Dear Acting Comptroller Brooks,

We would like to thank the Office of the Comptroller of the Currency (the “OCC”) for the opportunity to comment on the advance notice of proposed rulemaking regarding digital activities of national banks and federal savings associations (the “ANPR”). As an industry-leading financial technology company whose product offerings include the use of blockchain technology to facilitate cross-border payments and remittances, Ripple Labs, Inc. (“Ripple”) continuously looks for ways to improve its product offerings while remaining compliant with applicable laws, rules and regulations (“LRR”). Unlike the large majority of companies seeking to leverage crypto assets, Ripple’s customers and partners are regulated financial institutions, both banks and payment service providers, who operate within the existing financial system.

With over 300 customers as of the date of this response (the “Letter”). Using blockchain technology, Ripple allows financial institutions to process payments instantly, reliably, cost-effectively, and with end-to-end visibility anywhere in the world. In fact, Ripple was recently featured as the only blockchain company in a list of the top 100 cross-border payment providers.¹ Ripple’s aim is not to replace fiat currencies, but rather to enable a faster, less expensive, and more transparent method of making cross-border payments that benefits not only our financial institution customers, but the consumers they serve.²

We welcome the issuance of OCC Interpretive Letter #1170 (the “Interpretive Letter”), which makes clear that national banks may provide cryptocurrency custody services for customers. The current ANPR gives the OCC the opportunity to build on this crucial first step by clarifying which additional use cases are permissible under current LRR with respect to crypto assets. This response is structured first to provide general views on the need for regulatory clarity in the United States for national banks and federal savings associations (“banks”) seeking to rely on crypto assets before continuing with a discussion of certain questions presented in the ANPR.

¹ See https://www.fxcintel.com/research/reports/the-top-100-cross-border-payment-companies.
² See Consumer Financial Protection Bureau, Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E), 85 Fed. Reg. 34870, 34880 (Jul. 21, 2020) (observing that “expanded adoption” of Ripple’s products could allow banks and credit unions “to know the exact final amount that recipients of remittance transfers will receive before they are sent”).
Thank you for your consideration of this submission.

Sincerely,

Ripple Labs, Inc.

Appendix
APPENDIX

A. Overarching Views

1. **The United States should use its position of global prominence to lead in the development of a practical and comprehensive regulatory framework for crypto assets.**

To begin, although not directly the topic of this ANPR, it is important to recognize the current state of crypto asset regulation in the United States. No nation is better positioned than the United States to lead in the development of a practical and comprehensive regulatory framework for crypto assets.

The lack of a unified regulatory approach in the United States creates marketplace confusion and the opportunity for regulatory arbitrage. For example, competing definitions and conflicting regulatory treatments of crypto assets at the state and federal level makes marketplace participants vulnerable to a confusing LRR patchwork that cannot be practically navigated. As a result, some participants may elect to abandon their efforts altogether, seek to establish outside the United States and/or block U.S. residents from accessing their services. All of these outcomes are antithetical to the United States’ rich history of fostering innovation and entrepreneurship.³

Because responsible actors in the crypto asset industry need to rely on banks for a variety of services, the OCC is uniquely positioned to lead by clarifying the scope of permissible crypto asset activities banks may undertake. That clarity will undoubtedly influence other policymakers and regulators (both domestically and foreign).⁴

2. **Any regulatory framework must be principles-based rather than impose prescriptive rules on market participants.**

Any regulatory framework should be principles-based and designed to be technology neutral, taking into account the evolving nature of the crypto asset space.⁵

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³ In fact, if the United States does not lead there is a real threat that China will continue to expand its control of crypto assets and global payments. See Jamieson Greer, *U.S. Must Act to Slow China’s Roll Toward Global Digital Payments Domination*, Bloomberg Law, June 26, 2020.

⁴ For example, many banks have affiliate or subsidiary broker-dealers and futures commission merchants; thus, the interest of banks in activities involving crypto assets clearly extends beyond those which are in “the business of banking” or “incidental” thereto. 12 CFR § 7.5001(a).

⁵ A principles-based approach has been utilized successfully by other U.S. regulators. For example, in the shadow of the 2008 global financial crisis, the U.S. Commodity Futures Trading Commission developed Core Principles for trading platforms (later named swap execution facilities) that allow market participants to transact in swaps. See 17 CFR Part 37.
Regulatory schemes that are overly prescriptive can stifle innovation and set policy makers back years, if not decades in terms of needing to adjust to account for an inflexible strategy at the outset. A principles-based approach should inform the majority of the OCC's future work in developing a crypto asset regulatory framework or determining what activities are permissible for banks to participate in.

3. **There are risks associated with all asset classes, not just crypto assets. An appropriate regulatory framework should acknowledge this instead of attempting to categorize crypto assets in a way that precludes banks from engaging in crypto-related activity.**

Any regulatory framework requires careful evaluation of the risks associated with crypto assets. Banks, however, are already required to act in a safe and sound manner and not only assess risks, but develop written policies and procedures reasonably designed to comply with applicable LRRs. As the OCC stated in its recent Interpretive Letter on cryptocurrency custody services, banks must “operate in compliance with applicable law, properly manage customer relationships and effectively mitigate risks by implementing controls commensurate with those risks.”  

Moreover, “banks are encouraged to manage customer relationships and mitigate risks based on customer relationships rather than declining to provide banking services to entire categories of customers.”  

Treating activities that involve a crypto asset as involving a particularly odious level of risk than other asset classes would run counter to the existing practices that banks have adopted and embedded into their operational risk management and compliance frameworks.

B. **ANPR Questions**

1. **Considering the financial industry's evolution, are the OCC's legal standards in part 7, subpart E, and part 155 sufficiently flexible and clear? Should the standards be revised to better reflect developments in the broader financial services industry? If so, how?**

Establishing a basic taxonomy is a threshold issue that the OCC is well equipped to address. Multiple terms are currently used interchangeably—including “crypto asset,” “digital asset,” “cryptocurrency” and others—which can lead to confusion among market participants, policy makers and regulators. We propose using a single term, like crypto asset, and defining it as “a digital representation of value that is not issued by a central bank, but is traded, transferred and stored electronically by natural and legal persons for the purposes of payment, investment and other forms of utility, and applies cryptography techniques in the underlying technology.”

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7 Id.
Adoption of the above definition in relation to the term “crypto asset” is appropriate and consistent with the approach taken by regulators and policy makers in other jurisdictions.\(^8\) Using this term and definition would allow for continued supervision while acknowledging the evolving nature of distributed ledger technology (“DLT”). There may also be benefits to categorizing crypto assets into certain subgroups based on their underlying characteristics, including, for example, separating “exchange tokens” or “payment tokens” into separate categories.\(^9\)

No matter the approach, however, crypto assets should be defined in a manner that provides flexibility to allow for continued innovation and avoids marketplace confusion.

2. Do any of the legal standards in part 7, subpart E, or part 155 create unnecessary hurdles or burdens to the use of technological advances or innovation in banking?

Fairly read, the legal standards in part 7, subpart E or part 155 should not create unnecessary hurdles or burdens to the use of technological advances or innovation in banking. But banks are inherently risk averse and without clear regulatory guidance, such as that set forth in the OCC’s recent Interpretive Letter, some banks will not adopt new, innovative services. This ANPR is an opportunity for the OCC to clarify additional use cases it considers permissible, including that certain crypto assets can be treated as an alternative form of a bridge currency to facilitate cross-border payments between fiat currencies. Absent clarification that they are not undertaking prohibited activity, banks may continue to be reluctant to experiment with new products reliant on DLT which ultimately hurts the banks themselves,\(^{10}\) as well as their customers who would otherwise reap the benefits of such innovation.

3. Are there digital banking activities or issues related to digital banking activities that the OCC does not address in part 7, subpart E, or part 155 that the OCC should address? If so, what are these activities or issues, and why and how should the OCC address them?

Ripple’s suite of products and services allows two (or more) parties to facilitate cross-border money remittances between fiat currencies through use of a blockchain solution that employs a crypto asset. Banks that are interested in using this technology,

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\(^8\) The Canadian Securities Administrators, Bank of Thailand, European Commission, United Kingdom’s Financial Conduct Authority have all referenced the term “crypto asset” in some public forum. See, e.g., Canadian Securities Administrators Staff Notice 21-327, Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (Jan. 16, 2020).

\(^9\) For example, in the UK, exchange tokens, which “can be used to facilitate regulated payment services” is an unregulated token that falls outside the Financial Conduct Authority’s regulatory perimeter. See https://www.fca.org.uk/publication/policy/ps19-22.pdf, § 2.15. The Monetary Authority of Singapore defines “digital payment token” similarly, describing it as something that “is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt[.]” See Payment Services Act 2019, Part I, § 2.

\(^{10}\) For example, by availing themselves of this technology, banks can free up capital that is otherwise locked in pre-funded correspondent accounts or otherwise reduce their cost of funds.
however, may be hesitant to integrate the software itself because of uncertainty around whether the involvement of a crypto asset in the payment flow will result in heightened regulatory scrutiny, let alone whether it is permissible under existing U.S. LRR. This is so despite the Consumer Financial Protection Bureau’s (“CFPB’s”) recent acknowledgement that adoption of Ripple products could provide banks with greater certainty regarding the fees that will be charged in cross-border remittances than existing solutions.11

No matter the regulatory approach it takes, the OCC should make clear that banks’ reliance on crypto assets for purposes of conducting or facilitating cross-border remittances and related foreign exchange operations—allowing for compliance with other existing regulatory regimes—falls within the scope of permitted activities. It is also critical that whatever revisions to 12 CFR Part 7 (or other applicable LRR) are adopted, they be flexible enough to ensure that entities like Ripple remain outside the regulatory perimeter with respect to licensure or registration. Requiring companies who offer software services (i.e., that are not directly involved in the payment flow) to be captured within the regulatory perimeter is an ill-fitting approach that would result in an inconsistency with current market practices and likely stifle innovation.

4. What types of activities related to cryptocurrencies or crypto assets are financial services companies or bank customers engaged? To what extent does customer engagement in crypto-related activities impact banks and the banking industry? What are the barriers or obstacles, if any, to further adoption of crypto-related activities in the banking industry? Are there specific activities that should be addressed in regulatory guidance, including regulations?

   a. Explicitly permitting national banks to engage in crypto asset transactions will aid in institutional adoption and maturation of the industry.

As previously discussed, Ripple’s suite of products and services allow two (or more) parties to conduct a cross-border transaction through use of a crypto asset, allowing payments to be processed instantly, reliably, cost-effectively, and with end-to-end visibility anywhere in the world. This represents a marked improvement over current cross-border payment options that require banks to lock up precious capital in pre-funded correspondent accounts. Yet for many reasons, banks remain hesitant either to onboard with a crypto asset exchange or engage in bilateral, over-the-counter arm’s length crypto transactions. The reasons include, though are not limited to, regulatory concerns exacerbated by policymakers’ silence as to what activities are permissible.

An interpretive statement from the OCC that crypto assets may be used for remittances without further licensure or permission would provide banks with the comfort they need to adopt these sorts of products.12 Specifically, the OCC should make clear that the

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11 See supra note 2.
12 Ripple believes that the purchase or sale of crypto assets falls within the statutory text of 12 CFR § 7.5001(c).
purchase and sale of a crypto asset to facilitate a cross-border transaction or foreign exchange operation is the “functional equivalent to, or a logical outgrowth of, a recognized banking activity.”¹³ Just as banks use foreign exchange operations to move money between fiat currencies, the use of a crypto asset to facilitate the exchange of one fiat currency for another is a “logical outgrowth” of a recognized banking activity. Similarly, permitting banks to perform such transactions is clearly “activity [that] strengthens the bank by benefiting its customers or its business,” as the ultimate beneficiary customer will achieve the same objective with the added benefits of cost reduction and time efficiency.¹⁴ Finally, the use of novel asset classes to facilitate activity that is traditionally considered recognized banking activity is a hallmark of American innovation.

Banks have considered and experimented with new products and their associated risks for decades, which have allowed them to grow and develop their industry, which in turn benefits consumers. For example, with the advent of derivative instruments over the past 20 years, banks have been able to hedge their risks more appropriately. The same can be said for the use of crypto assets to facilitate cross-border payments; these are merely new tools that banks can deploy in their arsenal to offer a better customer experience for the ultimate beneficiary, the consumer. Thus, the “activity involves risks similar in nature to those already assumed by banks.”¹⁵

7. What new payments technologies and processes should the OCC be aware of and what are the potential implications of these technologies and processes for the banking industry? How are new payments technologies and processes facilitated or hindered by existing regulatory frameworks?

Ripple’s use of a crypto asset in connection with its software products allows financial institutions to settle cross-border transactions globally, on a real-time basis, at a fraction of the cost of traditional services available to market participants.

Historically, remittance providers enable payments by pre-funding correspondent accounts. This not only traps enormous amounts of capital, but also creates foreign exchange and counterparty risks that must often be hedged. The trapped capital also creates compliance costs and large, lost opportunity costs. This process limits the reach of efficient payment solutions to high-volume currency pairs and is a major driver of the high and opaque fees being charged to customers sending smaller amounts to friends and families overseas. Payments between less frequently traded currencies can be even more expensive and cumbersome.

Crypto assets specifically designed for payments have the potential to reduce these limitations by enabling payments without the need to pre-fund overseas. Ripple’s software leverages XRP -- a convertible virtual currency -- as a bridge between

¹³ 12 CFR § 7.5001(c)(1)(i).
¹⁴ Id. § 7.5001(c)(1)(ii).
¹⁵ Id. § 7.5001(c)(1)(iii).
currencies. This allows financial institutions to access liquidity on demand through crypto asset exchanges without having to pre-fund accounts in the destination country. The payer and payee continue to use fiat currency for their payment, with XRP used as a bridge between the regulated financial institutions that are facilitating the remittance transaction. This is particularly useful for smaller institutions with limited capital; using Ripple products, they can achieve broad global payment reach without additional capital needs.

Notwithstanding the broad utility of solutions like Ripple’s, banks have exhibited hesitance to utilize crypto assets in their operations due to the current lack of regulatory clarity. As discussed in response to question 4, we believe the OCC should make clear -- through the promulgation of either regulations or associated guidance -- that the purchase and sale of a crypto asset to facilitate a cross-border transaction or foreign exchange operation is the “functional equivalent to, or a logical outgrowth of, a recognized banking activity.”¹⁶ A statement of support from the OCC will give banks the assurance they need that implementation of solutions like Ripple’s are permissible under existing LRR and will not ultimately result in enforcement action.

To this end, other regulators have proactively highlighted Ripple’s product offerings as beneficial to consumers. As noted earlier, the CFPB, in announcing the final rule that would revise the Electronic Fund Transfer Act (“EFTA”) as it relates to remittance transfer providers,¹⁷ cited “the continued growth and expanding partnerships of virtual currency companies, such as Ripple, which offer both a payments messaging platform to support cross-border money transfers as well as a virtual currency, XRP, which can be used to effect settlement of those transfers.”¹⁸ The CFPB continued by stating that it “believe[d] that expanded adoption of ... Ripple’s suite of products could ... allow banks and credit unions to know the exact final amount that recipients of remittance transfers will receive before they are sent.”¹⁹ As a result of the changes to the rule, subject to limited exceptions, remittance providers in the United States will now have to disclose: (a) the exact exchange rate that applies to a remittance transfer; (b) any covered third-party fees; and (c) the amount to be received by the recipient of the transfer.

Clear guidance from the OCC acknowledging that banks may use crypto assets to facilitate cross-border payments will help innovative payment technologies like Ripple’s flourish in terms of their adoption and commercialization, bringing to bear the benefits to consumers that the CFPB envisioned in their recent rulemaking.

¹⁶ Id. § 7.5001(c)(1)(i).
¹⁸ See 85 Fed. Reg. 34870, 34880 (final rule); see also 84 Fed. Reg. 67132, 67142 (proposed rule).
¹⁹ See 85 Fed. Reg. 34870, 34880 (final rule); see also 84 Fed. Reg. 67132, 67142 (proposed rule).
8. What new or innovative tools do financial services companies use to comply with applicable regulations and supervisory expectations (i.e., “regtech”)? How does the OCC’s regulatory approach enable or hinder advancements in this area?

As crypto asset adoption increases globally, policy makers and standard setting bodies are increasingly seeking to bring crypto asset activity within the existing regulatory framework of the financial system. Advances in DLT have led to an increase in the number of innovative solutions that can aid market participants in their efforts to reasonably comply with applicable LRRs, as well as provide regulators and examiners with additional tools to identify and detect potentially suspicious activity.

For example, during its June 2020 Plenary Session, the Financial Action Task Force (“FATF”) finalized its evaluation of virtual asset service provider (“VASP”) efforts over the prior 12 months to implement revised anti-money laundering and counter-terrorist financing (“AML/CFT”) requirements, including Recommendation 19 (the “Travel Rule”).

FATF’s recommendation to require the reporting of certain information relating to crypto asset activity conducted by VASPs resulted in concentrated efforts by various providers to implement a solution that is interoperable across market participants and geographic regions.

One such example is PayID, a solution developed by Ripple’s Xpring unit. PayID is a simple, open standard designed to help individuals and companies easily send and receive money using a single identifier. As open-source software, PayID offers financial institutions both small and large an easy and quick way to integrate a Travel Rule solution with other systems across their enterprises and that of their partners. Designed to leverage existing web infrastructure and comply with security and privacy standards, PayID is designed to work across jurisdictions, blockchains, and traditional payment rails.

The rapid growth of crypto asset activity must be accompanied by commensurate tools to allow market participants to meet their compliance obligations. To that end, the OCC should look to its member banks to adopt new technologies that are specifically designed to keep pace with innovation in today’s marketplace. Moreover, new ideas and fresh perspectives on how to develop compliance solutions are needed if the United States is to keep pace with advancements in other nations.

Finally, it is worth highlighting that although many “regtech” solutions are being developed today that are designed solely to address crypto asset activity, others seek an additive solution to traditional financial markets infrastructure. Both struggle at times to reach commercial success, because of the negative perception associated with crypto assets in the marketplace. It is critical that the OCC and its fellow regulators

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21 https://payid.org/.

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encourage banks to closely examine and not dismiss innovative solutions simply because the development and design did not originate within the banks or by legacy partners.

11. Are there issues the OCC should consider in light of changes in the banking system that have occurred in response to the COVID-19 pandemic, such as social distancing?

Although digitization of financial services has long been underway, the current pandemic has highlighted the importance of ensuring this transition proceeds swiftly as traditional operations have been upended. Interest and demand in digital payment services in particular has escalated, with legislation being introduced in the U.S. House of Representatives that would reduce human contact in payments by eliminating signatures for swipe, dip, or tap point-of-sale transactions22 and other nations – including Austria, Germany, Hungary, Ireland, the Netherlands, and the United Kingdom – making more transactions eligible for contactless payments.23 E-transactions and digital remittances are experiencing a similar spike as individuals seek immediate access to cash and the ability to send it quickly and reliably to others, without ever needing to leave their homes. Finally, in light of the pandemic, several U.S. lawmakers also expressly encouraged the Treasury Department to consider utilizing “private sector innovations such as blockchain and DLT to support the necessary functions of government to distribute and track relief programs.”24

We believe any proposed rulemaking undertaken by the OCC should continue to encourage these developments and promote innovation in the financial technology space, including with respect to DLT and crypto assets which can be used to move money quickly, securely, and transparently to the individuals and businesses who need it most. The pandemic has demonstrated that many of the traditional ways in which we conduct financial transactions may no longer be effective, or safe. Any regulatory changes should be flexible enough to encompass the new paradigms that fintech promises to usher in.