



July 17, 2025

*Via Electronic Mail*

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Jason Almonte, Director for Large Bank Licensing

Re: Applications to Organize National Trust Banks

Dear Directors:

The undersigned associations (the "Associations")<sup>1</sup> appreciate the opportunity to comment on recent national bank charter applications, including national trust charter applications submitted by National Digital TR CO; Fidelity Digital Assets, NA; First National Digital Currency Bank, N.A.; and Ripple National TR Bank (each, an "Applicant" and collectively, the "Applicants") to the Office of the Comptroller of the Currency ("OCC") since April 2025 (each, an "Application" and collectively, the "Applications").

Based on the Associations' review of the limited information included in the public portions of the Applications, the Associations believe that there are significant policy and legal

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<sup>1</sup> The American Bankers Association, America's Credit Unions, Consumer Bankers Association, Independent Community Bankers of America, and National Bankers Association represent banks and credit unions across the U.S. banking system. See [Annex A](#) for a description of each Association.

questions as to whether the Applicants' proposed business plans involve the types of fiduciary activities performed by national trust banks. The suitability of the trust charter for the Applicants is a material question of public policy. Granting these Applications could represent a fundamental departure from existing OCC precedent, and the Associations firmly believe that such a departure demands public input.

As discussed further herein, the Associations believe that:

1. The public portions of the Applications do not allow for meaningful public scrutiny; and
2. Broader change to OCC policy with respect to trust activities requires public scrutiny.

With a lack of public information or public input, the OCC's approval of the Applications would raise significant policy and process concerns.

Given these substantial concerns, and the policy, legal, and commercial implications that chartering the Applicants would have for the banking system, the Associations urge the OCC to postpone consideration of the Applications. The delay should continue until such time as the OCC has released enough information concerning the Applicants' intended business plans, as well as other aspects of the Applications, to inform the public's review and interested stakeholder comment, consistent with the historical transparency of the OCC's charter application review process. A postponement would allow time and, hopefully, sufficient information for the public to meaningfully assess the Applications and the novel issues they present, as well as provide input regarding the broader policy shift that would be represented by granting a national trust bank charter to an entity that will not be engaged primarily in fiduciary activities.

### **1. The Public Portions of the Applications Do Not Allow for Meaningful Public Scrutiny.**

The public portions of the Applications do not provide sufficient information for the public to assess or provide meaningful comment on the Applicants' proposed business models and operations. For example, the National Digital TR CO ("NDTC") Application describes the anticipated activities simply as "digital asset custody, providing secure and efficient custodial and fiduciary services for a variety of digital assets, including cryptocurrencies, tokenized securities, commodities tokens, NFTs, and stablecoins," and otherwise referencing "the Protego Trust Bank charter conversion application," which itself was shielded from public scrutiny,<sup>2</sup> without further detail and without clearly asserting confidentiality.<sup>3</sup> This vague and incomplete business plan fails to provide sufficient

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<sup>2</sup> See Joint Trades Letter to OCC on Interpretive Letter 1176 (May 27, 2021), available at <https://www.aba.com/advocacy/policy-analysis/joint-trades-il-1176> ("Because [the Protego application] was a conversion to an OCC charter there was no public comment period and information regarding its business model is limited.").

<sup>3</sup> National Digital TR CO Application at pp. 4, 5.

information to permit public understanding of NDTC's proposed business activities. It is possible that further information is provided in the attachments to NDTC's Application; however, those materials are not made publicly available. Notwithstanding that there is insufficient detail available to provide meaningful public comment on these novel activities, the comment period on the NDTC Application closed on June 30, 2025.

Similarly, the public portion of the First National Digital Currency Bank, N.A. Application merely states that it "will manage USDC reserves and provide related fiduciary services, including digital asset custody."<sup>4</sup> And, the public portion of the Ripple National TR Bank Application states that it will "conduct activities that complement Ripple's stablecoin and other payments businesses, including management of stablecoin reserves and related fiduciary services."<sup>5</sup> Neither public portion provides sufficient detail to allow meaningful public comment. Nonetheless, the comment periods for these Applications close on July 30, 2025 and August 4, 2025, respectively.

Moreover, there is no publicly available material on the Application by Fidelity Digital Assets, NA, and the comment period for this Application closed on July 11, 2025.

To be sure, the Associations support the OCC's receptivity to innovative proposals. That said, proposals based on novel interpretations of the law demand increased transparency and public scrutiny.

Unfortunately, based on the incomplete information available in the public sections of the Applications, the public is not afforded an opportunity to exercise that right and responsibility. Accordingly, the Associations respectfully request that the OCC release to the public a more complete description of the Applicants' business plans, with appropriate redactions only with respect to truly confidential information, and an extension of the comment periods that provide ample time to scrutinize such information.

## **2. Broader Change to OCC Policy With Respect to Trust Activities Would Require Public Scrutiny.**

Public policy considerations argue strongly against approving the Applications without public scrutiny of the evolution of OCC policy. National trust banks have historically been permitted to engage solely in activities authorized under 12 U.S.C. § 92a. As discussed in greater detail in the Associations' letter to the OCC dated January 8, 2021,<sup>6</sup> banking powers reserved for national banks under 12 U.S.C. § 24(Seventh) should not be exercised by trust companies chartered pursuant to 12 U.S.C. § 27(a), unless such powers are also authorized under 12 U.S.C. § 92a or relate to the exercise of powers authorized under that section. Otherwise, 12 U.S.C. § 27(a) would be a loophole available for companies seeking to take advantage of the benefits of a national bank charter without the attendant regulatory

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<sup>4</sup> First National Digital Currency Bank, N.A. Application at p. 8.

<sup>5</sup> Ripple National TR Bank Application at p. 10.

<sup>6</sup> See Joint Trades Letter to OCC re: Trust Charter Application (Jan. 8, 2021), available at <https://www.aba.com/advocacy/policy-analysis/joint-trades-letter-to-occ-re-trust-charter-application>.

oversight generally applicable to national banks, including under the Bank Holding Company Act, absent a written agreement with the OCC.

Under 12 U.S.C. § 92a, the fiduciary powers granted to national trust banks include “the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity” authorized under the law of the state where the national trust bank is located.<sup>7</sup> The authority under state law applies only with respect to powers deemed by the OCC to be “fiduciary” in nature. It is not enough that trust companies in the state are authorized to engage in the activity.

Under OCC guidance, custody services are not fiduciary activities.<sup>8</sup> Instead, powers to engage in custody services are derived from a national bank’s authority under 12 U.S.C. § 24(Seventh).<sup>9</sup> Additionally, the OCC has determined that, even if custody services are authorized for trust companies under state law, such services are not fiduciary activities authorized for national trust banks pursuant to 12 U.S.C. § 92a.<sup>10</sup> A national trust bank may therefore provide custody services only if they are “related to” the fiduciary activities of the trust bank.<sup>11</sup>

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<sup>7</sup> OCC regulations implementing 12 U.S.C. § 92a define “fiduciary capacity” to mean “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 12 U.S.C. 92a.” 12 C.F.R. § 9.2(e).

<sup>8</sup> See OCC Unpublished Interpretive Letter from James M. Kane, District Counsel (June 20, 1985) (“[I]t is difficult to argue that safekeeping and safe deposit services are ‘fiduciary’ activities within the meaning of section 92a. ...Such activities do not involve the exercise of investment discretion or similar fiduciary responsibilities.” (citations omitted)), available at <https://plus.lexis.com/api/permalink/d82cf1b8-0cce-4f6b-bed6-75adb48f3b10/?context=1530671>.

<sup>9</sup> 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).”).

<sup>10</sup> See OCC Unpublished Interpretive Letter (June 20, 1985), *supra* n.6, (determining that Florida law authorizing state trust banks to engage in custody activities did not authorize national trust banks located in Florida to engage in custody activities since custody activities are not fiduciary activities).

<sup>11</sup> See *id.* The OCC has determined that national banks can offer cryptocurrency custody services in either a fiduciary or non-fiduciary capacity. See OCC Interpretive Letter No. 1170 (July 22, 2020) (“A bank that provides custody for cryptocurrency in a non-fiduciary capacity would essentially provide safekeeping for the cryptographic key that allows for control and transfer of the customer’s cryptocurrency. ...A national bank holding cryptocurrencies in a fiduciary capacity—such as a trustee, an executor of a will, an administrator of an estate, a receiver, or as an investment advisor—would have the authority to manage them in the same way banks can manage other assets they hold as fiduciaries.”); see also OCC Bulletin 2025-17, July 14, 2025 (Crypto-Asset Safekeeping Services) (providing that national banks may provide crypto-asset safekeeping in a fiduciary or a non-fiduciary capacity, but if done in a fiduciary capacity, must comply with 12 C.F.R. pt. 9). Nonetheless, the authority to offer cryptocurrency custody services in a non-fiduciary capacity is derived from a national bank’s powers under 12 U.S.C. § 24(Seventh). The authority to offer cryptocurrency custody services in a fiduciary capacity is derived from 12 U.S.C. § 92a.

This is true notwithstanding the interpretation published in OCC Interpretive Letter 1176, which was published without the benefit of public notice and comment.<sup>12</sup> That novel interpretation would effectively eliminate the longstanding requirement that applicants for national bank trust charters engage in fiduciary activities. This significant change in OCC policy was made with no opportunity for public comment and review. This significant change in OCC policy was later “clarified” by OCC published Interpretive Letter 1179 (now rescinded), which provided in relevant part that:

Whether an institution may be chartered under 12 U.S.C. § 27(a) is a question of federal law. The OCC may look to state law to determine if an applicant’s activities are limited to the operations “of a trust company and activities related thereto,” *but an applicant’s activities will not automatically be deemed to be trust activities—or to be fiduciary activities—solely by virtue of state law.* The OCC retains discretion to determine if an applicant’s activities that are considered trust or fiduciary activities under state law are considered trust or fiduciary activities for purposes of applicable federal law.<sup>13</sup>

Based on the publicly available detail, business models similar to those described in the Applications do not involve the types of fiduciary activities historically performed by national trust charter banks, without regard to any authority provided by state law. Providing custodial services for digital assets is not a fiduciary activity, and granting charters where traditional fiduciary activity is absent—or, is secondary at best—would represent a significant change in OCC policy that should be made only pursuant to a proper public notice and comment period.<sup>14</sup> Any such grant in response to the Applications would call into question whether the OCC is acting within its authority under 12 U.S.C. § 27(a).

If the Applicants are successfully able to establish themselves as national trust banks that do not primarily provide fiduciary services, but instead provide traditional banking services like payments, then, as the Associations anticipated in 2021,<sup>15</sup> other companies will follow, presenting material risk to the U.S. banking and financial system.

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<sup>12</sup> OCC Interpretive Letter No. 1176 (Jan. 2021).

<sup>13</sup> OCC Interpretive Letter No. 1179 (Nov. 2021, rescinded Mar. 2025) (internal citations omitted). We note that OCC Interpretive Letter No. 1179 was seemingly rescinded as it relates to the approval process to engage in crypto-asset activities, and the interpretation of trust powers excerpted above was not expressly addressed by the rescission interpretation. See OCC Interpretive Letter No. 1183 (Mar. 2025).

<sup>14</sup> Publication of a joint statement regarding appropriate risk management for crypto-asset safekeeping services in a fiduciary or non-fiduciary capacity is not a meaningful substitute for public scrutiny of the above-described change in public policy. See OCC Bulletin 2025-17, Crypto-Asset Safekeeping Services (July 14, 2025).

<sup>15</sup> See Joint Trades Letter to OCC re: Trust Charter Application (Jan. 8, 2021) (anticipating that if BitPay National Trust Bank and Paxos National Trust were “successfully able to establish themselves as national trust banks that do not primarily provide fiduciary services, but instead provide traditional banking services like payments, then the Associations fully expect that other companies will follow.”).

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The Associations appreciate the opportunity to comment on the Applications and intend to provide further comment on the substance of the Applications when further details are made publicly available.

If you have any questions, please contact Stephen Kenneally by phone at 202-663-5147 or by email at [skenneally@aba.com](mailto:skenneally@aba.com).

Respectfully,

American Bankers Association

America's Credit Unions

Consumer Bankers Association

Independent Community Bankers of America

National Bankers Association

## **Annex A**

**American Bankers Association.** The American Bankers Association is the voice of the nation's \$24.5 trillion banking industry, which is composed of small, regional and large banks that together employ approximately 2.1 million people, safeguard \$19.5 trillion in deposits and extend \$12.8 trillion in loans.

**America's Credit Unions.** America's Credit Unions is the unified voice for not-for-profit credit unions and their more than 140 million members nationwide. America's Credit Unions provides strong advocacy, resources and services to protect, empower and advance credit unions and the people and communities they serve. For more information about America's Credit Unions, visit [AmericasCreditUnions.org](https://AmericasCreditUnions.org).

**Consumer Bankers Association.** The Consumer Bankers Association is the only national trade association focused exclusively on retail banking. Established in 1919, the association is a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3.4 trillion in consumer loans, and provide \$270 billion in small business loans.

**Independent Community Bankers of America.** The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams.

**National Bankers Association.** Founded in 1927, the National Bankers Association (NBA) champions minority depository institutions, advocating for mission-driven banks that serve underserved and low- to-moderate-income communities. Representing community banks across 43 states and territories, NBA promotes economic empowerment, capital access and financial inclusion. Learn more at [www.nationalbankers.org](https://www.nationalbankers.org)