

# United States Senate

WASHINGTON, DC 20510

August 10, 2022

The Honorable Michael J. Hsu  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> St. SW  
Washington, DC 20219

Dear Acting Comptroller Hsu,

We write to inquire about the Office of the Comptroller of the Currency's (OCC) November 2021 interpretive letter authorizing banks to engage in certain cryptocurrency (crypto) activities, and the activities that banks have been permitted to engage in under OCC's guidance.<sup>1</sup> Each of the prudential regulators, including the OCC, is responsible for safeguarding our financial system from undue risk and ensuring the safety and soundness of the banking system. In light of recent turmoil in the crypto market, however, we are concerned that the OCC's actions on crypto may have exposed the banking system to unnecessary risk, and ask that you withdraw existing interpretive letters that have permitted banks to engage in certain crypto-related activities.

Under your predecessor, Acting Comptroller Brian Brooks, the OCC unilaterally issued a series of interpretive letters related to cryptocurrencies in July 2020 (Interpretive Letter 1170), October 2020 (Interpretive Letter 1172), and January 2021 (Interpretive Letter 1174).<sup>2</sup> In these letters, the OCC determined that banks were authorized to engage in certain crypto-related activities, including: providing cryptocurrency custody service for customers, holding deposits that serve as reserves for certain stablecoins, and operating independent node verification networks (INVN)s and stablecoins for payment activities.<sup>3</sup> Under your leadership, the OCC issued an additional interpretive letter on crypto-related activities in November 2021 (Interpretive Letter 1179) confirming that the previously addressed activities "are legally permissible for a bank to engage in, *provided* the bank can demonstrate, to the satisfaction of its supervisory office, that it has controls in place to conduct the activity in a safe and sound manner."<sup>4</sup>

The interpretive letters issued under your predecessor essentially granted banks unfettered opportunity to engage in certain crypto activities and remain problematic. Under your watch, the OCC issued updated guidance with the aim of reining in potential risks posed by your

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<sup>1</sup> Office of the Comptroller of the Currency, "Interpretive Letter #1179," November 18, 2021, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>.

<sup>2</sup> Office of the Comptroller of the Currency, "Interpretive Letter #1170," July 22, 2020, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf>; Office of the Comptroller of the Currency, "Interpretive Letter #1172," September 21, 2020, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1172.pdf>; Office of the Comptroller of the Currency, "Interpretive Letter 1174," January 4, 2021, <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Office of the Comptroller of the Currency, "Interpretive Letter #1179," November 18, 2021, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>.

predecessor's policies.<sup>5</sup> Yet, despite these efforts, we are concerned that the OCC has failed to properly address the shortcomings of the preceding interpretive letters and the risks associated with crypto-related banking activities, which have grown more severe in recent months.

Cryptocurrencies are highly volatile assets that offer few, if any, protections to retail investors. The crypto market has plunged over the last several months, astonishingly erasing about \$2 trillion in value since its high in November 2021 and triggering the collapse of several major crypto lenders and firms.<sup>6</sup> In May 2022, two of the three largest stablecoins – cryptocurrencies intended to maintain a set value through a peg to another cryptocurrency, fiat currency or other exchange-traded commodities – failed to maintain their pegs, with the collapse of Terra, an algorithmic stablecoin that was supposed to be pegged to the U.S. dollar, “end[ing] with a bank run that made \$40 billion of tokens virtually worthless.”<sup>7</sup> And in July 2022, crypto “banks” Celsius and Voyager and crypto hedge fund Three Arrows Capital filed for bankruptcy protection.<sup>8</sup> While you declared that “there has been no contagion from cryptocurrencies to traditional banking and finance” during this recent market turmoil,<sup>9</sup> it is clear that stronger protections are necessary to mitigate crypto’s risks to the financial system and consumers.

This is why we are concerned that Interpretive Letter 1179 maintains that each of the crypto activities specified in the preceding letters are “legally permissible,”<sup>10</sup> generally affirming, rather than rescinding, the crypto interpretive letters issued under your predecessor – letters that “helped make it easier for traditional financial institutions to get into crypto”<sup>11</sup> and “that the

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<sup>5</sup> Banking Dive, “OCC will revisit crypto charters, interpretive letters, acting chief says,” Anna Hrushka, June 3, 2021, <https://www.bankingdive.com/news/occ-will-revisit-crypto-charters-interpretive-letters-acting-chief-says/601228/>.

<sup>6</sup> Newsweek, “Cryptocurrencies Lose \$2 Trillion in Value Since 2021 Peak,” Rob Minto, June 13, 2022, <https://www.newsweek.com/cryptocurrencies-lose-trillion-value-since-peak-1715207>; Wall Street Journal, “Market Rout Shows Dangers of Margin Lending, Crypto Style,” Justin Baer and Orla McCaffery, July 20, 2022, [https://www.wsj.com/articles/market-rout-shows-dangers-of-margin-lending-crypto-style-11658334507?mod=markets\\_lead\\_pos6](https://www.wsj.com/articles/market-rout-shows-dangers-of-margin-lending-crypto-style-11658334507?mod=markets_lead_pos6); Wall Street Journal, “They Thought the ‘Crypto Banks’ Were Safe, and Then Came the Crash,” Rachel Louise Ensign and Angel Au-Yeung, July 23, 2022, <https://www.wsj.com/articles/they-thought-crypto-banks-were-safe-and-then-came-the-crash-11658568780>.

<sup>7</sup> Bloomberg, “Tether Loses Dollar Peg as Crypto Anxiety Hits No. 1 Stablecoin,” Emily Nicolle and Muyao Shen, May 12, 2022, <https://www.bloomberg.com/news/articles/2022-05-12/tether-moves-to-reassure-market-after-biggest-stablecoin-slips>; Bloomberg, “A \$2 Trillion Free-Fall Rattles Crypto to the Core,” Emily Nicolle and Olga Kharif, June 26, 2022, <https://www.bloomberg.com/news/articles/2022-06-26/crypto-winter-why-this-bitcoin-bear-market-is-different-from-the-past>.

<sup>8</sup> CNBC, “Crypto hedge fund Three Arrows files for Chapter 15 bankruptcy,” Arjun Kharpal, July 2, 2022, <https://www.cnbc.com/2022/07/02/crypto-hedge-fund-three-arrows-files-for-chapter-15-bankruptcy.html>; Wall Street Journal, “Market Rout Shows Dangers of Margin Lending, Crypto Style,” Justin Baer and Orla McCaffery, July 20, 2022, [https://www.wsj.com/articles/market-rout-shows-dangers-of-margin-lending-crypto-style-11658334507?mod=markets\\_lead\\_pos6](https://www.wsj.com/articles/market-rout-shows-dangers-of-margin-lending-crypto-style-11658334507?mod=markets_lead_pos6); Wall Street Journal, “They Thought ‘Crypto Banks’ Were Safe, and Then Came the Crash,” Rachel Louise Ensign and Angel Au-Yeung, July 23, 2022, <https://www.wsj.com/articles/they-thought-crypto-banks-were-safe-and-then-came-the-crash-11658568780>.

<sup>9</sup> Office of the Comptroller of the Currency, “Remarks by Acting Comptroller Michael J. Hsu at the DC Blockchain Summit 2022,” May 2022, <https://www.occ.treas.gov/news-issuances/speeches/2022/pub-speech-2022-60.pdf>.

<sup>10</sup> Office of the Comptroller of the Currency, “Interpretive Letter #1179,” November 18, 2021, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>.

<sup>11</sup> Wall Street Journal, “Cryptocurrency Giant Binance.US Hires Former Top Bank Regulator,” Alexander Osipovich, April 20, 2021, <https://www.wsj.com/articles/cryptocurrency-giant-binance-hires-former-top-bank-regulator-11618912800>.

industry widely praised as one that could help mainstream adoption of crypto.”<sup>12</sup> This is despite your previously stated concerns “that these initiatives were not done in full coordination with all stakeholders” or as “part of a broader strategy related to the regulatory perimeter.”<sup>13</sup>

The inclusion of a grandfather clause in Interpretive Letter 1179 also raises concerns. According to this clause, “[b]anks already engaged in cryptocurrency, distributed ledger, or stablecoin activities as of the date of publication of this letter do not need to obtain supervisory non-objection,”<sup>14</sup> meaning that banks that engaged in crypto-related activities prior to the letter’s issuance can avoid putting in place proper risk management controls and systems. Instead, the OCC merely “expects that a bank that has commenced such activity will have provided notice to its supervisory office.”<sup>15</sup>

Given the risks posed by cryptocurrencies to banks and their customers, we request that you withdraw OCC Interpretive Letters 1170, 1172, 1174, and 1179 and coordinate with the Federal Reserve and the Federal Deposit Insurance Corporation to develop a comprehensive approach that adequately protects consumers and the safety and soundness of the banking system.

Additionally, in order to better understand banks’ exposure to the crypto market, please provide responses to the following by August 24, 2022:

1. Since the issuance of Interpretive Letter 1179 in November 2021, which banks have obtained OCC permission to engage in the crypto-related activities specified under Interpretive Letters 1170, 1172, and 1174? As part of your response, please provide the following information.
  - a. Specify the activities each bank has been approved to engage in under your guidance and the estimated dollar volume of their activities.
  - b. Has the OCC denied any banks’ request to engage in crypto-related activities?
2. In total, please specify the number and names of banks regulated by the OCC which are currently engaged in the following activities:
  - a. Providing cryptocurrency custody services.
  - b. Holding dollar deposits serving as reserves backing stablecoins.
  - c. Acting as nodes to verify customer payments.
  - d. Facilitating stablecoin payment transactions.
3. In connection with the banks listed in question number two, please specify which engaged in the following activities prior to the issuance of Interpretive Letter 1179:
  - a. Providing cryptocurrency custody services.
  - b. Holding dollar deposits serving as reserves backing stablecoins.

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<sup>12</sup> Coinbase, “Banks Won’t Rush to Hold Crypto – But OCC’s Regulatory Approval Makes It Harder to Ignore,” Nikhilesh De and Ian Allison, July 24, 2020, <https://www.coindesk.com/policy/2020/07/24/banks-wont-rush-to-hold-crypto-but-occs-regulatory-approval-makes-it-harder-to-ignore/>.

<sup>13</sup> Written testimony of Michael J. Hsu to the U.S. House of Representatives Committee on Financial Services, May 19, 2021, <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba00-wstate-hsum-20210519.pdf>.


<sup>14</sup> Office of the Comptroller of the Currency, “Interpretive Letter #1179,” November 18, 2021, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>.


<sup>15</sup> *Id.*


- c. Acting as nodes to verify customer payments.
  - d. Facilitating stablecoin payment transactions.
4. For each OCC-regulated bank engaged in crypto-related activities, please specify the estimated total dollar volume of the following activities:
- a. Providing cryptocurrency custody services.
  - b. Holding dollar deposits serving as reserves backing stablecoins.
  - c. Acting as nodes to verify customer payments.
  - d. Facilitating stablecoin payment transactions.
5. Are banks regulated by the OCC engaging in other crypto-related activities, such as lending crypto assets or trading crypto assets or derivatives? If so, please specify the bank(s), the activities they are engaging in, and the estimated dollar volume of each activity.


Thank you for your prompt attention to this request.

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Richard J. Durbin  
United States Senator

  
Sheldon Whitehouse  
United States Senator

  
Bernard Sanders  
United States Senator