

## U.S. Federal Banking Regulators Release Joint Statement on ‘Crypto-Asset Risks to Banking Organizations’

JANUARY 31, 2023

On January 3, 2023, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the “agencies”) issued a [joint statement](#) on crypto-asset risks to banking organizations.

The initiative highlights a number of key risks associated with crypto-assets that participants in the sector should be aware of in 2023, including:

- risk of fraud and scams among crypto-asset sector participants;
- legal uncertainties related to custody practices, redemptions, and ownership rights;
- inaccurate or misleading representations and disclosures by crypto-asset companies;
- significant volatility, which has the potential to impact deposit flows associated with crypto-asset companies;
- susceptibility of stablecoins, which runs the risk of negatively impacting potential deposit outflows for banking organizations that hold stablecoin reserves;
- contagion risk within the crypto-asset sector resulting from interconnections among certain crypto-asset participants, including through opaque lending, investing, funding, service, and operational arrangements;
- risk management and governance practices in the crypto-asset sector exhibiting a lack of maturity and robustness; and
- heightened risks associated with open, public, and/or decentralized networks, or similar systems, including, but not limited to, the lack of governance mechanisms establishing oversight of the system; the absence of contracts or standards to clearly establish roles, responsibilities, and liabilities; and vulnerabilities related to cyber-attacks, outages, lost or trapped assets, and illicit finance.

The joint statement was published just a few months after the collapse of certain crypto exchanges, which had rippling effects across the industry.

The agencies have been assessing whether current or proposed crypto-asset-related activities by banking organizations can be conducted in ways that adequately account for safety and compliance with applicable laws and

regulations. These laws and regulations elicit finance statutes (such as anti-money laundering) and consumer protection laws (such as fair lending laws).

This is not the first time the agencies have issued a joint statement with regard to crypto-assets. On November 23, 2021, the agencies issued a similar [joint statement](#) titled, “Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps.”<sup>[1]</sup> In that joint statement, the initiative sets forth the agencies’ goals to establish uniform standards for regulating crypto-asset transactions involving U.S. bank organizations and previewed that in 2022, agencies would provide further clarity on:

- crypto-asset safekeeping and traditional custody services;
- ancillary custody services;
- facilitation of consumer purchases and sales of crypto-assets;
- loans collateralized by crypto-assets;
- issuance and distribution of stablecoins; and
- activities involving the holding of crypto-assets on balance sheets.

Despite these goals for 2022, the agencies never created uniform standards for regulating crypto-asset transactions and did not provide much clarity regarding the points listed above. In fact, some of these same concerns, such as with crypto-asset custody and stablecoins, reappeared in the 2023 joint statement.

Please contact your Winston relationship partner should you have any questions or to request further information. We will continue to monitor developments and provide friends of the firm with updates as they become available.

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<sup>[1]</sup> The November 23, 2021, Joint Statement was published just a few weeks after the release on the Presidential Working Group Report on Stablecoins, which recommended that the U.S. Congress take prompt action to address regulatory gaps in the stablecoin market and, in the absence of such legislative action, that the U.S. federal bank regulatory agencies use their existing regulatory authorities to regulate the stablecoin market.

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[Carl Fornaris](#)

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Carl Fornaris

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