

OCC Enters Into a Consent Order With the First Federally-Chartered Digital Asset Bank

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The Office of the Comptroller of the Currency (OCC) recently entered into a consent order with the first federally-chartered digital asset bank, Anchorage Digital Bank (Anchorage Digital), for “fail[ing] to adopt and implement a compliance program that adequately covers the required Bank Secrecy Act/Anti-Money Laundering (BSA/AML) program elements.”^[1] In doing so, the OCC clearly signaled that crypto-custodians like Anchorage Digital are expected to comply with the same BSA/AML requirements as other regulated entities. The consent order also suggests that the OCC is keen to intensify its supervision of such entities, and that it is willing to take enforcement action against any entities who should fall short of meeting their BSA/AML obligations.

In January 2021, the OCC conditionally approved Anchorage Digital (previously Anchorage Trust Company) to convert into a national trust bank primarily providing custody services in digital assets and cryptocurrencies.^[2] As a condition of the OCC’s approval, Anchorage Digital was required to enter into an operating agreement with the OCC, compelling it to, among other things, meet the necessary BSA/AML requirements.^[3] Yet as the April 22, 2022 consent order makes clear, the OCC ultimately found that Anchorage Digital failed to adopt and implement an adequate BSA/AML program in violation of both its statutory obligations and the operating agreement. Although it neither admitted nor denied the OCC’s findings, Anchorage Digital has stated that it “is committed to taking all necessary and appropriate steps to remedy the deficiencies identified by the OCC.”^[4]

Under the terms of the consent order, Anchorage Digital must submit to the OCC an action plan detailing the corrective steps it plans to take within 30 days of the date of the order. It must appoint a Compliance Committee, which will be responsible for submitting regular written progress reports to the OCC describing, among other things, the specific corrective actions undertaken and the status of those actions. Anchorage Digital must also implement various compliance programs designed to meet its BSA/AML obligations, including a program designed to ensure sufficient information on digital asset transactions is collected in order to effectively identify and report any suspicious activity.^[5] Anchorage Digital is further required to implement and adhere to a data governance program that ensures information on transaction volumes, customer risk ratings, customer business types, and suspicious activity monitoring data, including alert volumes, is reliably collected.^[6]

Key Takeaways

The Anchorage Digital consent order confirms that the OCC intends to be a proactive supervisor of crypto activities by financial institutions, and that, as Acting Comptroller of the Currency Michael J. Hsu recently stated, it “holds all nationally chartered banks to the same standard, whether they engage in traditional or novel activities.”^[7] This is in line with Hsu’s previous public remarks on crypto assets, which he argued should be subject to consolidated and comprehensive supervision.^[8] It is also consistent with the OCC’s approach to crypto activities so far under the new administration. This approach is reflected in the OCC’s Interpretive Letter 1179, which clarified that in order for national banks to legally engage in cryptocurrency custody services, they must first obtain written approval from the OCC by demonstrating that such services are “safe and sound.”^[9] Financial institutions that engage in or plan to engage in crypto-asset activities, particularly in custodial services, should thus take heed of the shortcomings identified in the Anchorage Digital consent order with respect to the effectiveness—or lack thereof—of its BSA/AML program.

Winston & Strawn Law Clerk Jeremy Chu also contributed to this blog post.

^[1] *In re Anchorage Digit. Bank, Nat’l Ass’n*, AA-ENF-2022-7 (Off. Comptroller Currency Apr. 21, 2022).

^[2] Application by Anchorage Trust Company to Convert to a National Trust Bank (Jan. 13, 2021), <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6a.pdf>.

^[3] Operating Agreement, By and Between Anchorage Digit. Bank Nat’l Ass’n, and Off. Comptroller Currency (Jan. 13, 2021), <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6b.pdf>.

^[4] *In re Anchorage Digit. Bank, Nat’l Ass’n*, AA-ENF-2022-7.

^[5] *Id.* at 10.

^[6] *Id.* at 17-18.

^[7] OCC News Release 2022-41 (April 21, 2022).

^[8] Michael J. Hsu, *Remarks Before the BritishAmerican Business Transatlantic Finance Forum*, Off. Comptroller Currency (Jan. 13, 2022), <https://www.occ.treas.gov/news-issuances/speeches/2022/pub-speech-2022-2.pdf>.

^[9] The OCC also announced that it was “approaching crypto-related activities in the federal banking system very carefully with a high degree of caution and expects its supervised institutions to do the same.” OCC Bulletin 2021-56 (Nov. 23, 2021).

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