

July 30, 2025

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: ICBA Letter in Opposition to First National Digital Currency Bank, N.A.'s National Trust Bank Charter Application (2025-Charter-342299)

Dear Director Astrada,

The Independent Community Bankers of America ("ICBA")¹ strongly opposes Circle's application for a national trust bank charter for its proposed subsidiary, First National Currency Bank N.A. ("FNDCB"). Circle proposes to use FNDCB to "manage USDC² reserves and provide related fiduciary services, including digital asset custody" in order to further Circle's mission to "raise global economic prosperity through the frictionless exchange of value" and its belief "that with the advent of blockchain networks, the global financial system can be rebuilt on the principles of the internet."³

Circle's ambitious goal of rebuilding the global financial system on a blockchain network is outside of the scope of the powers Congress envisioned when it created the national trust bank charter. As a national trust bank, FNDCB is legally prohibited from taking deposits.⁴ However, by managing Circle's USDC reserves and facilitating the issuance of USDC, FNDCB will enable Circle to offer a product that functions similarly to a demand deposit, and which has the potential to drain deposits out of traditional banks. According to a recent Treasury Department report, as

¹ 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. For more information, visit ICBA's website at icba.org.

² USDC, or United States Dollar Coin, is the second largest dollar-denominated stablecoin currently in circulation with approximately \$62 billion outstanding.

³ First National Currency Bank N.A., Interagency Charter Application (June 30, 2025), available at: <https://foia-pal.occ.gov/app/ReadingRoom.aspx>.

⁴ 12 U.S.C. 92a(d).

much as \$6.6 trillion might flow from deposit accounts into stablecoins.⁵ If the Treasury's estimate is correct, the outflow of deposits from the traditional banking system to entities like FNDCB and Circle could have a destabilizing effect on the financial system as a whole and could significantly impact the ability of community banks to make loans to families, small businesses, and farms. This outcome is contrary to the OCC's mandate of "assuring the safety and soundness of ... the institutions ... subject to its jurisdiction."⁶

FNDCB's Business Model Is Outside the Scope of the Trust Bank Charter

Traditionally, a national trust bank acts as a custodian who provides safekeeping services for the assets of trust beneficiaries.⁷ This may include the safekeeping of securities, estate planning services, or long-term wealth preservation. Traditional trust bank departments do not compete with traditional commercial banks because they do not lend or offer deposit accounts to retail customers.

By contrast, FNDCB's business model is to facilitate Circle's issuance of USDC, a payment stablecoin that is offered globally to retail customers, including those located outside the United States, and shares many similar features with bank deposits. Like a bank deposit, USDC can be transferred to others electronically, can be spent at the point of sale through a mobile app, and, most importantly, can be redeemed one-for-one for U.S. Dollars. This close functional similarity to deposits is problematic because, as mentioned above, national trust banks are legally prohibited from deposit taking.

In other words, Circle and FNDCB are seeking a novel charter to mimic the depository business of a traditional bank without the requirements, restrictions, and compliance obligations that accompany a traditional bank charter. This end run around the rules has several important implications, both for consumers and the financial system. First, because FNDCB is a national trust bank, rather than a traditional bank, customer funds are not protected by Federal Deposit Insurance Corporation ("FDIC") insurance in the event of a failure.

Second, national trust banks are exempt from the definition of a bank in the Bank Holding Company Act ("BHCA").⁸ This exemption means that FNDCB's parent company is not subject to consolidated supervision at the holding company level like other bank holding companies and it permits FNDCB to be owned by a commercial (non-financial) parent company, contrary to the separation of banking and commerce.

⁵ Department of the Treasury, TBAC Presentation "Digital Money" (April 30, 2025), available at: <https://home.treasury.gov/system/files/221/TBACCharge2Q22025.pdf>.

⁶ 12 C.F.R. 4.2.

⁷ 12 U.S.C. 92a.

⁸ See 12 U.S.C. 1841(c)(1).

The OCC should not permit stablecoin issuers to mimic full-service banks using the national trust bank charter because it is simply too far afield from the custodial and fiduciary services that the charter was designed to facilitate. Stablecoins are close substitutes for deposits because like deposits they can be transferred, spent, and redeemed for dollars. This is unlike the traditional long-term safekeeping and investment of client assets that trust banks traditionally provide and it demands a more stringent level of supervision and consumer protection than has traditionally been applied to trusts.

Lack of Statutorily Required Rulemaking to Expand Trust Powers

In 2021, the OCC published Interpretive Letter #1176, which made significant policy changes regarding the eligibility requirements to receive a national trust charter.⁹ Specifically, the Interpretive Letter concluded that national trust banks are permitted to engage in “fiduciary activities as defined by federal or state law, as well as other activities that are non-fiduciary in nature, such as non-fiduciary custody.”¹⁰ This change eliminated the longstanding requirement that applicants for national bank trust charters engage exclusively in fiduciary activities.

This significant policy change was made without any statutory change. There is nothing in the existing statute to indicate that Congress intended national trust banks to have the power to offer non-fiduciary services as anything other than an ancillary part of their business or a courtesy to their customers. To expand the national trust charter to include non-fiduciary custody and other non-custodial services like facilitating cross border payments or issuing stablecoins is a major question, which requires a Congressional delegation of authority.

At a minimum, substantive reinterpretations of a statute, such as those contained in Interpretive Letter #1176, should be enacted only after a transparent public notice and comment rulemaking process. Before deciding on any new national trust bank applications, the OCC should engage in formal rulemaking, as required by the Administrative Procedure Act, to clarify the scope of the permitted non-fiduciary powers of national trusts.

Risks Posed by Stablecoin to a Safe and Sound Banking System

When reviewing a charter application, the OCC is required to consider factors related to maintaining a safe and sound banking system.¹¹ Despite the public exhibit’s lack of details concerning the business plan, which makes it difficult for the public to meaningfully review the proposal, it is clear that Circle and FNDCB would be tightly bound together. Both FNDCB and its parent would be vulnerable to shocks in the digital asset market, and the fact that both the

⁹ OCC, “OCC Chief Counsel’s Interpretation on National Trust Banks” Interpretive Letter #1176 (Jan 2021), available at: <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1176.pdf>.

¹⁰ *Id.*

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

bank and its parent are so concentrated in this market could make it difficult for Circle to serve as a source of strength for FNDCB, should the need arise.

In its June 2025 S-1/A Securities Registration Statement, Circle clearly acknowledges two key risks inherent in stablecoin: run risk and reserve issues that can pose redemption challenges.¹² Circle's S1 filing warns investors that, "Privately issued stablecoins may be subject to the risk of significant and concentrated redemption requests, even when they are fully reserved with high quality liquid assets such as cash and short-dated U.S. government obligations" and that "in extreme cases, the market for the short-dated U.S. government obligations held by the Circle Reserve Fund might not be sufficiently liquid ... to liquidate them in a way that allows us to meet redemption demands in a timely manner, which could potentially lead to redemption delays."¹³

Like many stablecoins, USDC has broken its peg to the dollar on multiple occasions, reaching an all-time low price of \$0.87.51 on December 22, 2022.¹⁴ Significant price dislocations like this may prompt a run on Circle's Reserve Fund as USDC holders rush to redeem their USDC for Dollars before the price falls further. This could force Circle to liquidate its reserve assets at a loss, leaving it unable to repay USDC holders at par. Unlike depositors in a traditional bank, USDC holders are not FDIC-insured, and would have no government guarantee in the event of a run on Circle's Reserve Fund.

An event like this would be destabilizing not just in the crypto sector, but for traditional banks as well. If FNDCB receives a national trust bank charter and is allowed to promote itself as an OCC regulated bank, it may lead to customer confusion about whether their funds are FDIC-insured. Furthermore, in the event of the insolvency of FNDCB, the risk of contagion would be elevated because bank customers might fear that their deposits in traditional banks are not redeemable at par. This could increase the risk of follow-on runs.

Furthermore, approving this application would further expose the traditional banking and financial system to risks and volatility inherent in the digital asset market. The failure of Silicon Valley Bank ("SVB") – in which Circle was the largest single depositor – in 2023 demonstrated that a large bank failure caused by concentrated exposure to the cryptocurrency sector can have systemic consequences. The FDIC was forced to invoke the Systemic Risk Exception in order to prevent the crisis of confidence sparked by SVB's failure from spreading to other depository institutions.

Circle acknowledges that the SVB failure led to a dislocation in the price of USDC, saying, "in March 2023, we announced that we had initiated transfers of the more than \$3 billion of

¹² Circle Internet Group, Inc. S-1/A Securities Registration Statement at 49 (June 2, 2025), available at: <https://www.sec.gov/Archives/edgar/data/1876042/000119312525126208/d737521ds1a.htm>.

¹³ *Id.*

¹⁴ TradingView, USDCUSD, available at: <https://www.tradingview.com/symbols/USDCUSD/>.

deposits from SVB to other banks, but those transfers failed to settle before the FDIC placed the bank into receivership. Although all of these funds were ultimately made available and transferred to new banks, concerns related to Circle's access to these funds caused USDC to experience a temporary price dislocation on certain secondary trading markets during the period when banks were closed and until the resulting backlog of redemption requests had been cleared, and the amount of USDC in circulation decreased thereafter."¹⁵

These facts all weigh against a determination that the applicant satisfies factors related to maintaining a safe and sound banking system.

Fraud and Cybercrime in the Crypto Space

The cryptocurrency ecosystem is fraught with significant risks related to fraud, money laundering, and cybercrime, posing substantial challenges for any institution, such as FNDCB, seeking to provide custodial services for digital assets. According to the Federal Bureau of Investigation's Internet Crime Complaint Center (FBI IC3), cryptocurrency-related fraud resulted in 149,686 complaints and \$9.3 billion in losses in 2024, reflecting a 66% increase in losses from the prior year. These losses account for more than half of the total financial impact from all forms of cybercrime, including phishing, identity theft, data breaches, and online check and credit card fraud.¹⁶ This alarming trend underscores the pervasive and growing threat within the digital asset space, particularly for institutions like FNDCB that propose to custody stablecoins and other digital assets.

According to the Financial Action Taskforce ("FATF"), an intergovernmental organization created by the G7 to combat money laundering, "most on-chain illicit activity now involves stablecoins."¹⁷ The FATF reports that, "The use of stablecoins by various illicit actors, including Democratic People's Republic of Korea (DPRK) actors, terrorist financiers, and drug traffickers, has continued to increase [since 2024]" and that "[m]ass adoption of stablecoins or [digital assets] more broadly could amplify illicit finance risks."¹⁸

Circle acknowledges these heightened risks in its securities registration filings: "The risk of illegal activity may be heightened for digital assets, which are relatively new and, in many jurisdictions, lightly regulated or largely unregulated. Many types of digital assets have characteristics such as the speed with which transactions can be conducted, the ability to conduct transactions without the involvement of regulated intermediaries, the ability to engage

¹⁵ *Supra* note 12.

¹⁶ Federal Bureau of Investigation, Internet Crime Complaint Center, "Internet Crime Report 2024," available at: https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf.

¹⁷ Financial Action Taskforce, "FATF urges stronger global action to address Illicit Finance Risks in Virtual Assets" (June 26, 2025), available at: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/targeted-update-virtual-assets-vasps-2025.html>.

¹⁸ *Id.*

in transactions across multiple jurisdictions, the irreversible nature of certain transactions, and encryption technology that anonymizes these transactions, which may make digital assets susceptible to use in illegal activity.”¹⁹

Because of the heightened risk of stablecoins and digital assets being used in criminal activities, it is critical for FNDCB to implement a strong Bank Secrecy Act, Anti-Money Laundering, and Countering the Financing of Terrorism Program (“BSA/AML/CFT”) of the highest quality. Given that Circle proposes to use its national trust charter to “enable Circle Group to expand its services for institutional customers,” the risk of USDC to be used for international money laundering appears to be heightened even further.

Unfortunately, the details of FNDCB’s information systems and plans to comply with BSA/AML/CFT regulations or to safeguard consumer data are not included in the public portion of their application and so cannot be examined by the public. The OCC should make these portions of the application public and allow for a second round of public comment on their adequacy before approving FNDCB’s application for a national trust bank charter.

Separation of Banking and Commerce

ICBA has a long history of opposing less regulated novel charters – including the industrial loan company (“ILC”) charter – that would allow commercial parent companies to blur the line between banking and commerce by owning a bank. Like ILCs, national trust banks are exempt from the definition of “bank” in the BHCA. Because of this exemption, a national trust bank would potentially be permitted to be owned by a commercial company, rather than a traditional bank holding company that is limited to engaging only in businesses that are financial in nature.²⁰ Such a regulatory loophole raises profound concerns about the integrity of the financial system and the potential for consumer harm.

If companies are permitted to use the national trust charter to manage the reserves of stablecoin issuers or to provide other deposit-like products such as stable value accounts, major commercial entities including large retailers and Big Tech companies could own a national trust bank like FNDCB, enabling them to provide deposit-like services to their customers without being subject to the BHCA’s prohibitions on non-financial activities or consolidated supervision

¹⁹ *Supra* note 12.

²⁰ See Max Bonici, Stephen T. Gannon, and Kristal Rovira, Davis, Wright Tremaine LLP, “National Trust Banks – Revisited for Crypto and Payments” (November 22, 2024), available at: <https://www.dwt.com/blogs/financial-services-law-advisor/2024/11/why-fintechs-should-consider-national-trust-banks> [“Provided a national trust bank doesn’t meet the definition of “bank” under the Bank Holding Company Act (BHCA), a company that owns a national trust bank is not a bank holding company subject to the Federal Reserve’s comprehensive regulation and supervision. That essentially means a commercial entity can own a national trust bank without the Federal Reserve’s involvement for a bank or the FDIC’s involvement for an ILC. National trust banks that do obtain FDIC deposit insurance can comply with additional conditions to avoid meeting the definition of “bank” under the BHCA.”]

by the Federal Reserve Board. This arrangement threatens both consumer welfare and financial stability.

Conclusion

Granting FNDCB's national trust bank charter would undermine the stability of the financial system by allowing a non-traditional institution to offer deposit-like services without adequate regulatory oversight, threatening consumer protection and the integrity of the banking sector.

The OCC should reject FNDCB's application to prevent the risks posed by stablecoins, including potential deposit drainage, increased fraud, and circumvention of critical banking regulations. Furthermore, the OCC must undertake formal rulemaking, as required by the Administrative Procedure Act, to clarify the scope of national trust bank powers and ensure alignment with Congressional intent, thereby safeguarding the safety and soundness of the financial system.

Please contact me at Mickey.Marshall@icba.org if you have any questions about the positions stated in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Marshall", with a stylized flourish at the end.

Mickey Marshall
Vice President and Regulatory Counsel