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OCC AUTHORIZES THE USE OF STABLECOINS FOR PAYMENT ACTIVITIES

The Office of the Comptroller of the Currency ("OCC") released another Interpretive Letter relating to a nation bank's use of cryptocurrency and blockchain technology. Interpretive Letter 1174 provides that national banks and federal savings associations may use independent node verification networks ("INVN") and stablecoins to carry out permissible payment activities.

An INVN as a shared electronic database where copies of the same information are stored on multiple computers. One common form of an INVN is a distributed ledger. A stablecoin is a type of cryptocurrency that is designed to have a stable value as compared to other types of cryptocurrency. Some stablecoins are backed by a fiat currency, such as the U.S. dollar.

The Interpretive Letter states that courts and the OCC have long recognized that the primary role of banks is to act as financial intermediaries, facilitating the flow of money and credit among different parts of the economy. The OCC recognizes that as new technologies emerge, banks must adapt and adopt new technologies to facilitate payments, support financial transactions and meet the evolving needs of the economy.

The Interpretive Letter states that new technologies have led to a demand for banks to use INVNs to carry out their traditional functions. Using INVNs to facilitate payments transactions represents a new means of performing banks' permissible payments functions. Serving as nodes on INVNs is a new means of transmitting payment instructions and validating payments. The Interpretive Letter explains that rather than utilizing a centralized entity, the nodes on the shared network validate the transfers. However, the basic functions are the same: transmitting payment instructions and validating payments.

The Interpretive Letter also emphasizes that a bank may use stablecoins to facilitate payment transactions for customers on an INVN, including by issuing a stablecoin, and by exchanging that stablecoin for fiat currency. The OCC likens a stablecoin to debit cards, checks and electronically stored value systems.

In the past year, the OCC Commissioner has not been shy about his acceptance and approval of national banks embracing the use of cryptocurrency technology. In July, the OCC issued an

advance notice of proposed rulemaking related to its regulations on banking issues related to digital activities, use of technology and innovation and issued an Interpretive Letter that states that a national bank may provide cryptocurrency custody services on behalf of customers, including holding the unique cryptographic keys associated with cryptocurrencies. See our prior ALERT dated [Sept. 4, 2020](#). In December, three cryptocurrency companies applied for a bank charter from the OCC. See our prior ALERT dated [Dec. 16, 2020](#).

On December 23, the President's Working Group on Financial Markets ("PWG") released a statement on key regulatory and supervisory issues relevant to certain stablecoins. Members of the PWG include the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission. The statement recognizes that digital payments, including U.S. dollar-backed and other stablecoin arrangements used as payment systems, have the potential to improve efficiencies, increase competition, lower costs and foster broader financial inclusion. The statement highlights that stablecoin arrangements must comply with applicable legal, regulatory and oversight requirements, but the statement fails to label whether a stablecoin is a currency or commodity. The statement simply provides that depending on its design and other factors, a stablecoin may constitute a security, commodity or derivative subject to the U.S. federal securities, commodity and/or derivatives laws.

The PWG statement concluded with a statement that U.S. authorities will continue to assess the evolving technological and market landscape and the U.S. regulatory framework for oversight of stablecoin arrangements to enable responsible innovation that protects end users and to address potential risks to the financial system. Hopefully as continued use of stablecoins and distributed ledger technology increases, these regulatory agencies will work together to provide a uniform regulation for cryptocurrency companies.

We will continue to keep you informed on cryptocurrency as a means of payment in competition with payment cards, cryptocurrency regulation and related matters. If you have any questions, please let us know. □

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