October 14, 2025

Via Electronic Submission

Sebastian R. Astrada
Director for Licensing
Midsize, Trust, Credit Card, and Novel Banks
Office of the Comptroller of the Currency
400 7th St., SW
Washington, DC 20219

Re: First National Digital Currency Bank, N.A., Charter Application (2025-Charter--342299)

Dear Mr. Astrada:

The Bank Policy Institute[1] respectfully submits this comment in opposition to the application submitted by First National Digital Currency Bank, N.A. ("Trust Bank") on June 30, 2025 (the "Application") to the Office of the Comptroller of the Currency seeking approval for a national trust bank charter.[2] As we describe in detail below, we have deep concerns that approval of the Application, whether alone or in conjunction with the similar applications recently filed, would: (i) exceed the scope of the OCC's authority under 12 U.S.C. 27(a), which limits national trust bank charters to institutions predominantly engaged in trust and fiduciary activities; (ii) permit the national trust bank charter to be used in a new and untested manner that could significantly increase risks to the U.S. financial system; and (iii) create an unlevel playing field that would harm traditional federal- and state-chartered banks and inhibit their ability to serve the credit needs of their communities.

We note at the outset that the public's ability to meaningfully comment on the Application is significantly limited by the fact that the portions of the Application that the OCC has made public include only a cursory and superficial description of the Trust Bank and its proposed activities – literally no more than a few sentences. While we submit this comment based on the information available, we note that neither Trust Bank nor the OCC has provided the public with adequate information for the public to

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

[2] The Application largely mirrors numerous other applications recently filed by affiliates of entities engaged primarily in activities related to digital assets, in response to which we have submitted similar comments.

meaningfully assess or fully comment on Trust Bank's proposed activities or business plan, or to consider any relevant legal or policy issues that may be presented by such activities. While the Application refers to a confidential business plan appended to the Application which would provide helpful information, this information remains hidden from the public, even after we have requested the OCC disclose this information under the Freedom of Information Act.[3] This lack of transparency is wholly inconsistent the present administration's explicit commitment.[4]

As discussed in more detail below, the Application raises a host of important legal, regulatory, and policy questions and concerns that we urge the OCC to carefully evaluate and ensure are appropriately answered and addressed before any action is taken on the Application. In particular, we recommend that the OCC:

- Confirm that Trust Bank will not itself issue stablecoins;
- Confirm that Trust Bank will actually engage in fiduciary activities within the meaning of the relevant provisions of the National Bank Act;
- Confirm Trust Bank will not accept, hold in its name, or commingle with its own accounts (including in any master account it may maintain at a Federal Reserve Bank) the cash component of any stablecoin reserves for which it may act as trustee or custodian or any trust deposits it may accept;
- Confirm that Trust Bank will maintain sufficient capital (for example, by maintaining capital on at least a one-to-one basis with any funds it places with an insured depository institution ("IDI"));
- Consider whether Trust Bank's parent can adequately provide capital and liquidity support to Trust Bank, especially in light of the fact that it appears that Trust Bank's services will be provided predominately to affiliates and concentrated within a single financial market segment, on which Trust Bank will be dependent for its revenues and profitability;
- Consider whether the OCC's procedures for resolving uninsured national trust banks provided in 12 CFR Part 51 would be adequate to protect customers, consumers, and the banking system in the event of Trust Bank's failure;
- Consider whether Trust Bank's proposed activities are consistent with Sections 23A and 23B of the Federal Reserve Act and their implementing regulation, Regulation W, given that it appears that its services will be provided predominantly to affiliates; and

[3] In response to our FOIA requests, the OCC produced the public portions of the applications already made available on the OCC's website and fully redacted confidential exhibits, and thus, provided no further clarity regarding the proposed activities of Applicant or the similar applications about which we sought additional information.

[4] Approving the Application without affording the public visibility into Trust Bank's proposed activities would also contravene President Trump's express mandates regarding transparency in government. As described in a White House announcement, "President Trump campaigned on a promise to return power back to the American people by 'cleaning out the Deep State.'" https://www.whitehouse.gov/issues/doge/. Without greater transparency and solicitation of public input regarding the Application and the OCC's interpretation of its chartering authority, President Trump's promise would remain unfulfilled. Accordingly, we ask the OCC to release additional information to the public on Trust Bank's business plans, with only strictly necessary redactions, to provide the public the ability to scrutinize such information.

- Confirm that Trust Bank will, if necessary, register with the U.S. Securities and Exchange Commission as a broker-dealer or conform its activities to those permissible under the narrow exceptions permitted by Regulation R.[5]

I. Paradigm for Evaluating the Charter Application

Evaluating the Application is complicated by the numerous and acute legal ambiguities presented by digital asset-related activities. It is sometimes suggested that digital assets in general, and stablecoins in particular, are novel or unique financial instruments. But it may be more accurate to say that digital assets and stablecoins in many cases are simply traditional assets – depending on the digital asset, they may be analogous to bonds, debentures, deposits, money orders, traveler's checks, money market mutual funds, derivatives, precious metals, or baseball cards – the ownership of which is recorded through a distributed ledger recordkeeping system rather than a centralized ledger or other means.[6] The system of recording the ownership of an asset does not fundamentally alter the character or risk of the asset, and the OCC rightly addresses its chartering and prudential regulation to the substantive risks of a particular asset, product or service may pose to institutions and the broader banking system, and not merely their form.[7]

This is especially true with respect to national trust banks, which by law are distinct from commercial banks – their permissible remit is limited to fiduciary and related activities and does not include the wider range of permissible banking activities permitted under 24(Seventh) of the National Bank Act ("NBA"). The fact that the assets involved in a particular activity are subject to a different recordkeeping technology should therefore not alter the OCC's fundamental legal analysis regarding whether and how national trust banks may engage in those activities.

Despite the potential for the recordkeeping technology underpinning digital assets to offer efficiencies with respect to certain types of transactions, Trust Bank does not propose to limit its activities to developing any such efficiencies or improving recordkeeping methods. Rather, Trust Bank proposes to "manage" the stablecoin reserves of USDC, a stablecoin issued by its affiliates, and "provide related fiduciary services, including digital asset custody," though nothing in the Applications explains how or in what capacity it might do so.

Notwithstanding recent Congressional efforts to establish a framework to regulate stablecoins in the GENIUS Act, questions remain regarding the legal construct of stablecoins as concerns the

[5] 12 CFR Part 247.

[6] The ownership of digital assets is evidenced on a distributed ledger system (commonly referred to as a "blockchain") in which a change in ownership is recorded on the ledger when multiple validators (that are "distributed") cryptographically agree to the validity of the change. To initiate a transaction (i.e., a change in ownership of a digital asset), the holder of the digital asset, which can either be an individual self-custodying the digital asset or a third-party custodian, uses a cryptographic mechanism – a "private key" – to broadcast the proposed change in ownership to the distributed ledger for validation. Changes in digital asset ownership are usually recorded on the distributed ledger without central trusted counterparty clearing and settlement, in contrast to traditional financial transactions which are typically effected through the assistance of a central trusted counterparty to clear and settle the transaction. This recordkeeping method does not rely on particularly novel technology. Public key/private key cryptography dates back many decades and has been used by financial institutions since the previous century.

[7] *See* 12 CFR Part 30.

Applications – questions the OCC must necessarily answer prior to considering granting a trust charter to an entity that would engage in stablecoin activities. In the first instance, it is unclear what legal structure will be employed by Trust Bank, whether alone or together with its affiliates or clients, to support custody or issuance of stablecoins and/or other digital assets. In particular, the Application does not explain the capacity in which Trust Bank will "manage stablecoin reserves" because it provides no information on how the managed stablecoins themselves will be issued, by whom and to whom the stablecoins will be issued, and what legal and other relationships will exist between the stablecoin holder, issuer, and Trust Bank.

These relationships will depend upon, and ultimately be defined by, what the stablecoin purports to be. Broadly speaking, there are two possibilities that may be used. First, like shares in a money market mutual fund ("MMMF"), a stablecoin can evidence a holder's claim for an undivided interest in a pool of assets maintained by or for the issuer, which is done typically by a trust. Second, akin to prepaid cards, money orders, or traveler's checks, a stablecoin can evidence a holder's claim directly against the issuer, with reserves merely ensuring the solvency of the issuer in the face of redemptions. The Application provides no information concerning which of these stablecoin issuance models Trust Bank will support through custody and/or management of the underlying stablecoin reserves. For example, the Application does not indicate whether the stablecoin reserves it "manages" will constitute the *res* of a duly formed trust of which the issuer or stablecoin holders are beneficiaries. If this is the case, will Trust Bank be the trustee to that duly formed trust, or act merely as custodian of some or all the reserves and other property of that trust? If Trust Bank is to act as a trustee, on whose behalf will it be acting – stablecoin holders, the issuer, or another trust company? Whether or not Trust Bank will owe a fiduciary duty to any person will depend on the legal structure used and the legal relationships between the interested parties, none of which is described in the Application. It is therefore vital that the OCC investigate and clarify the precise structure of Trust Bank's activities and the implication of that structure to Trust Bank's eligibility and fitness for a national trust bank charter.

To better establish the legal and regulatory implications of the Application, we suggest the OCC seek and make public the answers to the following questions, among others:

1. With respect to any stablecoin reserves that Trust Bank manages or custodies, will the relevant stablecoins be issued by a trust and represent a holder's undivided interest in the stablecoin reserves, or will they be issued by a non-trust entity against which holders have a claim as creditor, such that the stablecoin reserves are property of the non-trust issuer itself?
2. Will Trust Bank support/manage stablecoins issued by affiliated parties, third-party issued stablecoins, or both?
3. In what capacity will Trust Bank hold reserves – as a non-fiduciary, directed custodian, trustee or custodian with investment discretion?
4. Will Trust Bank support the issuance, custody, or trading of securities?
5. In what capacity will Trust Bank hold digital assets other than stablecoins – as a non-fiduciary, directed custodian, as a trustee, or as a custodian with investment discretion?

II. Trust Bank's Proposed Activities Appear Inconsistent with a National Trust Bank Charter under the National Bank Act and OCC Regulations

Section 27(a) of the NBA empowers the OCC to charter national banks whose activities are "limited to those of a trust company *and* activities related thereto."[8] The plain meaning of this provision, to which the OCC must conform its chartering decisions,[9] is that a national trust bank charter is predicated on an applicant engaging in the activities of a "trust company" in the first instance, with related activities also being permitted to an applicant otherwise engaged in trust company activities. In other words, the NBA does not provide an applicant the freedom to act as a trust company *or* engage in related activities; rather, applicants must primarily engage in the activities of a trust company. Unhelpfully, the NBA does not define the term "trust company" and no provision of the NBA or other federal law outside of Section 27(a) specifically authorizes the chartering of a "trust company."

Traditionally, trust companies have differed from commercial banks in that they do not and may not perform traditional banking functions, such as accepting demand deposits or making commercial loans.[10] Rather, the primary role of a trust company has always been to "take and administer trusts."[11] A "trust" is a "fiduciary relationship with respect to property . . . subjecting the person who holds title to the property to deal with it for the benefit" of others.[12] The OCC's chartering regulations expressly recognize the centrality of acting as a fiduciary for national trust bank applicants.[13] 12 CFR 5.20(e)(1)(i) states:

> The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 et seq. The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the following three core banking functions: Receiving deposits; paying checks; or lending money.

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[8] 12 U.S.C. 27(a) (emphasis added).

[9] *Loper Bright Enterprises et al. v. Raimondo*, 603 U.S. 369 (2024).

[10] National banks were originally prohibited from acting in a fiduciary capacity and such activities were reserved solely for trusts and trust corporations. Over time, national banks were granted more latitude with respect to engaging in trust capacities, and the traditional fiduciary activities enumerated in 12 U.S.C. 92a are grounded in historic state laws which aimed to uphold the restrictions on national banks and ensure national banks were not provided with an "unqualified privilege to exercise trust powers." See Albert Levitt, The Trust Powers of National Banks, U. Penn. L. Rev. (May 1929). With the amendment of the Federal Reserve Act in 1918, Congress authorized the Federal Reserve Board to grant national banks the power to act in the same fiduciary capacity as state banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the state where the national bank was located. This amendment also nullified prior state legislation which limited the exercise of trust activities by national banks.

[11] *People v. National Security Co*., 189 App. Div. 38, 177 N.Y.S. 838, aff'd, 232 N.Y. 586, 134 N.E. 582; *Loudoun Nat. Bank v. Continental Trust Co*., 164 Va. 536, 180 S.E. 548, appeal dismissed, 297 U.S. 698.

[12] Restatement (Third) of Trusts, § 2.

[13] *See* 12 CFR 5.20(e)(1)(i); *see also* Comptroller's Licensing Manual, Charters, p. 56. The essence of acting as trustee is possessing legal title to the trust property, see Comments to Restatement (Third) of Trusts, § 5, as contrasted with other custodial relationships in which property is held in the name of the beneficiary (or another custodian).

Thus, 12 CFR 5.20(e)(i) requires that if a national trust bank applicant does not propose to receive deposits, pay checks, or lend money (i.e., it does not propose to engage in activities requiring a full national bank charter), then it must conduct fiduciary activities to be eligible for a charter. The implication is that the *sine qua non* of a national trust bank is the performance of fiduciary activities. While Section 27(a) permits a national trust bank to provide non-fiduciary services *in addition to* its fiduciary activities, acting as a fiduciary is the essential predicate to an institution's eligibility to apply for and receive a national trust bank charter.

The scope and extent of trust and fiduciary activities under the NBA are clearly articulated in both statute and the OCC's regulation. 12 U.S.C. 92a permits the OCC to grant "trust powers" to national banks and national trust banks and sets forth certain general requirements which are implemented in detail through 12 CFR Part 9. It is instructive that Section 92a is entitled "Trust Powers" and Part 9 is entitled "Fiduciary Activities of National Banks," expressly linking the concepts of "trust" and "fiduciary." Under Part 9, national banks are authorized to act as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to Section 92a.

Thus, the most common types of fiduciary activities exercised by national trust banks under their Part 9 authority can be broadly categorized as (1) acting in a trustee or similar capacity – i.e., taking legal title to property for the benefit of others; (2) exercising investment discretion; or (3) providing investment advice for a fee. Bailee-bailor and debtor-creditor relationships, such as those created when a customer deposits funds with a bank, are not "trusts"[14] because they are not fiduciary in nature. Likewise, the OCC has previously recognized that escrow, safekeeping, and custody services are not fiduciary in nature and may be performed by a national bank without trust powers.[15]

The publicly available portion of the Application indicates that Trust Bank intends to manage the reserves of the stablecoin, USDC, issued by its parent, Circle Internet Group, Inc., and provide "related" undefined "fiduciary services, including digital asset custody."

Based on the limited publicly available portions of the Application, Trust Bank has given no indication of any specific fiduciary activities in which it proposes to engage. Instead, it appears that Trust Bank proposes to act solely in a non-fiduciary capacity – that is, as a custodian that does not exercise investment discretion, take legal title to the assets in custody, or provide investment advice for a fee. The OCC has been clear that such custody services are not fiduciary in nature.[16] Thus, it appears that Trust Bank proposes to engage only in non-fiduciary activities, rather than engaging in such activities merely in addition or incidental to the fiduciary activities that must be conducted in order for an institution to be eligible for a national trust bank charter, as required by Section 27(a) of the NBA and 12

[14] Comments to Restatement (Third) of Trusts, § 5.

[15] OCC Conditional Approval 267, at 19 (January 1998) https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/1998/ca267.pdf.

[16] *See* OCC Interpretive Letter No. 1078 (May 2007) ("For banking law purposes, the authority of national banks to engage in custody activities derives from the general business of banking, and incidental powers language in 12 U.S.C. § 24(Seventh).").

CFR 5.20(e)(i) of the OCC's regulations. Accordingly, Trust Bank should be ineligible for the charter it is seeking under Section 27(a).[17]

III. Granting Trust Bank's Application Would Expand the Traditional Scope of the National Trust Bank Charter and Increase Systemic Risk

a. Asset Volatility

The OCC has identified the volatility of assets held by national trust banks as a matter of key prudential supervision. Recognizing that most national trust banks are almost wholly dependent on fee income as their primary source of liquidity, and that this fee income is directly affected by the value of assets held or managed by a trust bank, the OCC has explained that "in periods of volatile or declining financial markets, a [trust bank] may face a decline in revenues and an increase in short-term liquidity needs."[18] In considering the Application, the OCC should assess the volatility of the digital asset industry on which the safety and soundness of Trust Bank will rely in determining whether the supervisory risks posed by such volatility are insuperable. The charts appended in Exhibit 1, which compare the price volatility of the two most traded digital assets[19] with the S&P 500 and Gold, illustrate this volatility.

Pronounced volatility is not limited to so-called "cryptocurrencies" such as BTC and ETH; the stablecoin market has also proved to be quite unstable. For example, the market capitalization for stablecoins increased from $6 billion in January 2020 to $180 billion in April 2022, declined to $130 billion by early 2023, only to rebound to more than $230 billion by February 2025. Each of the most traded stablecoins "broke the buck" on multiple occasions between 2019 and 2023, primarily as the result of the May 2022 collapse of TerraUSD, the November 2022 failure of FTX, and the March 2023 failure of Silicon Valley Bank ("SVB").[20]

SVB's failure is particularly relevant as it caused a significant run on USDC, a stablecoin issued by Circle.[21] Circle maintained a portion (around 8.25%) of its USDC reserves in deposit accounts at SVB in amounts exceeding the FDIC standard maximum deposit insurance amount ("SMDIA"). When SVB failed,

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[17] We recognize that, in 2021, the OCC issued an interpretive letter which effectively concluded that whether or not an activity is fiduciary in nature for purposes of 12 U.S.C. 92a is a question to be determined by state fiduciary law. We continue to believe that the language in this statute concerning acting in a "fiduciary capacity" must be interpreted as a matter of federal law, over which the federal courts have ultimate say (See *Loper*, 603 U.S. 369). Nothing in Section 92a suggests that this term should be interpreted in accordance with state law, nor does it suggest that the OCC should construe federal law as though it did. That result is also supported by a strong policy rationale – if Section 92a authorizes any activity that a state law treats as fiduciary, no legal obstacle exists to prevent a state from expanding the scope of fiduciary activities to ones that have long been illegal for national banks. We also believe that such a consequential change in the interpretation of a statutory definition should have been subject to public notice and comment. Accordingly, the OCC should base that assessment on an independent determination as to whether Trust Bank's activities are "fiduciary" within the meaning of 12 U.S.C. 92a.

[18] OCC Bulletin 2007-21, Supervision of National Trust Banks: Capital and Liquidity.

[19] Data from CoinMarket Cap, https://coinmarketcap.com (accessed Aug. 18, 2025).

[20] Arthur E. Wilmarth, Jr., "We Must Protect Investors and Our Banking System from the Crypto Industry," 101 *Washington University Law Review* 235, 252 (2023).

[21] *See* CoinMarketCap, Explaining the Silicon Valley Bank Fallout and USDC De-Peg, https://coinmarketcap.com/academy/article/explaining-the-silicon-valley-bank-fallout-and-usdc-de-peg.

USDC holders rushed to redeem their stablecoins for fear that Circle's reserves were uninsured and would be lost in SVB's failure. The value of USDC dropped to $0.88 and only rebounded when the FDIC promised to insure deposits exceeding the SMDIA. Only a federal bailout stemmed the bleeding.

While SVB exemplifies how a bank failure can roil crypto markets, the failures of Silvergate Bank and Signature Bank demonstrate how crypto volatility can destabilize individual banks, and as demonstrated by the Treasury Department's systemic risk determination under the Federal Deposit Insurance Act ("FDI Act"), the entire banking sector. At the time of its failure, 90% of deposits at Silvergate were tied to the crypto industry; while a lower percentage than Silvergate, a still significant 20% of deposits at Signature Bank were crypto-related.[22] One study explained the causative mechanism:

> After reaching an all-time high of around $3 trillion in November 2021, crypto lost more than two-thirds of its market capitalization by December 2022 [partly explained by the failure of FTX]. As digital asset prices fell, centralized crypto platforms and stablecoin issuers experienced redemptions, likely causing them to draw down deposits held at these banks. To meet withdrawal demand, banks sold ostensibly safe securities for losses, affecting their liquidity and—in some cases—their solvency.[23]

While many other banks had exposure to the crypto industry, Silvergate and Signature were more dependent and less diversified, illustrating the serious concentration risk Trust Bank must manage.

Given this demonstrated volatility, we believe it is difficult over the long-term for a national trust bank entirely reliant on the digital asset market without diversified exposure to other economic sectors to operate in a safe and sound manner. This intrinsic volatility could threaten the long-term solvency of Trust Bank, particularly in the inevitable periods of stress, which may necessitate costly federal intervention to prevent consumer harm and contagion to the broader banking system. Just as the OCC should not (and we offer, never would) grant a national trust bank charter to an institution solely focused on, for example, the subprime mortgage market, the OCC should not grant a charter to an institution solely focused on the digital asset market.

b. Reduction in Main Street's Access to Bank Credit

Trust Bank's solvency, and the potential need for a federal bailout to prevent contagion, is a direct systemic risk. But the indirect systemic risks may in fact prove more pernicious. Bank deposits are currently the predominant "fully liquid" non-cash means of exchanging U.S. dollars. Stablecoin issuers have asserted that stablecoins serve the same role, except more efficiently.[24] Bank deposits, stablecoins, and shares of MMMFs all share the same feature of "liquidity transformation," meaning issuers of all three instruments "issue liabilities with a stable nominal value, but the collateral backing these claims

[22] CRS, The Role of Cryptocurrency in the Failures of Silvergate, Silicon Valley, and Signature Banks, at 1, https://www.congress.gov/crs-product/IN12148 (April 25, 2023).

[23] *Id.* at 3.

[24] *See*, *e.g.*, https://www.circle.com/usdc, https://ripple.com/solutions/stablecoin/.

can suddenly become illiquid."[25] Of the three, though, only bank deposits are insulated (by FDIC deposit insurance) from runs caused by potential illiquidity, and only bank deposits can serve as an economic engine through money and credit creation.

There are at least two broad reasons why the potential rapid growth in stablecoins could pose risks to the financial system, which the OCC must weigh in considering chartering trusts that would support stablecoin issuance.

First, if backed by government securities, stablecoins could reduce demand for bank deposits and thus the supply of bank credit – in effect, bank depositors would transform from funders of economic growth to funders of government growth, assuming the predominant asset backing stablecoins was Treasury securities and reverse repos backed by Treasury securities. Second, if invested in uninsured deposits at banks, stablecoins could increase the risk of a financial crisis in the event that a run on stablecoins prompted issuers to withdraw their deposits. Thus, stablecoins put policymakers between a rock and a hard place.

The magnitude of the potential effects of stablecoin growth depends on a series of assumptions: first, how much stablecoins will grow; second, if backed by government securities, how much bank lending will decline; third, how much that growth would be amplified by the ability to pay (indirectly) interest; and fourth, what assets (government securities versus bank deposits) will back the stablecoin. If stablecoins are backed mostly by Treasury securities and reverse repos, there could be a substantial decline in deposits. In a worst-case scenario where all stablecoin growth came from deposits, it would be a 20 percent decline.[26] But even if some of the funding came from money market funds or other sources, a substantial decline in deposits would seem likely.

Alternatively, stablecoin issuers could maintain a material share of their reserves in bank deposits. While that would mitigate the decline in deposits, it would also result in serious financial stability risks. Given the size of the stablecoin market, these deposits would almost certainly be so large as to be predominantly uninsured. Stablecoins could become a new vehicle for the propagation and amplification of systemic risk akin to prime money market funds in 2008. Stablecoin issuers would be at high risk of runs.[27] If a run on stablecoins were to happen, the issuers would pull their deposits out of banks, putting severe strain on the banking system. The issuers would also liquidate their other assets,

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[25] Kenechukwu Anadu, *et al*., Runs and Flights to Safety: Are Stablecoins the New Money Market Funds?, FRB of New York Staff Report No. 1073, https://doi.org/10.59576/sr.107 (Rev. Apr. 2024).

[26] *See* Jeff Hunther & Yikai Wang, How stablecoins could affect borrowing costs for the government, businesses and households, ABA Data Bank, https://bankingjournal.aba.com/2025/07/how-stablecoins-could-affect-borrowing-costs-for-the-government-businesses-and-households/ (July 14, 2025).

[27] During the March 2023 panic, USDC was exposed to SVB and suffered a 40 percent outflow in the ensuing weeks. *See* Ashley Capoot, CNBC, "Stablecoin USDC breaks dollar peg after firm reveals it has $3.3 billion in SVB exposure" (Mar. 11, 2023), https://www.cnbc.com/2023/03/11/stablecoin-usdc-breaks-dollar-peg-after-firm-reveals-it-has-3point3-billion-in-svb-exposure.html; *see also* Krisztian Sandor, CoinDesk, "Circle Confirms $3.3B of USDC's Cash Reserves Stuck at Failed Silicon Valley Bank" (May 9, 2023), https://www.coindesk.com/business/2023/03/11/circle-confirms-33b-of-usdcs-cash-reserves-stuck-at-failed-silicon-valley-bank.

putting pressure on the financial system more broadly. The resulting financial crisis is not hypothetical – such a buildup and collapse closely resembles the dynamics that led to the Global Financial Crisis.[28]

The historical example of MMMFs is also instructive. During a three-year stretch from 1979 to 1982, MMMF assets under management increased from three percent of aggregate bank deposits to 16.3%. Even after deposit interest rates were deregulated, MMMFs expanded from 13% of deposits in 1983 to 22% in 1993.[29] Numerous commentators have observed the direct and indirect role the proliferation of MMMFs (especially checkable MMMFs) played in the savings and loan crisis in the 1980s and early 1990s.[30]

[28] *See* Yiming Ma, *et al.*, National Bureau of Economic Research, No. w33882, Stablecoin runs and the centralization of arbitrage, https://www.nber.org/papers/w33882 (May 2025); *see also* Kenechukwu Anadu, *et al.*, FRB of Boston Supervisory Research & Analysis Unit Working Paper No. SRA: 23-02, Runs and flights to safety: Are stablecoins the new money market funds?, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5314284 (June 2025).

[29] Mark Flannery, "How the Rise of Stablecoins Could Threaten Traditional Banks' Lending Capacity," at 5-6 (Jan. 17, 2023) (concluding that the "introduction [of stablecoins] will reduce the size and lending capacity of the traditional banking system"), https://ssrn.com/abstract=4320945.

[30] *See generally* Catherine England, Lessons from the Savings Loan Debacle: The Case for Further Financial Deregulation, Cato Rev. of Bus. & Govt., at 37, https://www.cato.org/sites/cato.org/files/serials/files/regulation/1992/7/v15n3-5.pdf; Congressional Budget Office, The Economic Effects of the Savings & Loan Crisis, at 7, https://www.cbo.gov/sites/default/files/102nd-congress-1991-1992/reports/1992_01_theeconeffectsofthesavings.pdf (Jan. 1992). Alan Blinder, former Vice Chair of the Federal Reserve Board from 1994-1997 described his view about the substitution of bank deposits with MMMF shares:

> We were concerned as bank regulators with the eroding competitive position of banks, which of course would threaten ultimately their safety and soundness, due to the competition they were getting from a variety of nonbanks—and these were mainly Wall Street firms, that were taking deposits from them, and getting into the loan business to some extent. So, yeah, it was a concern; you could see a downward trend in the share of banking assets to financial assets.

The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at 31, https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf (Jan. 2011).

IV. Deposit-Taking Considerations

Trust Bank does not propose to accept deposits, and nothing in the Application suggests that Trust Bank would itself *issue* stablecoins, as opposed to managing or acting as custodian for stablecoin reserves with respect to stablecoins issued by affiliates or third parties. Accordingly, we do not comment on such a possibility, as we have no basis or information on which to do so. However, we note that the potential *issuance* of a stablecoin by a national trust bank raises complex and highly consequential legal and policy questions that can and should be carefully resolved only after extensive public notice and comment and consultation with other federal banking agencies. These questions include, but are not limited to, whether the issuance of a stablecoin by a national trust bank (i) constitutes the acceptance of a "deposit" for purposes of the FDI Act, as administered by the FDIC, and (ii) requires that the national trust bank obtain deposit insurance from the FDIC pursuant to the Federal Reserve Act, as administered by the Federal Reserve. Because the Application does not state that Trust Bank proposes to issue stablecoins, we do not express a view on how those questions should be resolved but fully reserve our right to do so if and when the OCC and other federal banking agencies take up that question, whether in the context of a national trust bank charter application or otherwise.[31]

As set forth in the FDI Act, a "deposit" is:

> (1) the unpaid balance of money or its equivalent received or held by a bank and for which it has given or is obligated to give credit;
> (2) trust funds received or held by such bank, whether held in the trust department or held or deposited in any other department of such bank;
> (3) money received or held by a bank, or the credit given for money or its equivalent received or held by a bank, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds…; or
> (4) an outstanding draft (including advice or authorization to charge a bank's balance in another bank), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases.[32]

[31] Further, we believe it is important to highlight the scope of the OCC's chartering authority under each of the NBA and the GENIUS Act. Under the GENIUS Act, an "uninsured national bank… that is **chartered by the Comptroller, pursuant to title LXII of the Revised Statutes**" may be a "federal qualified payment stablecoin issuer" (emphasis added). GENIUS also provides that the OCC shall review applications by a "Federal branch, or uninsured national bank **that is chartered by the Comptroller pursuant to title LXII of the Revised Statutes**, and that seeks to issue payment stablecoins" (emphasis added). Thus, an entity must meet the qualifications to be chartered as an uninsured bank by the Comptroller – and actually be chartered as such – before applying to issue stablecoins. In other words, the issuance of a payment stablecoin (or the intent to issue a stablecoin) does not, under the NBA, serve as a predicate for the granting of such a charter in the first instance. Nothing in the GENIUS Act indicates that Congress intended the Act to supersede in any way Section 27(a) of the NBA.

[32] 12 U.S.C. 1813(l).

The FDI Act thus takes a broad view of what constitutes a deposit. For example, escrow funds are arguably more akin to funds held by a bank as a bailee, but the FDI Act nonetheless expressly defines them as "deposits."

As provided in subsection (2) of the FDI Act definition of deposit, a bank's holding of customers' funds in a trust capacity also creates a liability treated as a deposit if held anywhere within the bank. Consistent with that definition, since Trust Bank does not intend to accept deposits (and thus not treat any stablecoin reserves it may manage as its own liabilities on its balance sheet), the OCC should confirm that Trust Bank will not hold the cash component of any such stablecoin reserves in its name or commingle such funds with its own accounts (including in a master account at a Federal Reserve Bank[33]), as the latter would constitute impermissible deposit-taking.[34] Instead, consistent with its characterization as a non-deposit-taking institution, Trust Bank should hold the cash component of any stablecoin reserves it "manages" in deposit accounts at insured depository institutions as custodian for the benefit of the stablecoin issuer. In that case, Trust Bank should be required to maintain appropriate capital. New York law, for instance, imposes an appropriately robust standard on its state-chartered trust companies and provides that a trust company may not deposit funds at a bank in an amount exceeding 100% of its capital, surplus, and undivided profits.[35]

V. Supervision and Resolution Planning Issues

Trust Bank's proposed activities with respect to volatile digital assets heightens the need for additional prudential consideration of capital, liquidity, and resolution planning issues. These issues are even more acute given that Trust Bank's primary customers appear to be its affiliates, based on the limited information available in the public file. As with all national banks, Trust Bank must develop a contingency funding plan forecasting funding needs and sources under adverse scenarios.[36] With its business model entirely dependent on fees generated based on the market value of digital assets, such an adverse scenario would necessarily entail asset price decreases of 50% or more, with concomitant losses of revenue to Trust Bank. As observed in the recent "Crypto Winter" lasting from 2022-24, these adverse scenarios may persist for long periods.

Diverse exposure to other economic sectors and asset classes could ordinarily be expected to mitigate such exogenous shocks to a bank's liquidity. Likewise, a broad customer base consisting of a large number of customers would ordinarily assist a bank in managing the risk of losses from any particular sector or asset class. Finally, consolidation under a holding company structure subject to

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[33] We note that, except with respect to certain correspondent banking relationships, nothing in the Federal Reserve Act permits an institution to hold funds in a master account as custodian for the benefit of a third-party. We note further that pursuant to the Federal Reserve Act, the Federal Reserve Banks have the authority to grant master account access to eligible institutions. *See* 12 U.S.C. 342; *see also* Board of Governors of the Federal Reserve System, Final Guidance: "Guidelines for Evaluating Account and Services Requests" (Aug. 15, 2022) (https://www.federalreserve.gov/newsevents/pressreleases/files/other20220815a1.pdf).

[34] If Trust Bank's activities result in the acceptance of deposits, numerous regulatory requirements would apply. Please see BPI's comment to the application of Wise National Trust seeking a national trust bank charter for additional discussion.

[35] N.Y. Banking Law § 106(1).

[36] *See* OCC, Supervision of National Trust Banks: Revised Guidance: Capital and Liquidity.

prudential supervision of the parent company by the Federal Reserve Board might also provide important protections.

However, none of these risk mitigants are applicable to Trust Bank: its exposure to the digital asset market is unhedged, seemingly primarily dependent on affiliates to support its business, and is not backstopped by a parent subject to consolidated supervision. Additionally, most currently operating national trust banks focus on providing trustee and fiduciary services and are therefore not ordinarily subject to bank runs because beneficiaries do not (or cannot) withdraw assets during stressed liquidity scenarios. However, the assets held in custody by Trust Bank may effectively function as cash substitutes and may in fact run should stablecoin holders seek to redeem their stablecoins, stablecoin issuers would have to liquidate the reserves backing the stablecoins, which may include uninsured deposits held at banks. These factors militate in favor of the OCC imposing increased capital and liquidity requirements for Trust Bank relative to other national trust banks.

Contingent sources of liquidity usually consist of a combination of (1) unencumbered balance sheet cash or highly liquid investments, (2) irrevocable letters of credit from third parties, and (3) financial support from a parent. The OCC should consider whether this third source is a reliable component of Trust Bank's contingency funding plan, especially because Trust Bank's parent company is equally exposed to the digital asset sector. Moreover, since Trust Bank's affiliates appear to be its primary business relationships, if Trust Bank is experiencing an adverse scenario, its parent company is equally likely to be stressed and therefore not positioned to offer substantial support. If financial support from its parent is unreliable, the OCC should consider whether it is necessary to offset this missing source of support with increased balance sheet requirements or irrevocable letters of credit from unaffiliated sources. Alternatively, the OCC could consider requiring Trust Bank's parent company to elect to be treated as a bank holding company and submit to consolidated supervision to ensure that it can act as a source of strength to Trust Bank.

The same factors that would affect Trust Bank's liquidity would also affect Trust Bank's solvency in a stressed scenario. While national trust banks are subject to the OCC's minimum leverage and risk-based capital ratios set forth in 12 CFR Part 3, the OCC has previously stated that such ratios "are not optimal measures of capital adequacy for [national trust banks]" given the unique risks posed by trust activities.[37] The OCC should therefore consider whether Trust Bank's safety and soundness needs to be further supported by the type of additional capital requirements usually imposed on larger institutions. In the absence of adequate capital and liquidity requirements, the Federal Reserve or Treasury Department may need to provide support to Trust Bank and similar applicants, much as they did to support MMMFs, commercial paper, and short term repurchase agreements in the 2008 Global Financial Crisis and COVID disruptions.[38]

Furthermore, consolidated supervision of Trust Bank and its parent by the Federal Reserve Board under the Bank Holding Company Act could effectively mitigate these prudential concerns. Consistent with the impetus of the Dodd-Frank Act's post-financial crisis reforms, such supervision could better enhance the resiliency of Trust Bank to the specific risks arising out of its exposure to the digital assets sector and reduce the impact on the financial system and broader economy that would be posed by Trust Bank's failure or material weakness. The OCC should thus consider requiring Trust Bank and

[37] *Id.*

[38] *See* Wilmarth, *supra* note 20, at 3.

similar applicants to agree with the Federal Reserve to be supervised and regulated as a bank holding company.

Should Trust Bank's capital and liquidity support prove insufficient, resolution would be required under 12 CFR Part 51, pursuant to which the OCC would be required to close Trust Bank and appoint a receiver to administer the resolution. Pursuant to Part 51, Trust Bank's resolution would not automatically be administered under the FDIC or Securities Investor Protection Corporation ("SIPC") resolution processes or the Bankruptcy Code, each of which provides detailed procedures and established resolution funds (the FDIC Deposit Insurance Fund, or "DIF," and the SIPC Fund) that have proven to efficiently wind-up failed entities. If Trust Bank fails, the OCC may need to appoint the FDIC as receiver, which may then need to seek emergency funding from the Federal Reserve to resolve Trust Bank. This would effectively socialize the losses of Trust Bank's failure. Without adequate resolution planning and management, the failure of Trust Bank may produce a deadweight loss across the banking industry. In addition, the potential complexities arising out of resolving Trust Bank in the event it fails militate in favor of advance planning to prevent customer harm and possible contagion, and we urge the OCC to consider mandating such an exercise for Trust Bank.

VI. Affiliate Issues

Trust Bank's proposed business model appears to contemplate engaging primarily in transactions with its affiliates. Not only does this raise important questions around capital and liquidity management, but necessitates careful consideration of, and potentially detailed planning around, the requirements of Sections 23A and 23B of the Federal Reserve Act, which apply to national trust banks.[39] The stated purpose of Sections 23A and 23B is "to reduce a bank's exposure to loss from affiliate relationships."[40] Pursuant to Regulation W, which implements Sections 23A and 23B, a bank is prohibited from entering a covered transaction with an affiliate if the aggregate amount of all covered transactions with that affiliate exceeds 10% of the capital stock and surplus of the bank,[41] or if the aggregate amount of covered transactions with affiliates exceeds 20% of the capital stock and surplus of the bank.[42] Moreover, a bank may only enter into a covered transaction with an affiliate on terms substantially the same as, or at least as favorable to the bank as, those prevailing for comparable transactions with unaffiliated parties.[43]

We believe the OCC should closely scrutinize the proposed business relationships between Trust Bank and its affiliates to ensure that any covered transactions comport with Regulation W's quantitative limits and market-terms requirement to help ensure that Trust Bank's affiliate relationships do not impede the purpose of Sections 23A and 23B. In particular, we suggest that the OCC closely monitor and scrutinize the relationships between Trust Bank and its affiliates, including the following arrangements:

- Custody and safekeeping fees;

[39] 12 USC 371c and 12 USC 371c-1.

[40] *See* Federal Reserve Board, Transactions Between Member Banks and Their Affiliates, 67 Fed. Reg. 76,560, 76,560 (Dec. 12, 2002).

[41] 12 CFR 223.11.

[42] 12 CFR 223.12.

[43] 12 CFR 223.51.

- Fee sharing arrangements related to deposit placements with third-party banks;
- Potential extensions of credit in favor of an affiliate related to transaction settlement or overdraft; and
- Advisory or management fees.

The OCC should further consider whether any mitigation measures may be appropriate to manage Trust Bank's significant exposure to its affiliates and prevent the imprimatur of the federal financial safety net from unduly benefitting an unregulated entity.

VII. Exchange Act Registration

Based on the scant information provided in the Application, it is unclear whether Trust Bank plans to offer a digital asset trading platform in which customers can buy and sell digital assets with others using the platform. Should Trust Bank intend to engage in this activity, this activity, at a minimum, raises the question of whether these digital assets are securities for the purposes of the federal securities laws that may subject Trust Bank to registration requirements under the Securities Exchange Act of 1934 (the "Exchange Act") or require an exemption from registration.[44] Regulation R issues could arise, for example, in the context of Trust Bank brokering, executing, or trading for its customers shares of digital asset-related Exchange Traded Funds. Initial coin offerings, or "ICOs," also constitute securities under the federal securities laws, as do yield-bearing stablecoins.

We note that under the Exchange Act a person may not "effect any transactions in, or induce or attempt to induce the purchase or sale of, any security" unless registered as a broker with the SEC.[45] Brokerage activities subject to Exchange Act registration requirements include participating in important parts of a transaction such as solicitation, negotiation or execution, or receiving compensation for participation in a transaction or compensation which depends on the outcome or size of a transaction.[46] Pursuant to SEC guidance, a person that operates or controls an electronic platform to trade securities or provide support services to registered brokers must typically register as a broker.[47]

Regulation R as adopted by the SEC and the Federal Reserve Board provides for limited exceptions from registration for "banks" engaged in certain brokerage activities. But under the Exchange Act, a person that does not accept deposits is a "bank" only if "a substantial portion of [its business] consists of receiving deposits or exercising fiduciary powers."[48] It is not at all clear that Trust Bank would qualify as "bank" for purposes of this exception, because (as described in detail above) it does not propose to receive deposits and may not engage in *any* fiduciary activities, let alone fiduciary activities that amount to a "substantial portion" of its business.

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[44] While Congress has been considering various versions of so-called "market structure" legislation that may address some of these issues, no legislation on these topics has yet become law.

[45] 15 U.S.C. 78o.

[46] *Id.*

[47] SEC, *Guide to Broker-Dealer Registration* (April 2008), https://www.sec.gov/about/divisions-offices/division-trading-markets/division-trading-markets-compliance-guides/guide-broker-dealer-registration.

[48] 15 U.S.C. 78c(a)(6).

Even if Trust Bank qualified as a "bank" under the Exchange Act, Regulation R would only permit it to perform services relating to third-party networking arrangements, trust and fiduciary activities, deposit "sweep" activities, and custody and safekeeping activities without registering as a broker with the SEC.[49] Most saliently, Regulation R provides that a bank may:

- Under certain conditions, effect securities transactions in a trustee or fiduciary capacity; or
- Engage in a variety of securities activities in connection with their customary custody and safekeeping activities, such as, for example, clearing and settling securities transactions; exercising warrants and other rights associated with securities held in custody; effecting securities lending or borrowing transactions as part of its custodial services; holding pledged securities on behalf of a customer; and serving as a custodian or providing other related administrative services to certain accounts and benefit plans.

The OCC would have to evaluate whether any proposed trading platform of Trust Bank satisfies the fiduciary and trust exception because, which would require the OCC to consider whether Trust Bank proposes to act as a trustee or fiduciary for customers using the trading platform to exchange assets with one another, and second, whether Trust Bank would publicly advertise the trading platform as a feature of its services, which is prohibited under the exception.[50] The OCC also would have to consider whether any proposed trading platform activities would satisfy the custody and safekeeping exception as permitted "accommodation" trading. If they did not satisfy the exception as accommodation trading, the proposed custodial relationship would be essentially a disguised brokerage account.[51] We therefore suggest the OCC confirm that, if applicable, Trust Bank has developed and implemented adequate policies and procedures for complying with the federal securities laws.

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We would welcome the opportunity to discuss this request with you further. Please contact Paige Paridon at (703) 887-5229 or paige.paridon@bpi.com to schedule time to discuss or with any questions.

Respectfully submitted,

/s/ Paige Pidano Paridon

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[49] *See generally* 12 CFR 218.

[50] 15 U.S.C. 78c(a)(4)(B)(ii)(II). A bank will fulfill this condition if "advertisements by or on behalf of the bank do not advertise that the bank provides securities brokerage services for trust or fiduciary accounts except as part of advertising the bank's broader trust or fiduciary services, and the advertising of trust or fiduciary services provided by the bank to trust or fiduciary accounts does not figure more prominently than advertising of trust and fiduciary services in general."

[51] *See* 15 U.S.C. 78c(a)(4)(B)(viii).

Exhibit 1

Bitcoin

Ethereum

S&P 500[52]

[52] Data from Yahoo! Finance, https://finance.yahoo.com/quote/%5EGSPC/ (accessed Aug. 18, 2025).

Gold[53]

[53] Data from Yahoo! Finance, https://finance.yahoo.com/quote/%5EGSPC/ (accessed Aug. 18, 2025).