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Banking agencies increase pressure on banks' relationships with cryptoasset firms

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The federal banking agencies signal increased scrutiny of banks taking traditional deposits from cryptoasset firms.

In line with recent actions signaling increased scrutiny of any touchpoint between banks and cryptoasset activities, the federal banking agencies recently issued a joint statement reminding banks that even a traditional banking activity—the acceptance of cash deposits—from cryptoasset firms may carry unique or heightened risks that require additional risk management practices. The statement raises concerns regarding the liquidity risk resulting from two types of cash deposits from cryptoasset firms: (1) deposits of end customers that are placed with a bank by a cryptoasset firm and (2) deposits that are reserves for stablecoins. It also points out as problematic a deposit funding base that is concentrated in cryptoasset-related entities. The statement describes the "unpredictability of the scale and timing of deposit inflows and outflows" of deposits of cash from cryptoasset firms and reminds banks that take deposits from cryptoasset firms to "actively monitor the liquidity risks inherent in such funding sources."

Our key takeaways are:

1. **Any bank interaction with cryptoasset firms will be highly scrutinized.** The statement takes the view that the federal banking agencies are not creating any new risk management principles or officially discouraging banks from providing banking services to cryptoasset firms. Nonetheless, the release is the latest in a series of recent statements and actions by the federal banking agencies that are designed to limit banks' interaction with cryptoasset firms or other cryptoasset-related activities.
2. **The joint statement is further evidence of the agencies' evolving theory of the potential risks posed by cryptoasset activities to safety and soundness.** This statement, while addressing only cash deposits from cryptoasset firms, reflects an increasingly skeptical view of whether many cryptoasset activities can be conducted in a safe and sound manner.
    - The federal government is highly attuned to the risk of crypto's growing integration with the traditional financial system, as highlighted in FSOC's October 2022 report on the risks that cryptoassets pose to financial stability. Using the rubric of safety and soundness to raise hurdles for banking organizations seeking to provide services to cryptoasset firms or to offer cryptoasset services of their own is one way to thwart that integration.
    - In a joint statement on January 3, 2023, the federal banking agencies stated that they "have 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."
    - In a policy statement issued earlier this month that addressed the permissibility of certain cryptoasset activities, the Federal Reserve reminded banks that, even if an activity is permissible, it must also be conducted in a safe and sound manner. That statement followed the Federal Reserve's denial of Custodia Bank's master account application because "[t]he firm's novel business model and proposed focus on crypto-assets presented significant safety and soundness risks." The Federal Reserve reaffirmed this position by unanimously denying Custodia's request for redetermination on February 23, 2023.

These references to the elastic, and largely undefined, concept of safety and soundness are a reminder of the enormous discretion that banks' supervisory teams have, and that could be used to cut off cryptoasset firms from the banking system.

3. **The attention on brokered deposits and Call Reports may indicate a new front is emerging.** The statement reminds banks that they are required to comply with applicable laws and regulations, including brokered deposit and Call Report filing rules.

    Brokered deposits. Under the Federal Deposit Insurance Act, whenever an intermediary places deposits with a bank on behalf of persons or entities that are not direct customers of the bank, the bank must consider whether the arrangement results in brokered deposits. Only well-capitalized banks can accept brokered deposits without a waiver from the FDIC, which waiver is available to adequately capitalized banks only. Brokered deposits also attract higher deposit insurance fees and banks must account for their presumed increased run risk in liquidity planning. Although deposits from cryptoasset firms may ultimately qualify for a primary purpose or other exemption under the brokered deposit rules, the joint statement is a reminder that banks will need to carefully document their conclusions about whether deposits from cryptoasset firms are brokered and implement compliance procedures to treat them as such when necessary.

    Call Reports. The joint statement also serves as a reminder that banks will need to appropriately characterize deposits from cryptoasset firms in their Call Reports, which include brokered deposits and trust or fiduciary assets as distinct line items.

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