and capitalize on technology and innovation to deliver better products and services, to operate more efficiently, and to reduce risk in the system."[3] We thank the OCC for seeking public comment on the digital activities of its regulated institutions, an important step in reinforcing the OCC's "foundation of innovation."

As the OCC notes, the business of banking is not static, and innovations have made banking more efficient and accessible throughout the federal banking system's history. The OCC's responsiveness to innovation has facilitated these positive changes. The vast majority of transactions are completed digitally, and the mass adoption of internet and mobile banking has fundamentally changed how banks interact with their customers. Today, millions of consumers have "digital native" relationships with their banks—a situation unimaginable when the National Bank Act entered law.

The U.S. benefits greatly from its continued position as the world's financial hegemon. To retain this advantage, the U.S. must remain at the forefront of financial innovation. Cryptocurrencies and blockchains—and the "tokenization" of assets and value more broadly—are driving the next major wave of innovation in the financial and technology sectors. The federal banking system must be more responsive to the changing technological landscape and offer services that include cryptocurrencies and digital assets. In addition, U.S. businesses at the forefront of these innovations should enjoy fair access to the federal banking system so that they can thrive. We believe that reinforcing the system's

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[1] The Blockchain Association is a 501(c)(6) trade association based in the United States working to improve the public policy environment so that blockchain networks and cryptocurrencies can thrive.

[2] Office of the Comptroller of Currency, "National Bank and Federal Savings Association Digital Activities," *Federal Register* 85, no. 130 (July 7, 2020): 40827, https://www.regulations.gov/document?D=OCC-2019-0028-0001.

[3] Office of the Comptroller of the Currency, "Brian P. Brooks Statement on Becoming Acting Comptroller," News Release, (May 29, 2020), https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-69.html.

foundation for innovation will play a role in ensuring the U.S. dollar maintains dominance over global trade and will strengthen the transparency and security of financial services. The United States' competitors are seizing the moment, and we will be left behind.

Clarifying the applicability of existing regulations to manage new technologies is an important first step in promoting crypto and blockchain innovation domestically. At a minimum, the federal banking system must be prepared for a "tokenized," digital-first future. However, we hope to see a federal banking system that is at the vanguard of promoting the creation and adoption of new technologies that can make the business of banking more efficient, accessible, and safe.

Finally, the Blockchain Association welcomes the OCC's recently released interpretive letter[4] finding that national banks and federal thrift associations may custody cryptographic assets. The letter eliminates some of the uncertainty that has proven to be detrimental to the establishment of a thriving and innovative digital asset ecosystem in the United States. More broadly, the OCC's focus on fostering innovation in banking while ensuring the safety and soundness of the system will help the U.S. retain financial and economic preeminence well into the future.

Section 1. Executive Summary

It is critical that cryptocurrencies and cryptocurrency businesses have fair access to the federal banking system. Unfortunately, the U.S. has been slow to establish the regulatory certainty necessary to enable the financial system to reasonably integrate with cryptocurrencies and related emerging technologies. As a result, only some financial institutions have shown a willingness to offer financial services to cryptocurrency businesses, and the scarcity of available options means limited competition and increases prices for these services. To the point: while almost 40 million Americans owned at least one cryptocurrency in 2019, no OCC-chartered financial institutions provide cryptocurrency-related services like exchange and custody to their customers.

Misperceptions have also made national banks reluctant to provide banking services to cryptocurrency businesses and cryptocurrency services to their customers. First among these is the (thankfully fast-fading) misperception that cryptocurrencies are primarily used for illicit activities (and therefore are likely to expose banks to regulatory enforcement actions). While this misperception likely has contributed to national banks' apprehension, evidence now shows that reality is quite different. The blockchain analysis firm Chainalysis has found that the share of total cryptocurrency transaction volume that was illicit in 2017, 2018, and 2019 was 0.7 percent, 0.4 percent, and 1.1 percent, respectively.[5]

Providing sufficient regulatory certainty will enable the federal banking system to offer cryptocurrency services to customers and fair access to the financial system for cryptocurrency businesses. Providing such clarity adheres to the OCC's mission and promotes the OCC's intent "to regulate banking in ways that allow for the responsible creation or adoption of technological advances

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[4] Office of the Comptroller of the Currency, "Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers," Interpretive Letter, (July 22, 2020), https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf

[5] "The 2020 State of Crypto Crime," *Chainalysis* (January 2020): 5, https://go.chainalysis.com/rs/503-FAP-074/images/2020-Crypto-Crime-Report.pdf.

and to establish a regulatory and supervisory framework that allows banking to evolve, while ensuring that safety and soundness and the fair treatment of customers is preserved."[6]

To that end, we recommend that the OCC

1. Issue a statement encouraging the financial institutions within its jurisdiction to adopt a risk-based approach in assessing individual relationships with cryptocurrency businesses;
2. Explicitly permit banks to use third-party relationships to provide cryptocurrency-related services, such as custody, settlement, and reconciliation;
3. Allow banks to settle payments and accept deposits in dollar stablecoins that meet criteria defined by the OCC;
4. Clarify that national banks and federal savings associations may offer or enter into foreign exchange transactions involving cryptocurrencies; and
5. Create and issue a federal payments charter.

Section 2. Many Cryptocurrency Businesses Lack Fair Access to Financial Services

In your opening statement on becoming Acting Comptroller of the Currency, you also said that "fair access [to the federal banking system] has come under attack… We should not tolerate lawful entities being denied access to our federal banking system based on their popularity among a powerful few. That is a dangerous and untenable practice that we will work to correct."[7]

We agree. Access to basic financial services is essential to the development of commerce, and the emergence of the U.S. cryptocurrency industry requires the same. However, some cryptocurrency businesses have struggled with receiving fair access to basic financial services for nearly ten years. Some have been refused accounts,[8] and others have had existing accounts closed after just days, severely interrupting business operations.[9] In more draconian examples, individuals working at legal U.S. cryptocurrency businesses have faced difficulties obtaining personal banking services because of their employment.

Encouragingly, this has started to change. Some financial institutions have shown an increasing willingness to offer cryptocurrency-related businesses financial services over the last decade,[10] but the continued scarcity of available options reduces competition and increases prices. When compared to other industries, cryptocurrency businesses generally pay higher banking fees, have higher reserve requirements, and earn less interest on their cash balances in checking and savings accounts. In

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[6] OCC, "National Bank and Federal Savings Association Digital Activities."

[7] OCC, "Brian P. Brooks Statement on Becoming Acting Comptroller."

[8] Alastair March and Silla Brush, "Why Crypto Companies Still Can't Open Checking Accounts," *Bloomberg* (March 3, 2019), https://www.bloomberg.com/news/articles/2019-03-03/why-crypto-companies-still-can-t-open-checking-accounts?srnd=cryptocurrencies.

[9] Danny Bradbury, "Wells Fargo Holds Summit on Bitcoin Engagement," *Coindesk* (January 15, 2014), https://www.coindesk.com/wells-fargo-summit-bitcoin.

[10] Daniel Palmer, "U.S. Crypto Firms Will Soon Have Another Option," *Yahoo! News* (November 18, 2019), https://www.yahoo.com/now/us-crypto-firms-soon-another-140117265.html.

addition, certain other financial services providers, such as direct payment providers, may still refuse to establish relationships with cryptocurrency businesses because their partner banks do not allow them.

The lack of access of cryptocurrency businesses to safe and sound financial services ultimately creates unnecessary risks for U.S. consumers. Situations in which cryptocurrency businesses may be forced to seek services at the margins of the financial system create unnecessary counterparty risks for cryptocurrency companies and, by extension, their customers. In one example, a U.S. global systemically important bank (GSIB) “abruptly” ended its payment processing relationship with a cryptocurrency exchange, forcing the exchange to rely on an offshore provider for payments processing. In 2019, $850 million of the exchange’s customer funds held at the offshore provider went missing, and the exchange was forced to tap $900 million in liquidity from an offshore stablecoin provider.[11]

Section 3. The Federal Banking System Remains Hesitant to Provide Cryptocurrency Services

In addition to the lack of fair access of some cryptocurrency businesses and their employees to the financial system, no OCC-chartered financial institutions provide cryptocurrency-related services to their customers. Yet cryptocurrencies are widely held in the United States. As the ANPR acknowledges, in 2018, eight percent of Americans owned at least one cryptocurrency. The same survey found that that figure had reached 14.4 percent (which translates to over *36 million U.S. citizens*) in 2019, an 80 percent increase in ownership over 2018.[12] Among millennials, the ownership rate was even higher at 35 percent.[13] Indeed, popular retailers like Amazon[14] and Starbucks[15] now accept bitcoin from customers as payment. Yet, despite Americans’ clear acceptance of and growing demand for cryptocurrencies, national banks and thrift institutions have yet to provide cryptocurrency services like custody, exchange, and deposit-taking.

Where banks have been reluctant to provide banking services to cryptocurrency businesses and cryptocurrency services to their customers due to regulatory and legal ambiguity, the OCC can provide them much needed clarity. According to the *Wall Street Journal*, banks, “still smarting from billions of dollars in fines tied to questionable transactions” unrelated to cryptocurrencies, fear providing financial services to cryptocurrency-related businesses because of potential regulatory enforcement actions.[16] The fading misperception that cryptocurrencies are primarily used for illicit activities (and therefore are

[11] Paul Vigna, “Lack of Banking Options a Big Problem for Crypto Businesses,” *Wall Street Journal* (May 17, 2019), https://www.wsj.com/articles/lack-of-banking-options-a-big-problem-for-crypto-businesses-11558092600.

[12] Richard Laycock, “A Rising Number of Americans Own Crypto,” *Finder* (November 20, 2019), https://www.finder.com/how-many-people-own-cryptocurrency.

[13] Jamie Ballard, “81% of Americans Are Familiar with at Least One Type of Cryptocurrency,” *YouGov* (September 24, 2019), https://today.yougov.com/topics/finance/articles-reports/2019/09/24/cryptocurrency-bitcoin-americans-millennials-poll.

[14] Leigh Cuen, “You Can Now Shop With Bitcoin on Amazon Using Lightning,” *Coindesk* (April 22, 2019), https://www.coindesk.com/you-can-now-shop-with-bitcoin-on-amazon-using-lightning.

[15] Mark Emem, “Starbucks Will Accept Bitcoin in 20202, Thanks to Wall Street’s Bakkt,” *CNN* (October 29, 2019), https://www.ccn.com/starbucks-will-accept-bitcoin-in-2020-thanks-to-wall-streets-bakkt/.

[16] Vigna, “Lack of Banking Options a Big Problem for Crypto Businesses.”

likely to expose banks to regulatory enforcement actions) likely has contributed to banks' apprehension to provide financial services to cryptocurrency businesses.

In reality, blockchain analysis firm Chainalysis has found that the share of total cryptocurrency transaction volume that was illicit in 2017, 2018, and 2019 was 0.7 percent, 0.4 percent, and 1.1 percent, respectively.[17] In comparison, according to the Federal Bureau of Investigation (FBI), "proceeds of crime generated in the United States were estimated to total... about two percent of the overall U.S. economy" in 2010.[18] These figures suggest that the share of cryptocurrency activity that is illicit is in fact *lower* than the share of overall economic activity that is illicit.

A recent report published by the Financial Action Task Force (FATF), "an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction,"[19] further illustrates that cryptocurrencies are not disproportionately used for illicit purposes or novel criminal activity. In its report published in June 2020, the FATF found that "the value of virtual assets involved in most ML/TF [money laundering/terrorist financing] cases detected to date has been relatively small so far compared to cases using more traditional financial services and products, although there needs to be ongoing monitoring for any potential changes."[20] Moreover, "among [the types of offenses involving virtual assets], narcotics-related and fraud offenses (e.g. investment scams and swindling, blackmail, and extortion) are the most prevalent."[21] We note that banks have long dealt with identifying and stopping transactions involving proceeds from such offenses without declining to provide financial services to entire industries.

Section 4. Ensuring Fair Access and Promoting Cryptocurrency Services Adheres to the OCC's Mission and Advances Responsible Innovation

The status quo is unsustainable and threatens to jeopardize the primacy of the U.S. financial system. We believe that the OCC fully appreciates the foundational importance that access to basic financial services has for the economic wellbeing of both U.S. citizens and businesses. However, because cryptocurrencies exist entirely in electronic form, access to the financial system for legal cryptocurrency businesses operating in the U.S. is especially important. And because cryptocurrencies are often treated as a financial asset and many cryptocurrency businesses seek to offer services intimately tied to the financial system, the initial unavailability or eventual termination of banking relationships can prove fatal to cryptocurrency businesses.

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[17] "The 2020 State of Crypto Crime," 5.

[18] Steve D'Antuono, "Combating Money Laundering and Other Forms of Illicit Finance: Regulator and Law Enforcement Perspectives on Reform," Statement before Senate Banking Committee (November 29, 2018), https://www.fbi.gov/news/testimony/combating-money-laundering-and-other-forms-of-illicit-finance.

[19] "12-Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers," *Financial Action Task Force* (June 2020): ii, http://www.fatf-gafi.org/media/fatf/documents/recommendations/12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf.

[20] Ibid, 6.

[21] Ibid.

Again, over 36 million Americans owned at least one cryptocurrency in 2019, almost twice as many as the year before. Perhaps no other asset so widely adopted by U.S. citizens has been so excluded from the U.S. financial system. “To regulate banking in ways that allow for the responsible creation or adoption of technological advances…”[22] while maintaining the safety and soundness of the system necessitates

- ensuring legal U.S. businesses have fair access to the federal banking system,
- recognizing the clear demand for cryptocurrencies and cryptocurrency services among the U.S. banking system’s primary customer—the American public, and
- providing clear rules and guidance on the integration of cryptocurrencies and related services into the federal banking system.

Expanding cryptocurrency services within the federal banking system and providing fair access to the financial system for cryptocurrency businesses adheres to the OCC’s mission and promotes the OCC’s intent “to regulate banking in ways that allow for the responsible creation or adoption of technological advances and to establish a regulatory and supervisory framework that allows banking to evolve, while ensuring that safety and soundness and the fair treatment of customers is preserved.”[23]

Congress “established in the Department of the Treasury a bureau to be known as the ‘Office of the Comptroller of the Currency’ which is charged with assuring... fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.”[24] Outdated regulations, guidance, and interpretations may be signaling to institutions subject to the OCC’s jurisdiction that it is unacceptable to provide cryptocurrency services to customers and banking services to legal cryptocurrency businesses.

Section 5. Recommendations

In order to promote fair access to the financial system and ensure that American businesses and citizens are being served effectively by the U.S. federal banking system, we recommend that the OCC consider the following actions:

1. <u>**The OCC should issue a statement encouraging the financial institutions within its jurisdiction to adopt a risk-based approach in assessing individual relationships with cryptocurrency businesses.**</u>

The OCC’s interpretive letter on national banks’ custody activities reaffirmed “the OCC’s position that national banks may provide permissible banking services to any lawful business they choose, including cryptocurrency businesses, so long as they effectively manage the risks and comply with the law.”[25] However, given that banks remain hesitant to compete to provide banking services to cryptocurrency businesses, the OCC should issue a standalone statement focused on the U.S. cryptocurrency industry.

[22] OCC, “National Bank and Federal Savings Association Digital Activities.”

[23] Ibid.

[24] National Bank Act, 12 U.S.C. § 1.

[25] OCC, “Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers,” 1.

In 2015, the Federal Deposit Insurance Corporation (FDIC) issued a Financial Institution Letter stating:

> The FDIC encourages insured depository institutions to serve their communities and recognizes the importance of the services they provide. Individual customers within broader customer categories present varying degrees of risk. Accordingly, the FDIC encourages institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers, without regard to the risks presented by an individual customer or the financial institution's ability to manage the risk. Financial institutions that can properly manage customer relationships and effectively mitigate risks are neither prohibited nor discouraged from providing services to any category of customer accounts or individual customer operating in compliance with applicable state and federal law.
>
> The FDIC is aware that some institutions may be hesitant to provide certain types of banking services due to concerns that they will be unable to comply with the associated requirements of the Bank Secrecy Act (BSA). The FDIC and the other federal banking agencies recognize that as a practical matter, it is not possible for a financial institution to detect and report all potentially illicit transactions that flow through an institution. Isolated or technical violations, which are limited instances of noncompliance with the BSA that occur within an otherwise adequate system of policies, procedures, and processes, generally do not prompt serious regulatory concern or reflect negatively on management's supervision or commitment to BSA compliance. When an institution follows existing guidance and establishes and maintains an appropriate risk based program, the institution will be well-positioned to appropriately manage customer accounts, while generally detecting and deterring illicit financial transactions.[26]

When cryptocurrency companies struggle to access financial services, they too suffer the consequences of institutions "declining to provide banking services to entire categories of customers, without regard to the risks presented by an individual customer or the financial institution's ability to manage the risk."[27] We believe that "financial institutions that can properly manage customer relationships and effectively mitigate risks" should be encouraged to "provid[e] services to [cryptocurrency companies] operating in compliance with applicable state and federal law."[28]

To that end, we urge the OCC to release a similar statement specifically addressing cryptocurrency businesses. We would welcome the opportunity to work with the OCC on crafting such a statement.

2. **<u>The OCC should explicitly permit banks to use third-party relationships to provide cryptocurrency-related services.</u>**

National banks regularly partner with third-parties to provide their customers certain services, including critical banking activities. When it comes to cryptocurrency services, third-party relationships

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[26] FDIC, "Statement on Providing Banking Services," Financial Institution Letter (January 28, 2015), https://www.fdic.gov/news/financial-institution-letters/2015/fil15005.pdf.

[27] Ibid.

[28] Ibid.

may be particularly attractive to national banks because of the novelty of cryptocurrencies. The OCC should explicitly state that chartered institutions may pursue third-party relationships to provide permitted cryptocurrency-related services such as settlement, custody, and reconciliation. While no statute or rule prevents them from doing so, banks may be more willing to engage third-parties to offer their customers cryptocurrency services should the OCC eliminate all ambiguity regarding their ability to do so.

3. **The OCC should allow banks to settle payments and accept deposits in dollar stablecoins that meet criteria defined by the OCC.**

Dollar stablecoins are digital assets that aim to maintain a stable value relative to the U.S. dollar (USD). Since dollar stablecoins aim at approximating the value of fiat currencies, they are more likely to be used to complete transactions in which fiat currencies are already used. However, because dollar stablecoins rely on blockchains to track transactions, they can facilitate faster and more cost-effective dollar transactions for individuals, businesses, and governments. Together, stable-value digital currency and blockchain technology offer many advantages, including 24/7 instant transferability, lower transaction fees, the ability to execute micro and macro payments at low cost and with increased programmability, expanded global reach, and more interoperability.

As our world has become more digitized, some of the existing uses of fiat currencies have become more limited. We believe stablecoins can advance the use of the dollar and "bring it up to speed" with the digital world in which we live. Modernizing the dollar through stablecoin innovation will further entrench the dollar's status as the world's reserve currency without undermining the monetary sovereignty and autonomy of the United States.

Many banks seek to use dollar stablecoins to improve their operations, but they need additional clarity from the OCC regarding acceptable practices and partnerships involving dollar stablecoins. Stablecoin use is expanding rapidly among consumers and businesses alike. At the beginning of January 2020, the twelve largest dollar stablecoins had an outstanding market capitalization of about $5 billion.[29] As of July 13, that figure had increased to nearly $12.5 billion.[30]

In addition, the adoption of stablecoins could improve the efficiency of payments and expand financial inclusivity. Gaining access to the most basic financial services can help reduce poverty and inequality by helping people invest in the future, moderate their consumption, and manage financial risks. According to the "Annual Economic Report 2020 of the Bank of International Settlements (BIS),

> access to payment services has increased over time, yet is still far from universal… Low-income individuals, women and small businesses are still much more likely to lack access to formal payment services. Even in advanced economies, some groups lack access to bank accounts and the associated payment options; nearly half of Black and Hispanic US households are unbanked or underbanked. In the euro area, 10% of low-income households are unbanked.[31]

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[29] "The Stablecoin Index," *Messari* (accessed July 20, 2020), https://stablecoinindex.com/marketcap.

[30] Ibid.

[31] "Annual Economic Report 2020," Bank of International Settlements (June 2020): 72, http://www.bis.org/publ/arpdf/ ar2020e.htm.

In light of these facts, we join the BIS in concluding that "there is scope to improve the quality of payment services in terms of convenience, transparency and speed. Despite greater demand for payments in real time (or very close to it), methods such as cross-border bank transfers often take days to clear and settle… Overall, the quality of payment services still falls short of evolving customer expectations."[32]

In order to meet "evolving customer expectations" and build a federal banking system that is "responsive to the needs of Americans in this generation and the next," the OCC should allow banks to settle payments and accept deposits in dollar stablecoins that meet criteria determined by the OCC.

First, the OCC should create criteria to transparently determine which dollar stablecoins may be used within the federal banking system for payments settlement and deposit-taking. In setting the criteria, the OCC should consider the following characteristics, functions, and activities of dollar stablecoin arrangements:

- Peg determinations;
- Participation in governance;
- Stabilization mechanisms;
- Privacy protections;
- Issuance;
- Redemption;
- Distribution;
- Management of reserve assets;
- Custody of reserve assets;
- Transfer;
- Control over user activities;
- Storage;
- Data management; and
- Exchanging, trading, and market-making.[33]

Next, the OCC should promulgate guidance on acceptable deposit taking and payment settlement activities involving dollar stablecoins, considering issues like capitalization requirements, balance sheet provisioning, etc.

4. <u>The OCC should clarify that national banks and federal savings associations may offer or enter into foreign exchange transactions involving cryptocurrencies.</u>

Tens of millions of Americans own at least one cryptocurrency, and cryptocurrencies are used around the world in exchange for goods and services every day. As mentioned, large U.S. consumer retailers like Starbucks and Amazon already accept payments in cryptocurrency. Cryptocurrencies have

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[32] "Annual Economic Report 2020," 75.

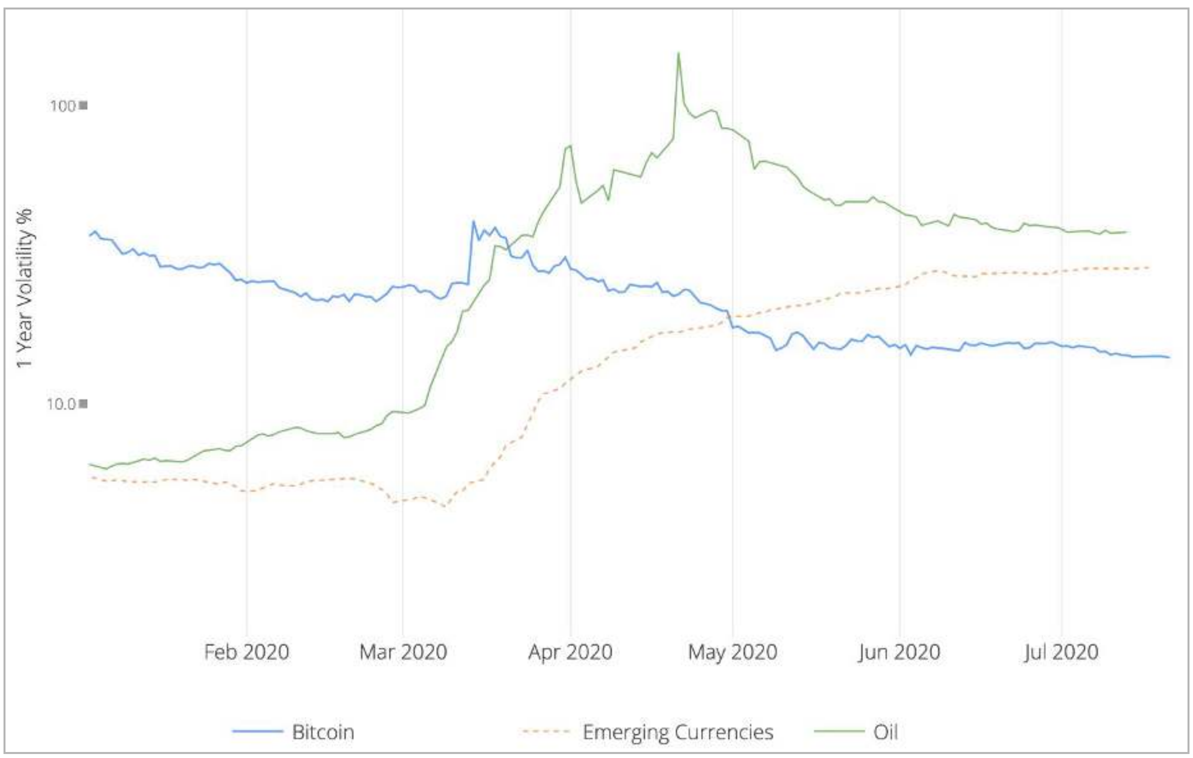
[33] *For further discussion of the regulation of stablecoin arrangements, please see the submissions of Blockchain Association, Celo, and Coinbase and Circle in response to the Financial Stability Board's consultative document addressing the regulatory challenges potentially raised by "global stablecoin arrangements" available at*: https://www.fsb.org/2020/07/public-responses-to-consultation-on-addressing-the-regulatory-supervisory-and-oversight-challenges-raised-by-global-stablecoin-arrangements/.

become massive payment systems: the two largest public blockchains, Bitcoin and Ethereum, settled $1.27 trillion and $1.05 trillion worth of transactions in 2018 and 2019, respectively, and are on pace for record volume this year.[34]

In order to ensure that "the federal banking system continues to serve consumers, businesses, and communities effectively,"[35] the OCC should clarify that chartered financial institutions may enter into retail and commercial exchange transactions involving cryptocurrencies under current authority. Section 24(Seventh) of the National Bank Act authorizes national banks and federal savings associations to buy and sell exchange.[36] Because cryptocurrencies are exchangeable for goods and services, the OCC should clarify to chartered institutions that cryptocurrency exchange transactions—both between cryptocurrencies and between cryptocurrencies and other currencies—meet the definition of "exchange" as used in the National Bank Act and associated regulations.

While historically the price volatility of cryptocurrencies has been higher on average than other currencies, the largest cryptocurrencies are less volatile than other assets that the U.S. federal banking system and consumers deal in everyday.

Bitcoin YTD 1 Year Volatility % vs. Oil and EM Currencies[37]



[34] Ryan Watkins, "Bitcoin and Ethereum on pace to settle a combined $1.3 trillion in transactions in 2020," *Messari* (July 21, 2020), https://messari.io/article/bitcoin-and-ethereum-on-pace-to-settle-a-combined-1-3-trillion-in-transactions-in-2020.

[35] OCC, "National Bank and Federal Savings Association Digital Activities."

[36] National Bank Act, 12 U.S.C. § 24.

[37] "Bitcoin Volatility vs Other Assets," *Woobull Charts* (accessed July 20, 2020), https://charts.woobull.com/bitcoin-volatility-vs-other-assets/.

5. The OCC should create and issue a federal payments charter.

The OCC should create and issue a non-depository federal payments charter with limited preemption that would allow firms to engage in some of the core activities of banking. Currently, individual states and territories are the primary regulators of money transmitters in the United States. This system of state-by-state regulation has not adapted well to the digitization of financial services. In order for "money transmitters," of which there is no uniform definition across the states, to provide their services everywhere in the country, they must first "interpret 53 various statutes, and confirm that interpretation with 53 different state and territorial regulators, merely to determine whether they need to engage in the licensing process at all."[38] Given that the provision of services which could be considered "money transmission" is primarily web-based and therefore borderless today, attaining the necessary licenses is a barrier to entry for innovators and an unnecessary regulatory burden for existing businesses.

The OCC should create a federal framework by issuing a federal payments charter providing for limited preemption of state money transmission laws. A federal regulatory framework to manage money transmitters would better respond to market realities and manage the potential risks raised by money transmission. Specifically, we recommend that a limited federal payments charter grant access to payments systems and Federal Reserve services but that it not grant charter holders the ability to engage in activities like deposit-taking or credit extension. As Peter Van Valkenburg explains, under such a framework of limited preemption via a federal payments charter

> a business could choose to seek licenses in those states in which it will have customers, or it could alternatively choose to seek a federal license. As a result, the federal licensing program need not preempt the ability of the several states to continue granting licenses. A federal license can simply be an alternative to state licensing and federally licensed businesses can be absolved, under the federal statute, from any liability or obligations under state licensing laws (limited preemption). This is no different than the dual nature of state and federal banking regulation that exists today.[39]

A charter holder "only gains access to ACH or Fedwire in order to facilitate exchange or interoperability between virtual currencies and the dollar. In this potential model of a limited charter, the fintech firm would have the key benefits of federal regulation, preemption of state law, and access to the payments system, but would not engage in risk-generating activities like deposit taking or credit extension."[40]

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[38] Peter Van Valkenburgh, "The Need for a Federal Alternative to State Money Transmission Licensing," *Coin Center* (January 2018), https://www.coincenter.org/the-need-for-a-federal-alternative-to-state-money-transmission-licensing/#an-alternative_federal_license_for_custodial_payment_companies.

[39] Ibid.

[40] Jerry Brito and Peter Van Valkenburgh, "Comments to the Office of the Comptroller of the Currency on Supporting Responsible Innovation" (May 27, 2016), https://www.coincenter.org/comments-to-the-office-of-the-comptroller-of-the-currency-on-supporting-responsible-innovation/.

The Blockchain Association appreciates the opportunity to provide input on the OCC's ANPR regarding national banks' digital activities. We welcome the OCC's focus on providing regulatory clarity to promote responsible financial innovation in the United States. Such efforts ensure the federal banking system serves the evolving needs of consumers and businesses and reinforce the United States' financial preeminence.

Sincerely,

Miller Whitehouse-Levine