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June 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 NATIONAL DIGITAL TRUST COMPANY'S CHARTER APPLICATION (2025-CHARTER-342009)

Dear Director Astrada,

The Independent Community Bankers of America (ICBA)¹ strongly opposes Protego Holdings Corporation's application for a National Trust Bank Charter for its subsidiary, National Digital Trust Company (NDTC). According to its application, NDTC "aims to establish itself as a specialized financial institution addressing the growing demand for digital asset services," specifically by providing custodial and fiduciary services for an array of digital assets including cryptocurrencies, tokenized securities, commodities tokens, Non-Fungible Tokens (NFTs), and stablecoins. NDTC additionally plans to create online trading and lending platforms, allowing its clients to trade digital assets and to facilitate digital asset lending between custody clients.

The formation of National Trust Banks that are exclusively focused on providing custody services for digital assets creates unwarranted risk to the US economy through undiversified financial institutions holding concentrating risk to the broader financial sector. The amount of funds that may flow out of FDIC-insured deposit accounts and into payment stablecoins is not yet well understood and may lead to liquidity issues in the broader banking system. A recent Treasury Department report to the Treasury Borrowing Advisory Committee (TBAC) suggested that as much as \$6.6 trillion might flow from deposit accounts into stablecoins.² For these reasons, we urge the Office of the Comptroller of the Currency (OCC) to reject NDTC's application.

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](https://www.icba.org).

² Department of the Treasury, TBAC Presentation "Digital Money" (April 30, 2025), available at: <https://home.treasury.gov/system/files/221/TBACCharge2Q22025.pdf>.

Lack of Statutorily Required Rulemaking to Expand Trust Powers

In 2021, the OCC's Chief Counsel's Office published Interpretive Letter #1176, which made significant policy changes regarding the eligibility requirements to receive a national trust charter.³ These changes, having the effect of formal rulemaking by letter, were made without going through the formal notice and comment rulemaking process required by the Administrative Procedure Act and without giving industry stakeholders a chance to provide feedback. 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."⁴ This change eliminated the longstanding requirement that applicants for national bank trust charters engage exclusively in fiduciary activities without the procedural requirements for doing so.

Significant policy changes such as those contained in Interpretive Letter #1176 should be enacted only after a transparent public notice process has been completed. Before deciding on any new National Trust Bank applications for banks seeking to provide custody services for digital assets, the OCC should engage in a formal rulemaking to clarify the scope of the permitted non-fiduciary powers of national trusts. Consequently, despite this unprecedented legal interpretation vastly expanding chartering authority, NDTC's proposed business model exceeds the scope of activities permitted pursuant to a national trust charter.

Separation of Banking and Commerce

ICBA has a long history of opposing loosely regulated novel charters that purport to offer banking services without corresponding oversight – 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, it appears that a national trust bank that is not FDIC insured and that does not accept demand deposits or make loans is exempt from the definition of "bank" in the Bank Holding Company Act (BHCA).⁵

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.⁶ Such a regulatory loophole raises

³ 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>.

⁴ *Id.*

⁵ See 12 U.S.C. 1841(c)(1).

⁶ 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

profound concerns about the integrity of the financial system and the potential for consumer harm.

Under current rules, major commercial entities such as Google, Meta, X, or Walmart could own a national trust bank like NDTC, enabling them to custody or issue crypto tokens or stablecoins without being subject to the BHCA's prohibitions on non-financial activities or consolidated supervision by the Federal Reserve Board. This arrangement threatens both consumer welfare and financial stability.

Moreover, allowing commercial companies to control bank-like entities risks creating anti-competitive market dynamics. Stablecoins issued by a retailer could lock consumers into using that merchant's ecosystem, as proprietary tokens may have limited acceptance elsewhere. This could reduce consumer choice, stifle competition, and create monopolistic tendencies in both retail and financial services markets. For example, a big tech firm owning a national trust bank could leverage its vast customer data to tailor financial products in ways that prioritize corporate profits over consumer interests, potentially leading to predatory practices or discriminatory lending.

Privacy concerns are equally pressing. Traditional banks are subject to stringent regulations, such as those under the Gramm-Leach-Bliley Act, requiring the protection of customers' personal financial information and ensuring impartiality in credit decisions. Commercial entities, however, often operate under less rigorous data privacy frameworks and may exploit financial data for marketing, cross-selling, or other commercial purposes. This misalignment of incentives could erode consumer trust in the financial system and expose customers to significant privacy risks. For instance, a tech giant owning a national trust bank could integrate financial data with its existing consumer profiles, creating comprehensive data sets that amplify risks of misuse or breaches.

While NDTC's parent company, Protego, does not currently operate as a large-scale commercial entity, there are no legal barriers preventing Protego from selling NDTC to a commercial firm once the charter is granted. Such a transfer heightens the risks outlined above, as a commercial owner could leverage NDTC's digital asset infrastructure to dominate markets or exploit consumer data. Furthermore, NDTC's proposed activities, such as issuing digital assets or facilitating their trading, could enable its parent or future owners to engage in activities traditionally reserved for regulated financial institutions, without equivalent oversight. This blurring of banking and commerce undermines the principles of safety, soundness, and fairness that underpin the U.S. banking system.

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."]

Challenges with Digital Asset Custody

When exercising trust powers, national trust banks are required to, “segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section.”⁷ However, the unique nature of digital assets, including the reliance on blockchain technology and private key management, introduces operational complexities by which compliance is impractical at best. A single security breach or loss of private keys would result in irretrievable asset losses, exposing clients to significant financial harm and undermining confidence in the banking system.

Furthermore, NDTC’s proposed trading and lending platforms raise additional concerns about conflicts of interest and market manipulation. Facilitating digital asset transactions could position NDTC as both a custodian and a market participant, creating incentives to prioritize proprietary interests over those of clients. Such conflicts are particularly notable in the largely unregulated digital asset market, where transparency and oversight remain limited.

Fraud and Cybercrime in the Crypto Sector

The cryptocurrency ecosystem is fraught with significant risks related to fraud, money laundering, and cybercrime, posing substantial challenges for any institution, such as NDTC, 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.⁸ This alarming trend underscores the pervasive and growing threat within the digital asset space, particularly for institutions like NDTC that propose to custody cryptocurrencies, stablecoins, and other digital assets.

The operational complexity of managing digital assets amplifies these risks. Unlike traditional financial assets, digital assets rely on blockchain technology and private key management, which introduce unique vulnerabilities. A single security breach, such as a hack or loss of private keys, could lead to the permanent loss of client assets, as there is often no recourse for recovery in the decentralized digital asset environment. For NDTC, the responsibility of safeguarding private keys and ensuring robust cybersecurity measures is paramount, yet the application does not provide sufficient detail on how it will address these technical challenges. A failure to implement state-of-the-art cybersecurity protocols could expose NDTC’s clients to catastrophic financial losses and erode public confidence in the broader financial system.

⁷ 12 U.S.C. 92a(c).

⁸ Federal Bureau of Investigation, Internet Crime Complaint Center, “Internet Crime Report 2024,” available at: https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf.

Moreover, the cryptocurrency market remains a prime target for illicit activities, including money laundering and sanctions evasion. For example, in 2024, the Department of Justice charged Russian national Iurii Gugin with using his cryptocurrency company, Evita, to funnel over \$500 million in overseas payments through U.S. banks and cryptocurrency exchanges back to Russia.⁹ This case illustrates how cryptocurrencies can be exploited to bypass international financial regulations. Similarly, there is recent evidence that, as sanctions on Iran have escalated, “Iranian centralized exchanges (CEXs) saw a surge in both usage and outflows, with transaction patterns suggesting capital flight.”¹⁰ Such activities demonstrate how digital assets can be used to undermine U.S. sanctions policy, posing a direct threat to national security and financial integrity.

These risks are not merely theoretical but have already manifested in regulatory actions against similar institutions. In 2022, the OCC issued a consent order against Anchorage Digital Bank for failing to implement an adequate Bank Secrecy Act/anti-money laundering (BSA/AML) compliance program.¹¹ This precedent highlights the difficulty of ensuring robust compliance in the digital asset space, particularly for institutions like NDTC that lack the extensive regulatory experience of traditional banks. NDTC’s proposed activities, including custody, trading, and lending of digital assets, would require a comprehensive BSA/AML framework to detect and prevent illicit transactions. However, the volatile and pseudonymous nature of many digital assets complicates transaction monitoring and customer due diligence, increasing the likelihood of oversight failures.

The scale of these risks necessitates that any institution seeking to custody digital assets, such as NDTC, meet the highest standards of cybersecurity and BSA/AML compliance. This includes implementing advanced encryption protocols, multi-factor authentication, cold storage solutions for private keys, and real-time transaction monitoring systems capable of identifying suspicious activities.

Additionally, NDTC would need to conduct rigorous know-your-customer (KYC) and customer identification program (CIP) processes to mitigate the risk of facilitating illicit transactions. However, the application does not adequately address how NDTC will achieve these standards, raising doubts about its preparedness to operate safely in the high-risk digital asset environment. The potential for NDTC to become a weak link in the financial system,

⁹ See Department of Justice, “Founder of Cryptocurrency Payment Company Charged with Evading Sanctions and Export Controls, Defrauding Financial Institutions, and Violating the Bank Secrecy Act” (June 9, 2025), available at: <https://www.justice.gov/opa/pr/founder-cryptocurrency-payment-company-charged-evading-sanctions-and-export-controls>.

¹⁰ Chainalysis, “Iranians Flock to Crypto Amidst Geopolitical Tension; International Sanctions Actions Disrupt Russia’s War Machine” (Feb. 19, 2025), available at: <https://www.chainalysis.com/blog/crypto-crime-sanctions-2025/>.

¹¹ OCC, News Release 2022-41, “OCC Issues Consent Order Against Anchorage Digital Bank” (April 21, 2022), available at: <https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-41.html/>.

inadvertently enabling fraud, money laundering, or sanctions evasion, underscores the need for heightened scrutiny and robust regulatory oversight prior to approving its application for a charter.

Conclusion

The approval of NDTC's charter would set a dangerous precedent, enabling the proliferation of undiversified, high-risk institutions that could destabilize the financial system and disadvantage traditional banks. The OCC must prioritize the stability of the banking sector and the protection of consumers by rejecting NDTC's application and engaging in formal rulemaking to address the expanded powers of national trust banks.

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 that reads "M. Marshall" with a stylized flourish at the end.

Mickey Marshall
Vice President and Regulatory Counsel