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Via Electronic Mail

March 2, 2021

The Director for District Licensing
Western District Main Office
1225 17th Street
Suite 300
Denver, CO 80202

Re: National Bank Charter Application for First Blockchain Bank & Trust, N.A.

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to provide comment to the Office of the Comptroller of the Currency (“OCC”) regarding the charter application by First Blockchain Bank & Trust, N.A. (“Applicant”) dated February 2, 2021. While ICBA supports responsible innovation and efforts to serve unbanked and underbanked communities, ICBA urges the OCC to proceed thoughtfully and transparently. Notably, the application fails to provide adequate information about the proposed bank’s activities to enable informed public comment as required by OCC regulations. ICBA strongly encourages the OCC to delay consideration of the application until after it has solicited and evaluated further public comments and addressed the policy concerns expressed in this letter.

Background

A California-based cryptocurrency start-up company, Metallicus, Inc., is seeking a national banking charter on behalf of First Blockchain Bank & Trust, N.A. (“First Blockchain”), which will be headquartered in South Dakota. First Blockchain Bank & Trust, N.A., a wholly-owned

¹*The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.*

With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, over \$4.4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

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subsidiary of Metallicus, Inc., also plans to file an application for deposit insurance with the Federal Deposit Insurance Corporation (“FDIC”) and an application for a Master Account with the Federal Reserve Bank of San Francisco. If granted, First Blockchain will become a federally regulated custodian of blockchain assets, offering traditional FDIC-insured deposit accounts.

Without giving any detail, First Blockchain says it will be involved in three categories of activities: 1) Trust and Estate Services, 2) Demand Deposit Accounts, and 3) Cryptocurrency Services.

ICBA Comments

ICBA’s concerns about First Blockchain’s application include the following:

- The application fails to provide adequate information;
- An “FDIC-insured crypto bank” will create consumer confusion and consumer protection risks; and,
- Certain supported cryptocurrencies and associated services raise risks of illicit activities.

The Application Fails to Provide Adequate Information

Substantive and material portions of the application have not been made public, limiting public understanding of the Applicant’s proposed activities. The significant deficiencies in information include any details about First Blockchain’s Business Model, including a detailed description of its deposit, trust and estate activities, a defined Community Reinvestment Act (CRA) plan, First Blockchain’s Bank Secrecy Act (“BSA”)/Anti-Money Laundering (“AML”)/Office of Foreign Assets Control (“OFAC”) Sanctions policy, and Metallicus’ Information Security Program Policy.

Lack of Information on the Business Model

Apart from merely listing the three primary products and service offerings First Blockchain plans to launch (as noted in the background), pertinent information related to activities referenced in “Exhibit E: Business Plan” is not publicly available. Greater transparency is needed to allow the public to understand how the new bank will operate within the organizational structure of Metallicus, Inc. and in relation to its flagship product Metal Pay.

The Community Reinvestment Act (“CRA”) Plan is Not Defined

An essential piece of information missing from First Blockchain’s application is the CRA plan. The OCC is required to ensure the “safety and soundness” of the national banking system and public interest standards, including the CRA that apply to FDIC-insured depositories. According to First Blockchain’s application, “A CRA Plan will be forthcoming regarding this as one of our strategic objectives is an overall plan for financial inclusion for the unbanked and underserved,

particularly with a focus on the Native American community across the U.S.” Without a defined CRA plan, the OCC cannot establish and enforce financial inclusion goals.

Information on Regulatory Compliance and Information Security Plans are Not Available for Review

Another missing component of First Blockchain’s application is its BSA/AML/OFAC Policy and Information Security Plans. Cryptocurrency services raise additional unique issues and considerations. Because different crypto assets are thought of as offering a greater level of anonymity or as falling beyond the purview of centralized banking systems, they have been associated with illicit activity, including money laundering. The OCC should consider how elements of First Blockchain’s applicant’s business model may affect the proposed bank’s compliance risk profile. The bank must ensure that its BSA/AML and OFAC programs and information security plans are appropriately tailored to effectively assess customer risk and monitor crypto-related transactions.

In the absence of essential information, it is difficult to evaluate First Blockchain’s application against key elements to which banks are held such as consumer protection and safety and soundness.

An “FDIC-Insured Crypto Bank” Will Create Consumer Confusion and Consumer Protection Risks

The application indicates that the First Blockchain will be taking deposits in cash and cryptocurrency. Receiving deposits in digital assets, alongside U.S. currency that will be insured by the FDIC, may lead to consumer confusion. Indeed, CEO Marshall Hayner’s remarks, “This would be the first FDIC-insured crypto bank,”² may be open to misinterpretation. Consumers could perceive the FDIC protections extend to cryptocurrencies, which they do not.

Congress passed the Banking Act of 1933 to establish deposit insurance and create the FDIC as the institution charged with implementing protection specifically for cash deposits. Because consumers may not distinguish between insured and uninsured deposits, a Black Swan event such as significant price fluctuations in cryptocurrencies may trigger a “bank run.”

Certain Supported Cryptocurrencies and Associated Services Raise Risks of Illicit Activities
According to Metallicus, Inc.’s website, 40 cryptocurrencies are supported,³ of which 19⁴ are available to deposit and withdraw on Metal Pay. Metal Pay supports cryptocurrencies such as Monero and ZCash designed to evade scrutiny and cloak users in greater secrecy. These anonymity-enhanced digital assets may be used to engage in a variety of criminal activities.⁵

² <https://www.coindesk.com/crypto-startup-metal-pay-files-for-national-bank-charter>

³ <https://support.metalpay.com/support/solutions/articles/43000468435-which-cryptocurrencies-are-available-in-metal-pay->

⁴ <https://support.metalpay.com/support/solutions/articles/43000560927-which-cryptos-are-supported-to-deposit-and-withdraw-on-metal-pay->

⁵ <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-consensus-blockchain>

ICBA is concerned about threats posed by these types of crypto assets and associated activities, such as money laundering, terrorist financing, and fraud.

Policymakers have recently cited the history of cryptocurrencies being used for criminal and illicit activity, undermining law enforcement. In July 2020, the Financial Crimes Enforcement Network (“FinCEN”) published an advisory warning, “Financial institutions dealing in CVC [Convertible Virtual Currencies] should be especially alert to the potential use of their institutions to launder proceeds affiliated with cybercrime, illicit darknet marketplace activity, and other CVC related schemes and take appropriate risk mitigating steps consistent with their BSA obligations.”⁶

Conclusion

Given the policy, regulatory, and consumer protection concerns raised, ICBA urges the OCC to postpone its consideration of First Blockchain’s application for a national bank charter. The delay would allow the OCC to release sufficient information concerning the First Blockchain’s intended business model and other aspects of the application to inform the public’s review and allow for informed stakeholder comment, consistent with the historical transparency of the OCC’s charter application review process.

ICBA appreciates the opportunity to provide comments in response to this request. If you have any questions, please do not hesitate to contact me at Nasreen.Quibria@icba.org or (202) 659-8111.

Sincerely,

/s/

Nasreen Quibria
Vice President, Emerging Payments and Technology Policy

cc: Acting Comptroller of the Currency Blake Paulson

⁶ FinCEN Advisory, FIN-2020-A005, July 30, 2020. <https://www.fincen.gov/sites/default/files/advisory/2020-07-30/FinCEN%20Advisory%20Covid%20Cybercrime%20508%20FINAL.pdf>