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# United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

LAURA SWANSON, STAFF DIRECTOR  
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May 19, 2021

Michael Hsu  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street NW  
Washington, DC 20219

Dear Acting Comptroller Hsu:

Congratulations on your appointment and the opportunity to ensure that the Office of the Comptroller of the Currency (OCC) prioritizes the safety of our banking system and the needs of working families that the OCC was established to serve.

I am concerned about a number of national trust charters granted by the prior leadership of the OCC. Shortly after former Acting Comptroller Brian Brooks left the OCC to join Binance, a cryptocurrency exchange, several nontraditional firms that specialize in digital and cryptocurrency activities - including Paxos, Protego, and Anchorage – received conditional national trust charters from the OCC.<sup>1</sup>

As you may be aware, I have long been concerned about the OCC's expansive view of its authority to grant charters to financial and non-financial companies.<sup>2</sup> The scope of the OCC's authority has been challenged by other Members of Congress<sup>3</sup> as well as by state banking regulators and community banks that have filed lawsuits against the OCC.<sup>4</sup> Furthermore, the Senate recently rejected an OCC-promulgated rule that similarly preempted state laws and provided access to the banking system to nontraditional firms that do not otherwise meet requirements to qualify as banks themselves.<sup>5</sup> A unifying concern among those stakeholders is that, in many cases, the companies that seek access to the benefits of a bank charter do not meet the same set of regulatory and consumer protection standards that banks are required to meet. The recent OCC approvals of national trust charters for these cryptocurrency firms raise similar concerns.

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<sup>1</sup> Paxos National Trust [https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-49.html#:~:text=The%20OCC%20granted%20a%20national,company%20and%20its%20current%20operations.&xt=The%20OCC%20granted%20preliminary%20conditional.thorough%20review%20of%20its%20application.](https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-49.html#:~:text=The%20OCC%20granted%20a%20national,company%20and%20its%20current%20operations.&xt=The%20OCC%20granted%20preliminary%20conditional.thorough%20review%20of%20its%20application.;); Protego Trust Bank <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html>; Anchorage Digital Bank <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html>.

<sup>2</sup> See e.g., <https://www.brown.senate.gov/imo/media/doc/2017%2001%2009%20-%20OCC%20Fintech%20letter.pdf>

<sup>3</sup> See here <https://cointelgraph.com/news/brian-brooks-defends-fintech-charter-to-house-financial-services-committee>

<sup>4</sup> "OCC Takes Aim at State Regulators' Fintech Charter Challenge", Law360, (April 29, 2021). Available at: <https://www.law360.com/articles/1380211/occ-takes-aim-at-state-regulators-fintech-charter-challenge>

<sup>5</sup> Lane, Sylvan. "Senate Votes to Repeal OCC 'true lender' Rule, The Hill, (May 2021).

A firm that cannot meet the rigorous requirements applicable to other banks should not be allowed to present itself to the public as a bank. Paxos, Protego and Anchorage seek to broaden access to cryptocurrencies and other risky and unproven digital assets and emerging technologies to traditional bank customers. Each company highlights their federally-chartered status – Paxos referring to itself as “Cutting-edge technology with bank-level oversight.”<sup>6</sup> In other words, these companies suggest that the OCC’s approval of their charters guarantees their business model is as safe, stable and dependable for customers as a local community bank. The fact is, given the many uncertainties present in the digital asset landscape as identified by other regulators,<sup>7</sup> the volatility of digital asset valuations,<sup>8</sup> and the disproportionate influence individuals can have on entire cryptocurrency markets<sup>9</sup>, the OCC is not in a position to regulate these entities comparably to traditional banks.

It is also unclear whether the OCC engaged in the appropriate due diligence to stand behind this ‘seal of approval’ before granting these charters. Former Acting Comptroller Brian Brooks actively encouraged cryptocurrency companies to apply for a national trust charter because it had “relatively easy requirements” and is “just a faster charter to get.”<sup>10</sup> Not only could these charter approvals lead customers to underestimate the risks related to these assets, but it could undermine faith in the safety and stability of the entire banking system.

For these reasons, I request that you reassess any conditional national trust charters and halt the approval of any additional charters to nonbank entities while you review. In addition, I urge you to review the procedures and guidelines followed within the OCC regarding the evaluation and approval of the Anchorage, Paxos and Protego charters to ensure that the OCC’s supervision and licensing standards remain both rigorous and equitable among charter applicants.

Thank you, and please do not hesitate to contact my staff with any questions.

Sincerely,



Chairman Sherrod Brown

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<sup>6</sup> For example, see Anchorage.com “the first Federally Chartered Digital Asset Bank”, Paxos.com “Cutting-edge technology with bank-level oversight” and ProtegoTrust.com “Federal Charter – extraordinary power”.

<sup>7</sup> United States Securities and Exchange Commission Division of Examinations Risk Alert – February 2021. Available at: <https://www.sec.gov/files/digital-assets-risk-alert.pdf>

<sup>8</sup> Affigne, Michael. “Bitcoin volatility is here to stay, top technician warns,” CNBC.com, March 2021. Available at: <https://www.cnbc.com/2021/03/23/bitcoin-volatility-is-here-to-stay-top-technician-warns.html>

<sup>9</sup> Notable examples include “Dogecoin plunges 30% during Elon Musk’s SNL Appearance” - <https://www.cnbc.com/2021/05/08/dogecoin-price-plummets-as-elon-musk-hosts-saturday-night-live-.html>; and “Musk Fuels Bitcoin Volatility by Saying Tesla Hasn’t Sold Stake” - <https://finance.yahoo.com/news/bitcoin-nurses-losses-musk-spats-025924298.html?guccounter=1>

<sup>10</sup> Brett, Jason. “Exclusive: OCC Chief Brian Brooks Says Payments Charter Is Ready, More Crypto Banks Coming Soon, Forbes, November 2020. Available at: <https://www.forbes.com/sites/jasonbrett/2020/11/17/exclusive-occ-chief-brian-brooks-says-payments-charter-is-ready-more-crypto-banks-coming-soon/?sh=7b5f61142626>