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Commissioner

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## **TEXAS DEPARTMENT OF BANKING**

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### **INDUSTRY NOTICE 2021-03**

*Date: June 10, 2021*

### **Authority of Texas State-Chartered Banks to Provide Virtual Currency Custody Services to Customers**

This notice affirms that Texas state-chartered banks may provide customers with virtual currency custody services, so long as the bank has adequate protocols in place to effectively manage the risks and comply with applicable law.

Texas state-chartered banks have long provided their customers with safekeeping and custody services for a variety of assets. These services play a crucial role in the business of banking as customers look to banks to offer secure and dependable storage. While custody and safekeeping of virtual currencies will necessarily differ from that associated with more traditional assets, the Texas Department of Banking believes that the authority to provide these services with respect to virtual currencies already exists pursuant to Texas Finance Code § 32.001.

Virtual currency is an electronic representation of value intended to be used as a medium of exchange, unit of account, or store of value. Virtual currencies do not exist in a physical form. Instead, they are intangible and exist only on the blockchain or distributed ledger associated with that virtual currency. The owner of the virtual currency holds cryptographic keys associated with the specific unit of virtual currency in a digital wallet. The keys enable the rightful owner of the virtual currency to access and utilize it further.

What virtual currency custody services a bank chooses to offer will depend on the bank's expertise, risk appetite, and business model. For instance, the bank may choose to allow the customer to retain direct control over their own virtual currency and merely store copies of the customer's private keys associated with that virtual currency. Alternatively, the bank may cause the customer to transfer their virtual currency directly to the control of the bank, creating new private keys that are then held by the bank on behalf of the customer. As with the method of custody services, several secure storage options are available to the bank, each of which has distinctive characteristics pertaining to level of security and accessibility. The bank will have to determine which storage option best fits the circumstances.

The Department has previously determined that custody services may be provided by a Texas state-chartered bank in either a fiduciary or non-fiduciary capacity. In providing such services in a non-fiduciary capacity, the bank acts as a bailee, taking possession of the customer's asset for safekeeping while legal title to that asset remains with the customer. The extent of the bank's duties regarding the asset depends on the custodial agreement between bank and customer but generally,

the bank owes its customer the duty to use proper care to keep the asset safely and to return it unharmed upon request.

A bank proposing to offer custody services in a fiduciary capacity must possess trust powers, which may require a charter amendment and/or compliance with 7 Texas Administrative Code § 3.23 prior to doing so. In its fiduciary capacity, the bank has the authority to manage virtual currency assets as it would any other type of asset held in such capacity.

Prior to a bank entering a new line of business, such as offering virtual currency services, it is incumbent on management to conduct due diligence and carefully examine the risks involved in offering a new product or service through a methodical risk assessment process. Should management and the board of directors decide to move forward, effective risk management systems and controls must be implemented to measure, monitor, and control relevant risks associated with custody of digital assets.

Necessary controls consist of administrative controls, such as policies and procedures; technical controls, such as access controls and authentication; and physical controls, such as protection of hardware and data specific to the virtual currency held. The bank should also confirm the existence of adequate coverage with its insurance carrier.

Due to the technical nature of holding virtual currency, the bank may choose to establish a relationship with a service provider with expertise in handling virtual currency. Therefore, it is incumbent on the bank to maintain a strong service provider oversight program that addresses risk in the service provider relationship from the first steps of due diligence through a potential termination of the service provider relationship. More information on outsourcing technology services can be found in the Federal Financial Institutions Examination Council's [\*IT Examination Handbook for Outsourcing Technology Services\*](#).

If you have any questions regarding the provision of virtual currency custody services, please contact Marcus Adams, Assistant General Counsel, via [email](#) or by phone at (512) 475-1236.