November 3, 2025

Via Electronic Mail

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: Coinbase National Trust Company, Charter Application (2025-Charter-343449)

Dear Mr. Astrada:

The Bank Policy Institute[1] respectfully submits this comment in opposition to the application submitted by Coinbase National Trust Company, Inc. ("Trust Bank") on October 3, 2025 (the "Application") to the Office of the Comptroller of the Currency seeking a national trust bank charter.[2] As described 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 brief illustration of Trust Bank and its proposed activities. We filed a Freedom of Information Act

[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 appears to present similar issues raised by 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.

("FOIA") request for the Application and all exhibits. As of the date of this letter, we have not received a response to our request. While we submit this comment based on the information available, we note that neither the Applicant nor the OCC has provided the public with adequate information to 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, and it is not clear whether we will receive this information pursuant to our request under the FOIA. This lack of transparency is wholly inconsistent the present administration's explicit commitment to this principle.[3]

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 predominantly 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 may be provided to affiliates; and
- 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.[4]

[3] 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.

[4] 12 CFR Part 247.

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.[5] 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.[6]

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. The extremely terse explanation of Trust Bank's proposed activities included in the Application simply provides that Trust Bank will provide the following activities "in a fiduciary capacity as a qualified custodian pursuant to regulations promulgated under the Investment Advisers Act of 1940 ("Qualified Custodian" or "QC") by the Securities and Exchange Commission ("SEC"):

- Prime Vault: Secure, segregated storage of digital assets powered by industry-leading implementation of multi-party computation ("MPC"), corresponding to onchain wallet address(es) unique to each customer.

[5] 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.

[6] *See* 12 CFR Part 30.

- Prime Custody: Holding customer fiat funds and digital assets in an omnibus wallet, enabling clients to trade, with assets remaining within the QC environment throughout the trade lifecycle, with the same comprehensive security protections as Prime Vault."

The Application also states that Trust Bank will "maintain operational integrations to enable Custody clients to access staking, financing, and trading services offered by other Coinbase entities" and "will explore the launch of other digital asset products, including payments products and next-generation advances on its existing custody products that enable clients to interact with select smart contracts onchain."

The limited description of Trust Bank's proposed activities raises more questions than it answers. One can assume that if Trust Bank intended merely to act as a custodian for assets, it would have said so. Instead, Trust Bank alluded to its intention to facilitate or participate in a variety of activities that implicate numerous regulatory schemes and may significantly increase Trust Bank's risk profile. For example, asset staking and trading might well encroach on the Regulation R limitations on a bank's securities activities. Trust Bank's "financing" activities may also exceed the statutory authority of a national trust bank. The public would greatly benefit from enhanced transparency regarding Trust Bank's proposed activities but has been deprived of any meaningful opportunity to comment.

In addition, Trust Bank's Application provides no indication of how its activities might connect to stablecoins issued by third parties or affiliates of Trust Bank, nor does it indicate whether any such stablecoin activities would be consistent with the limitations imposed by the GENIUS Act. But the implication of Trust Bank's Application and publicly available marketing information from Coinbase is that Trust Bank will almost certainly engage in stablecoin-related activities.

We note that despite 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 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 the issuance of stablecoins and/or other digital assets. In particular, the Application does not explain the capacity in which Trust Bank may support stablecoin activities, such as by managing stablecoin reserves, because it provides no information on how any managed stablecoins themselves will be issued, by whom and to whom the stablecoins may be issued, and what legal and other relationships will exist between the stablecoin holder, stablecoin reserves holder, stablecoin issuer, and Trust Bank.

These relationships will depend upon, and ultimately be defined by, what the stablecoin purports to be and the role Trust Bank will take in holding or managing the stablecoin reserves. Broadly speaking, there are two possibilities that may be used in issuing stablecoins. 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 any stablecoin reserves Trust Bank may manage 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? Or will Trust Bank simply hold the money as deposits (or the functional equivalent)? 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 limited portion of the Application made available by the OCC. 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 may manage or custody, 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."[7] The ordinary meaning of this provision within the statutory context, to which the OCC must conform its chartering decisions,[8] 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 with 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

[7] 12 U.S.C. 27(a) (emphasis added).

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

loans.[9] Rather, the primary role of a trust company has always been to "take and administer trusts."[10] 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.[11] The OCC's chartering regulations expressly recognize the centrality of acting as a fiduciary for national trust bank applicants.[12] 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.

Thus, section 5.20(e)(1)(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 conduct 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

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[9] 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.

[10] *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.

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

[12] 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).

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"[13] 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.[14]

The Application states only that Trust Bank will engage in its "Prime Vault" and "Prime Custody" activities in a capacity it cursorily labels as "fiduciary." The portions of the Application made publicly available provide no additional details about the specific fiduciary activities in which Trust Bank proposes to engage. Instead, it appears that Trust Bank proposes to act solely in a non-fiduciary capacity, including as a custodian that does not exercise investment discretion, take legal title to the assets in custody, or provide investment advice for a fee, and other unspecified non-fiduciary activities.[15] The OCC has been clear that such non-discretionary custody services are not fiduciary in nature.[16] Thus, it appears that Trust Bank proposes to engage solely in non-fiduciary activities, rather than engaging in such activities merely in addition or incidental to the fiduciary activities necessary for an institution to be eligible for a national trust bank charter, as required by Section 27(a) of the National Bank Act and 5.20(e)(1)(i) of the OCC's regulations. Accordingly, Trust Bank should be ineligible for the charter it is seeking under Section 27(a).[17]

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

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

[15] In 2021, Coinbase acknowledged in other governmental filings that its current New York-chartered trust company was at that time engaged only in non-discretionary custodial services that would not be considered "fiduciary" activities under the OCC's longstanding precedent. *See* Coinbase letter to the SEC re: Custody Rule and Digital Assets (May 25, 2021), FinHub IM QC Comment.

[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)."); 61 Fed. Reg. 68,543, 68,545 n.4 (Dec. 30, 1996) ("The OCC does not treat non-discretionary custodial activities as fiduciary ….").

[17] We recognize that, in 2021, the OCC issued an interpretive letter, No. 1176, 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 rules out this approach to defining acting in a "fiduciary capacity." 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. Even if the statute were ambiguous in this relation, the question is a matter of federal law, over which the federal courts have ultimate say, *see Loper Bright*, 603 U.S. 369. A strong policy rationale also militates against the position the OCC takes in Interpretive Letter No. 1176 – 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 the statutory definition should have been subjected to notice-and-comment rulemaking. In a previous notice-and-comment rulemaking, the OCC refused to define "'fiduciary capacity' exclusively with reference to state law" in order to "foster[] consistent application … throughout the national banking system." 61 Fed. Reg. at 68,545 (adopting 12

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

a. Asset Volatility and Concentration Risks

As noted, the most common types of fiduciary activities exercised by national trust banks are generally: (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. The OCC has developed a supervisory framework for trust banks and developed experience in supervising traditional trust banks over many years of such oversight.

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 compare the price volatility of the two most traded digital assets[19] with the S&P 500 and Gold to 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

C.F.R. 9.2(e)). To change that interpretation, the OCC was required to proceed through notice-and-comment rulemaking, both because the Administrative Procedure Act ("APA") "mandates that agencies use notice-and-comment procedures before issuing legislative rules," *Kisor v. Wilkie*, 588 U.S. 558, 583 (2019), and because "the APA mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance," *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015). Therefore, OCC must continue to base its assessment of whether Trust Bank's activities are in a "fiduciary capacity" within the meaning of 12 U.S.C. 92a and 12 C.F.R. 9.2 on an independent, federal-law determination of that term.

[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.

failed, 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 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. Risk of Consumer Harm

As described below, Coinbase, Trust Bank's parent company, engages in numerous activities in the crypto ecosystem, which could pose risks to consumers if not properly managed and disclosed. To the extent Trust Bank engages in or supports these activities, the OCC should ensure that Trust Bank adequately manages any risks posed to consumers.

Deposits. For example, Coinbase offers Coinbase One, a subscription service that provides rewards to subscribers that vary based on membership level. The basic membership, which is available for $4.99/month or $49.99/year, offers 4.00% APY on the first $10,000 of USDC purchased on Coinbase;

[22] Congressional Research Service, 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.

thereafter, "regular APY" applies.[24] The marketing reliance on APY (annual percentage yield) in connection with a near-cash-equivalent product is deeply concerning and could violate various consumer protection statutes and regulations. The term "APY" is not a term generally used to describe the risks and benefits of a given financial product or service; rather, its use is almost universally confined to a single product: bank deposits. The reason is that Congress mandated use of the term with respect to deposit accounts in the Truth in Savings Act, which was subsequently implemented by Regulation DD (12 CFR Part 1030). The entire purpose of the term "APY" is to enable comparison shopping between *deposit accounts*, as the calculation is designed for that specific purpose.[25]

Using the term "APY" raises three main problems. First, it is unclear whether Coinbase is calculating APY correctly or providing disclosures complying with Regulation DD. Second, the use of the term APY in connection with a non-deposit product could very likely violate the prohibition on unfair, deceptive, or abusive acts or practices in both the Dodd-Frank Act and the Federal Trade Commission Act.[26] Third, the use of the term APY could run afoul 12 CFR 328.102, which prohibits misleading communications regarding deposit insurance, as such use could mislead consumers into thinking that the product Coinbase is offering is an insured deposit account, the product with which such term is most frequently used and associated. The OCC should ensure that Trust Bank will not act in a service provider role supporting such apparent violations of consumer protection laws.

Furthermore, the GENIUS Act contains a prohibition on stablecoin issuers offering interest or yield, as well as other financial and non-financial rewards, to holders of stablecoins.[27] The GENIUS Act also directs the federal payment stablecoin regulators to issue regulations to prevent evasions of the prohibition on payment of interest, among other requirements.[28] However, as noted above, Coinbase offers interest (represented in "APY") to holders of USDC, thereby undermining the prohibition in the GENIUS Act.[29] This could have negative implications for the availability of credit to consumers and businesses, as we discuss further below. The OCC should give due consideration to whether Trust Bank may engage in or facilitate similar payments to stablecoin holders (including as a result of commercial arrangements Trust Bank or an affiliate enters into with a payment stablecoin issuer regarding the promotion of the use of the issuer's payment stablecoins), thereby undermining the prohibition in the

[24] "Coinbase One: Get more out of crypto with one membership," Coinbase One, last visited October 30, 2025. We note that the disclosures on this page are contradictory – some disclosures state that the available "teaser" APY is available on the first $10,000, first $30,000, or all USDC balances. But farther down on the same page, reference is made to a teaser rate being available on the first $30,000 in USDC balances without mention of the other balance tiers. We suggest the OCC perform a comprehensive review of Trust Bank's proposed consumer disclosures to ensure compliance with applicable regulations and supervisory expectations.

[25] § 1030.1(b) provides that the purpose of Regulation DD "is to enable consumers to make informed decisions about accounts at depository institutions. This part requires depository institutions to provide disclosures so that consumers can make meaningful comparisons among depository institutions."

[26] 15 U.S.C. § 45 and 12 U.S.C. § 5536(a)(1)(B).

[27] GENIUS Act, § 4(a)(11) provides that "No permitted payment stablecoin issuer or foreign payment stablecoin issuer shall pay the holder of any payment stablecoin any form of interest or yield (whether in cash, tokens, or other consideration) solely in connection with the holding, use, or retention of such payment stablecoin."

[28] GENIUS Act, § 4(h)(1).

[29] Coinbase One: Get more out of crypto with one membership," Coinbase One.

GENIUS Act, and the implications for credit availability and the safety and soundness of the banking system resulting from such payments.

Stablecoin Borrowing. Coinbase also offers customers the ability to "borrow USDC using your crypto on Coinbase as collateral . . . enabled by the Morpho" DeFi protocol.[30] Coinbase states that borrowers can borrow up to $1,000,000 USDC, with a maximum loan-to-value ratio of 86%.[31] Should a borrower's loan to value ratio exceed this amount, "due to a drop in Bitcoin's price or an increase in the amount of the loan due to accrued interest, [the borrower's] collateral will be at risk for liquidation to repay the loan (plus a penalty fee of 4.38% from Morpho)."[32] The OCC should ensure that, to the extent Trust Bank supports such activities, appropriate consumer disclosures are made to mitigate the potential risk of harm.

Stablecoin Lending. In addition, Coinbase recently launched a service that allows customers to lend their USDC stablecoin to earn yields – up to 10.8% (as of September 18, 2025). Coinbase's website states that:

> Once you deposit your USDC, a smart contract wallet will be created by Coinbase to connect to the [DeFi] Morpho protocol via onchain vaults curated by Steakhouse Financial, where the funds will be allocated across different lending markets to optimize returns – and you instantly start earning yield. Your funds are always accessible and can be withdrawn at any time ***when liquidity permits***.[33]

This statement indicates that it is entirely possible lenders may not be able to withdraw their funds on demand.[34] The OCC should consider the extent to which Trust Bank's support of or involvement in these activities could confuse consumers who may not understand or appreciate that

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[30] *See* Coinbase Crypto-Backed Loans, https://www.coinbase.com/loans.

[31] *See* Coinbase, USDC Loan Collateral, https://help.coinbase.com/en/coinbase/trading-and-funding/loan/collateral.

[32] *Id.*

[33] *See* Coinbase, Earn Competitive Yields by Lending your USDC, https://www.coinbase.com/blog/earn-competitive-yields-by-lending-your-usdc (Sept. 18, 2025).

[34] Morpho's disclosures state that "Liquidity refers to the access to supplied assets. A lack of liquidity can prevent suppliers from withdrawing their assets for a certain period of time. Liquidity issues are tackled through the interest rate model. Before providing liquidity, it's essential to understand the market's interest rate model. This understanding will help you estimate the level of liquidity you can expect in that market." *See* Morpho "Risk and Security Documentation," Risk & Security Documentation – Morpho Docs. According to one explanation, the "interest rate" model is the algorithm a protocol uses to compute the borrowing and lending rates for an asset at any given time. In DeFi lending markets, the rate typically depends on utilization, which reflects the percentage of available liquidity currently borrowed. Higher utilization generally results in higher borrow rates to attract more supply and discourage further borrowing; lower utilization leads to lower borrow rates to stimulate borrowing demand." *See* What is Interest Rate Model? DeFi lending rates explained | Cube Exchange. Thus, while clear documentation is lacking, Morpho seems to indicate that stablecoin lenders may not be able to access their stablecoins if there are not enough available stablecoins in the liquidity pool that are currently not borrowed. Stablecoin lenders add stablecoins in the liquidity pool and stablecoin borrowers take them from the pool. For example, if only 5% of the stablecoins are left in the pool, but 7% of the stablecoin lenders recall their loans, they will not all be able to get their stablecoins back.

Trust Bank's affiliates are not also subject to federal supervision, and thus, may not fully appreciate the risks involved in engaging in activities with those entities, either directly or indirectly through Trust Bank. The OCC should also consider that consumers may not comprehend or appreciate that Trust Bank is not subject to the requirements of a full-service national bank, since it does not propose to engage in the types of activities in which national trust banks have generally engaged to date.

c. Liquidity Risks

The possible liquidity issues attendant to yield seeking activities could also lead to stress for Coinbase and potentially other market participants and could negatively affect Trust Bank. The Financial Stability Institute of the Bank for International Settlements recently issued a report highlighting the risks associated with these types of "yield-bearing products based on payment stablecoins" offered by "cryptoasset service providers ("CASPs")," like Coinbase.[35] The report notes that yield "generation often involves re-lending to borrowers, margin pools, arbitrage/ derivatives collateral or facilitating their use in decentralised finance ("DeFi") lending protocols. In other cases, yields are provided through loyalty programmes that are directly funded by CASPs."[36] The report highlights the following risks associated with these programs:

- "These practices may blur the lines between payment instruments and investment products. They may compete with bank deposits but are often provided without equivalent prudential oversight, deposit insurance and transparency, exposing users to consumer protection gaps and losses.

- Yield-bearing products based on stablecoins can exacerbate some general risks that stablecoins pose, for example, those related to their runnability and interaction with traditional banks. Multifunction CASPs that conduct yield-bearing lending, custody and other activities can create operational interdependencies and trigger conflicts of interest."[37]

Thus, these yield-seeking activities could pose risks to Coinbase, Trust Bank's parent company, and potentially to Trust Bank itself. It is unclear the extent to which Trust Bank would support these activities. However, as noted, Trust Bank's proposed activities appear to be substantially concentrated in the crypto ecosystem and may rely primarily on affiliates for its business relationships. As noted below, the OCC should consider requiring Trust Bank's parent company to consent to consolidated supervision by the Federal Reserve to help ensure that Trust Bank and its affiliates and their customers are adequately protected.

d. Systemic Risks and Reduction in Main Street's Access to Bank Credit

Trust Bank's solvency, and the potential need for a federal bailout to prevent contagion, poses a direct systemic risk. But the indirect systemic risks may in fact prove more pernicious. Bank deposits

[35] *See* Denise Garcia Ocampo, FSI Briefs, Stablecoin-related Yields: Some Regulatory Approaches, https://www.bis.org/fsi/fsibriefs27.pdf (Oct. 2025). This Brief cites exchanges and trading venues as examples of CASPs. *See* FSF Brief at 2.

[36] *Id.*

[37] *Id.*

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.[38] 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 can suddenly become illiquid."[39] Of the three, though, only bank deposits are insulated from runs caused by potential illiquidity (by FDIC deposit insurance), 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.[40] 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.[41] 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.[42] If a run on stablecoins were to happen, the issuers would pull their deposits out of

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

[39] 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).

[40] *See, generally,* BPI Staff , "The Risks from Allowing Stablecoins to Pay Interest" (Sept. 25, 2025); The Risks from Allowing Stablecoins to Pay Interest - Bank Policy Institute.

[41] *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).

[42] 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).

banks, putting severe strain on the banking system. The issuers would also liquidate their other assets, 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.[43]

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.[44] 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.[45]

IV. Supervision and Resolution Planning Issues

Trust Bank's Application implicates numerous supervision and planning concerns.[46] First, we note that in 2023, Coinbase, Trust Bank's parent company, agreed to pay a $50 million penalty to New York State for significant failures in its compliance program that "made the Coinbase platform vulnerable to serious criminal conduct, including, among other things, examples of fraud, possible

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https://www.coindesk.com/business/2023/03/11/circle-confirms-33b-of-usdcs-cash-reserves-stuck-at-failed-silicon-valley-bank.

[43] *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).

[44] 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.

[45] *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).

[46] These concerns would also be implicated in any application by (i) Trust Bank's parent to become a BHC, or (ii) Trust Bank to obtain a Federal Reserve Bank master account.

money laundering, suspected child sexual abuse material-related activity, and potential narcotics trafficking."[47] These compliance failures raise questions about whether Trust Bank can demonstrate familiarity and compliance with applicable laws and regulations, whether Trust Bank's management is competent, and whether Trust Bank can be expected to operate in a safe and sound manner, all of which are factors the OCC must consider in assessing the Application.[48] The OCC should not approve the application unless the OCC determines that the applicant's BSA/AML compliance program is sufficiently robust to manage the BSA/AML risks related to the activities in which Trust Bank proposes to engage, which primarily involve digital assets, given the risk profile of those activities is very different from that of traditional trust charter applicants.

In addition, 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 would be even more acute to the extent that Trust Bank's primary customers would be affiliated entities, which appears possible based on the limited information available in the public Application. As with all national banks, Trust Bank must develop a contingency funding plan forecasting funding needs and sources under adverse scenarios.[49] 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.

However, these risk mitigants do not appear to be applicable to Trust Bank: its exposure to the digital asset market is unhedged, and it may depend primarily on affiliates to support its business. Nor is Trust Bank 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

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[47] *See* Superintendent Adrienne A. Harris Announces $100 Million Settlement with Coinbase, Inc. after DFS Investigation Finds Significant Failings in the Company's Compliance Program | Department of Financial Services. In addition to the penalty, Coinbase has agreed to invest an additional $50 million in its compliance function over the next two years to remediate the issues and to enhance its compliance program pursuant to a plan approved by DFS.

[48] 12 C.F.R. 5.20(f)(1), (2); 5.26(e)(2)(iii)(C), (F).

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

component of Trust Bank's contingency funding plan, especially because its ultimate parent company, Coinbase, is equally exposed to the digital asset sector. Moreover, should Trust Bank's primary business relationships consist of affiliated entities, in the event that 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, or in addition to these measures, the OCC could consider requiring Trust Bank's parent 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. Such consolidated supervision also would help ensure that the activities of the parent company do not negatively affect Trust Bank's safety and soundness.

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.[50] 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.[51]

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 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 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

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

[51] *See* Wilmarth, *supra* note 22, at 3.

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.

V. Affiliate Issues

Although it is not clear based on the limited information included in the Application, it is possible that Trust Bank would engage in a substantial volume of transactions with affiliates. If that is indeed the case, the OCC must not only consider important questions around capital and liquidity management, but also should consider the requirements of Sections 23A and 23B of the Federal Reserve Act, which apply to national trust banks, and Trust Bank's plans to comply with those requirements.[52] The stated purpose of Sections 23A and 23B is "to reduce a bank's exposure to loss from affiliate relationships."[53] 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,[54] or if the aggregate amount of covered transactions with affiliates exceeds 20% of the capital stock and surplus of the bank.[55] 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.[56]

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;
- 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.

VI. Exchange Act Registration

[52] 12 U.S.C. 371c and 12 U.S.C. 371c-1.

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

[54] 12 CFR 223.11.

[55] 12 CFR 223.12.

[56] 12 CFR 223.51.

Based on the scant information included in the Application, it is unclear what role Trust Bank will play in supporting Coinbase's trading platform. According to publicly available information, Coinbase offers "Coinbase Prime," "an integrated prime brokerage platform" that "provides clients with trading, custody, and prime services. Coinbase Prime is an integrated solution that provides the same secure offline storage we offer through Coinbase Custody, along with an advanced trading platform and prime services so you can manage your crypto assets in one place. You can now trade cryptocurrency and move in and out of custody within one product and one user interface, streamlining your Coinbase institutional experience."[57] Coinbase's website also states that "At the core of Prime is Coinbase's NYDFS-qualified custodian, which underpins the entire stack and provides robust asset protection, and the strongest balance sheet in crypto."[58] As noted, Trust Bank's Application states that Trust Bank intends to, among other things, "maintain operational integrations to enable Custody clients to access staking, financing, and trading services offered by other Coinbase entities." Therefore, it is possible that Trust Bank may seek to engage in brokerage activity with respect to digital assets.

Should Trust Bank intend to engage in those activities, this would, at a minimum, raise 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.[59] 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.[60] 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.[61] 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.[62]

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 is a "bank" only if "a substantial portion of [its business] consists of receiving deposits or exercising fiduciary powers."[63] It is not at all clear that Trust Bank would qualify as "bank"

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[57] Coinbase Prime FAQs | Coinbase Help.

[58] Coinbase: The Standard in Crypto Custody.

[59] 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.

[60] 15 U.S.C. 78o.

[61] *Id.*

[62] 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.

[63] 15 U.S.C. 78c(a)(6).

for purposes of this exception, because it does not expressly propose to receive deposits and (as described in detail above) may not engage in *any* fiduciary activities, let alone fiduciary activities that amount to a "substantial portion" of its business.

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.[64] 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 brokerage activities performed by Trust Bank satisfy the fiduciary and trust exception, which would require the OCC to consider first 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.[65] 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.[66] Therefore, we suggest the OCC confirm that, if applicable, Trust Bank has developed and implemented adequate policies and procedures for complying with the federal securities laws.

[64] *See generally* 12 CFR 218.

[65] 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."

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

VII. Deposit-Taking Considerations

Trust Bank does not expressly propose to accept deposits, and it is not clear if 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 do not have sufficient 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 Federal Deposit Insurance 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 information included in the Application does not state outright 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.[67]

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.[68]

[67] 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.

[68] 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[69]), as the latter would constitute impermissible deposit-taking.[70] 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.[71]

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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

Paige Pidano Paridon
EVP, Senior Association General Counsel &
Co-Head of Regulatory Affairs
Bank Policy Institute

[69] 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).

[70] 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.

[71] N.Y. Banking Law § 106(1).

Exhibit 1

Bitcoin

Ethereum

S&P 500[72]

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

Gold[73]

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