UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED,

Plaintiff,

v.

Case No. 1:24-cv-1857-ACR

FEDERAL DEPOSIT INSURANCE CORPORATION,

Defendant.

JOINT STATUS REPORT

Pursuant to this Court's Minute Order of November 4, 2024, Plaintiff History Associates Incorporated, and Defendant, the Federal Deposit Insurance Corporation ("FDIC"), hereby submit this joint status report.

- 1. As set out in the November 4 Minute Order, the FDIC reviewed the 23 "pause letters" to determine what portions should be redacted, and produced the redacted letters to Plaintiff's counsel on November 22, 2024 (Exhibit A).
- 2. At the pre-motion conference held on September 18, the Court stated that, if History Associates was "not satisfied" with the FDIC's production, the Court would review within 15 days five letters in camera. Dkt. 25-1, at 9:11-15, 11:6, 11:12, 12:2-4; *see also* September 18, 2024, Minute Order.
- 3. History Associates is not fully satisfied with the FDIC's production, for two reasons.
- a. First, all of the pause letters appear to redact information about the type of digital-asset products or services at issue in the letters. For example, letter 8 states: "[Redacted] participated in the meeting discuss the [redacted] ... functionality of the product [redacted] ... versions

of the product, [redacted] and subsequently, FDIC has received revised information outlining three models [redacted]." Ex. A at 20. And letter 15 states that the recipient bank "notified the FDIC and [redacted] ... that the Bank will provide its customers [redacted]." Although History Associates acknowledges that certain information in the letters—such as the identity of the recipient banks (or recipient bank employees)—may properly be subject to Exemption 8, information merely identifying the type of digital-asset product or service at issue is not invariably exempt. Exemption 8 does not apply to that information because it does not "relate[]" to any FDIC "examination, operating, or condition" report. 5 U.S.C. § 552(b)(8). Moreover, Exemption 8 "address[es] the concern that release of bank examination and operating reports could endanger the fiscal well-being of subject banks." Pub. Invs. Arb. Bar Ass'n v. SEC, 771 F.3d 1, 5 (D.C. Cir. 2014). Disclosing the type of products or services the FDIC asked banks to pause developing would not invariably harm that interest. For example, disclosing that a pause letter involved discussions about a custody service, an interest-bearing product, a staking-related service, a stablecoin product, or any other generic crypto product or service would reveal nothing about the identity of the bank seeking to offer that product or service and therefore must be disclosed under the FOIA Improvement Act of 2016. See 5 U.S.C. § 552(a)(8)(A)(i).

- b. Second, four of the letters (8, 16, 18, and 22) contain much heavier redactions than the remaining letters, which makes it difficult for History Associates to evaluate whether the FDIC has disclosed all non-exempt portions of those letters. This Court proposed in camera review in this case as a means of "double check[ing]" the FDIC's work, which is especially warranted as to these four letters. Dkt. 25-1, at 10:9.
- 4. The FDIC is of the view that History Associates' stated reasons for not being fully satisfied with the FDIC's production are mistaken.

a. History Associates acknowledges that at least some information in the letters falls within Exemption 8, but suggests that some of the redacted information is not contained in or related to an examination, operating, or condition report, or its disclosure would not harm an interest protected by Exemption 8. The FDIC's view, as set out in the FDIC's *Vaughn* Index (Dkt. 25-2), is that each of the letters clearly satisfies the criteria to be an examination report under the caselaw. In any event, the products or services offered by a bank are a core subject of bank examinations, and supervisory letters discussing those products and services are, at minimum, related to bank examinations.

There are various types of crypto asset products, services, and programs with different names, developed or promoted by different companies, with different features and different processes, and requiring arrangements with different entities outside the bank. A knowledgeable person or entity given the information that Plaintiff suggests could with little effort identify the particular bank.

The interest harmed by dissecting an examination report or supervisory communications down to the level of individual words or phrases to seek and produce "generic" information is the fundamental need for continuous, candid communication between bank and supervisor. Both bank and agency would be hesitant to communicate freely with each other if every report or letter could be probed for seemingly "harmless" words or statements to be made public. It would eviscerate the broad language and broad judicial interpretation of Exemption 8.

b. Plaintiff's reason for not being satisfied with the FDIC's redactions to letters 8, 16, 18, and 22 seems to be that it cannot evaluate the redactions without seeing what is under the redactions – an argument that would vitiate every redaction based on FOIA exemptions and every privilege redaction in every lawsuit. And the argument disregards the availability of the FDIC's

Vaughn index, a well-established tool in FOIA litigation. As the FDIC has repeatedly stated, contrary to Plaintiff's assertions, the "pause letters" are not "form letters." They are based upon the particular circumstances of the bank. Some of the letters are relatively short, and some of the letters are longer, depending upon the bank's size, location, assets, liabilities, and many other factors – in particular, the type of product or service that the bank seeks to provide. Longer letters can be expected to have more redactions.

- 5. History Associates proposes that the Court conduct in camera review of the unredacted versions of letters 8, 16, 18, and 22. The FDIC has no objection to this proposal. By reviewing those four letters, the Court can provide its assessment of whether the FDIC's redactions of categories of information in those letters comport with Exemption 8. Based on the Court's assessment, the parties can discuss whether an agreement can be reached on redaction of the letters to resolve the litigation, or whether one or both parties wish to pursue summary judgment, with full briefing of the issues.
- 6. The parties hereby request that the Court conduct in camera review of Letters 8, 16, 18, and 22 and schedule a hearing to discuss the Court's review once completed.

Date: December 6, 2024

/s/ Jonathan C. Bond

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Jonathan C. Bond
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Attorneys for Plaintiff

Respectfully submitted,

/s/ Daniel H. Kurtenbach

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Daniel H. Kurtenbach
Lina Soni
Federal Deposit Insurance Corporation
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Arlington, VA 22226
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dkurtenbach@fdic.gov

Attorneys for Defendant

Exhibit A

History Associates Inc. v. FDIC, No. 1:24-cv-1857-ACR (D.D.C.)

FDIC's Redacted Pause Letters

November 22, 2024



Division of Risk Management Supervision Division of Depositor and Consumer Protection

SENT VIA SECURED ELECTRONIC MAIL

March 11, 2022

| The Board of Directors | |
|---|---|
| Subject: Proposed New FinTech Product | |
| Dear Members of the Board: | |
| This office received | on relating to the subject product. The proposed |
| determined what, if any, regulatory filings will be need as a result, we respectfully ask that you pause all cryptomic supervised banks at a later date when a determine expectations for engaging in cryptomasset-related active. You may direct questions on this matter to should be addressed to Kristie Elmquist, Regional Direct PDF document through the FDIC's Secure Email port following e-mail address: DALMailRoom@fdic.gov. FAQs about the service can be found at https://www.fabout the Secure Email process, please contact | As a reminder, written correspondence rector, FDIC, Dallas Regional Office, and sent as a al (https://securemail.fdic.gov/) using the Information about how to use secure email and |
| S | Sincerely, |
| E | Eric T. Guyot (Signed) |
| | Eric T. Guyot Assistant Regional Director |

cc: Federal Reserve Bank of Atlanta



Atlanta Regional Office Division of Risk Management Supervision (678) 916-2200

March 15, 2022 Via Secure Email Subject: Based on recent discussions with you and your management team, as well as review of documentation provided by the bank, intends to offer bank clients Please notify us of any material change from the arrangement as described to the FDIC, Thereafter, the FDIC may have additional questions to clarify the bank's proposed activities prior to expanding the service to ensure the bank is operating in safe and sound manner. 1 If you have any questions concerning this letter, please contact Sincerely, Frank R. Hughes Acting Regional Director

¹ See e.g., Section 39 of the Federal Deposit Insurance Act and Part 364 of the FDIC Rules and Regulations.

New York Regional Office

March 25, 2022

| Board of Directors c/o | |
|--|---|
| Subject: | |
| Dear Members of the Board: | |
| | |
| K- | |
| proposal with representatives | conference call to discuss from the |
| understand, a | as a result of this conference call, that |
| expect you to satisfactorily address them (in adva operating in a safe and sound manner. ¹ To assist | |

Written correspondence should be addressed to Jessica A. Kaemingk, Acting Regional Director, FDIC, New York Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (https://secureemail.fdic.gov/) using the following email address:

NYMailRoom@fdic.gov. Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/.

questions and document requests that will need to be addressed.

that have not yet been satisfactorily addressed and (ii) additional

¹ See e.g., Section 39 of the Federal Deposit Insurance Act and Part 364 of the FDIC Rules and Regulations.

Board of Directors Page 2 of 2

If you have any questions, please contact Assistant Regional Director Steven P. Slovinski at

Sincerely, Jessica A. Kaemingk Acting Regional Director

CC:

Federal Reserve Bank of New York

Federal Deposit Insurance Corporation

Division of Risk Management Supervision 350 5th Avenue, New York, NY 10018

New York Regional Office

March 25, 2022

| Board of Directors | |
|--|--|
| Subject: Activity Related to | |
| Dear Board Members: | |
| planned product, | met with the FDIC and notified the FDIC of a new |
| Mathematical (1997) 1990 (1997 | low-up call on The regulators |
| understand, as a result of these discussions, | |
| expect you to satisfactorily address them (in be engaging in this new activity in a safe and we will be sending, under separate | |
| Director, FDIC, New York Regional Office Secure Email portal (https://secureemail.fdi | ut how to use secure email and FAQs about the |

¹ See e.g., Section 39 of the Federal Deposit Insurance Act and Part 364 of the FDIC Rules and Regulations.

Board of Directors Page 2 of 2

If you have any questions, please contact Assistant Regional Director Steven P. Slovinski at

Sincerely, Jessica A. Kaemingk Acting Regional Director



cc:

Federal Deposit Insurance Corporation Division of Risk Management Supervision 300 South Riverside Plaza, Suite 1700, Chicago, IL 60606

Chicago Regional Office Phone (312) 382-7500 Fax (312) 382-6901

April 5, 2022

| | три 3, 2022 |
|---|---|
| Board of Directors | |
| Subject: Activity Related to | |
| Dear Board Members: | |
| the Federal Deposit | Insurance Corporation (FDIC), management |
| meeting, the FDIC received bank's agreements, risk assessment, and due diligen | Subsequent to that additional documentation regarding the accerelated to this new service. |
| The FDIC has a number of questions based include questions with respect to the permissibility the bank performed related to permissibility and to Rules and Regulations. Those also include question related to this activity and consumer protection issureview of this activity and will seek further information upcoming the examination. Until expand the service to additional customers. | on the information provided to date. Those of this activity, including what legal analysis assess compliance with Part 362 of the FDI with respect to safety and soundness 1 es. The FDIC plans to perform a detailed |
| If you have any questions, please contact Do Newbury at | eputy Regional Director Christopher J. |
| | Sincerely, GREGORY Digitally signed by GREGORY BOTTONE BOTTONE Date: 2022.04.05 12:03:16-04'00' Gregory P. Bottone Regional Director |

¹ See e.g., Section 39 of the Federal Deposit Insurance Act and Part 364 of the FDIC Rules and Regulations.



Dallas Regional Office 600 North Pearl Street, Suite 700 Dallas, Texas 75201 (214) 754-0098 FAX (972) 761-2082

April 15, 2022

| The Board of Directors | |
|---|---|
| | |
| Subject: Proposed | |
| Dear Members of the Board: | |
| 20 S 2 C 2 C 2 C 2 C 2 C 2 C 2 C 2 C 2 C 2 | mission that provided poosed product will |
| However, at this time the regulatory filings will be necessary for a bank to engage in this type that you pause all crypto asset-related activity. The FDIC will notify when a determination has been made on the supervisory expectation activity, including the need for any regulatory filings. Refer to the Fi 2022, FIL-16-2022-Notification of Engaging in Crypto-Related Activity | all FDIC-supervised banks at a later date ons for engaging in crypto asset-related nancial Institution Letter issued on April 7, |
| Please direct questions on this matter to a reminder, written correspondence should be addressed to Kristie Regional Office, and sent as a PDF document through the FDIC's Section (https://securemail.fdic.gov/) using the following e-mail address: DA how to use secure email and FAQs about the service can be found at prefer to send correspondence via mail, please use the Dallas Region there are any questions about the Secure Email process, please continued. | cure Email portal ALMailRoom@fdic.gov. Information about https://www.fdic.gov/secureemail/. If you nal Office address noted in the letterhead. If |
| | Sincerely, |
| | Signed by Joseph A. Meade |
| | Joseph A. Meade Assistant Regional Director |

cc: Federal Reserve Bank of Kansas City

Federal Deposit Insurance Corporation

Division of Risk Management Supervision 350 5th Avenue, New York, NY 10018

New York Regional Office

April 22, 2022

| Board of Directors | |
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| | |
| Subject: | |
| Dear Members of the Board: | |
| | |
| | We appreciate the over the past several months in keeping us ducted due diligence and explored its entry into the digital asset follow-up to what was discussed in regards to and FDIC New York |
| Regional Office staff. | and PDIC New 1019 |
| discuss the | participated in a conference call to proposal with representatives from the FDIC, |
| conference call, that | The Federal regulators understand, as a result of this |
| expect to add operating in a safe and sor in regarding questions and document requestions are document requestions. | er of questions based on the information provided to date. We ress those (in advance of implementation) to ensure and manner. To assist the FDIC and the other Federal regulators, we will be sending, under separate cover, (i) the questions have not yet been satisfactorily addressed and (ii) additional ests that will need to be addressed. In addition to this outreach, we with questions to gain an understanding of how the bank d sound operation as this activity is implemented. |

¹ See e.g., Section 39 of the Federal Deposit Insurance Act and Part 364 of the FDIC Rules and Regulations.

Board of Directors Page 2 of 2

Written correspondence should be addressed to Jessica A. Kaemingk, Acting Regional Director, FDIC, New York Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (https://secureemail.fdic.gov/) using the following email address: NYMailRoom@fdic.gov/. Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/.

If you have any questions, please contact Assistant Regional Director Ashley M. Amicangioli at

Sincerely, Jessica A. Kaemingk Acting Regional Director

CC:



Dallas Regional Office 600 North Pearl Street, Suite 700 Dallas, Texas 75201 (214) 754-0098 FAX (972) 761-2082

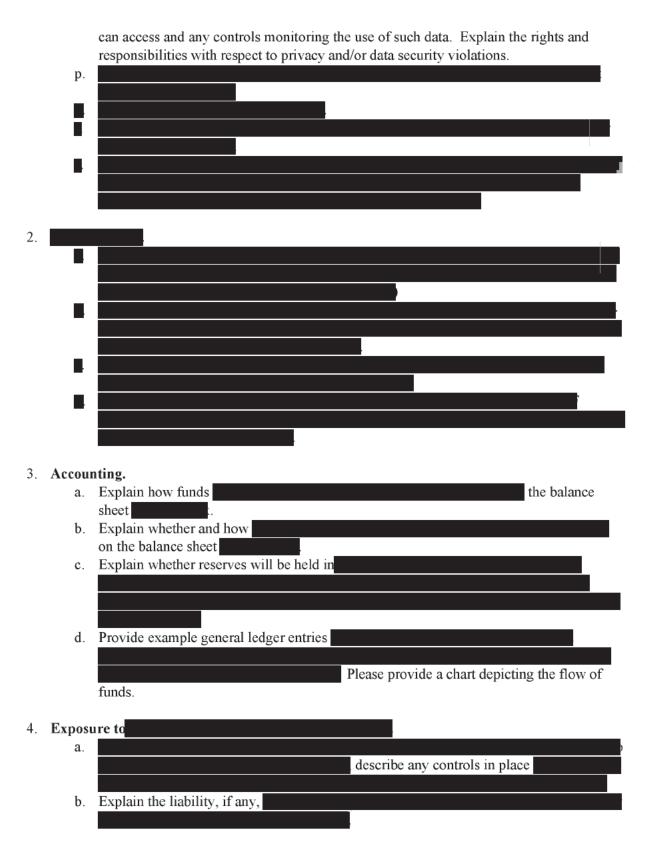
April 25, 2022

| | 2 8 |
|---|---|
| Board of Directors | |
| | |
| | |
| Via Secure Email | |
| Members of the Board: | |
| the FDIC, | met with |
| , participated in the meeting to disc | uss the |
| functionality of the product | |
| | versions of the product, |
| , and subsequently, FDIC has received revised in | nformation outlining three models |
| the discussion and information provided to date. The init | letter, we expect you to satisfactorily of implementation) to ensure the bank is at with FIL-16-2022 which requests that gency to assess the safety and |
| Written correspondence should be addressed to Kristie K Dallas Regional Office, and sent as a PDF document thro (https://securemail.fdic.gov/) using the following e-mail a Information about how to use secure email and FAQs about https://www.fdic.gov/secureemail/. | ough the FDIC's Secure Email portal address: DALMailRoom@fdic.gov. |
| | Sincerely, |
| | * |
| | Kristie Elmquist |
| | Regional Director |
| 1 | |

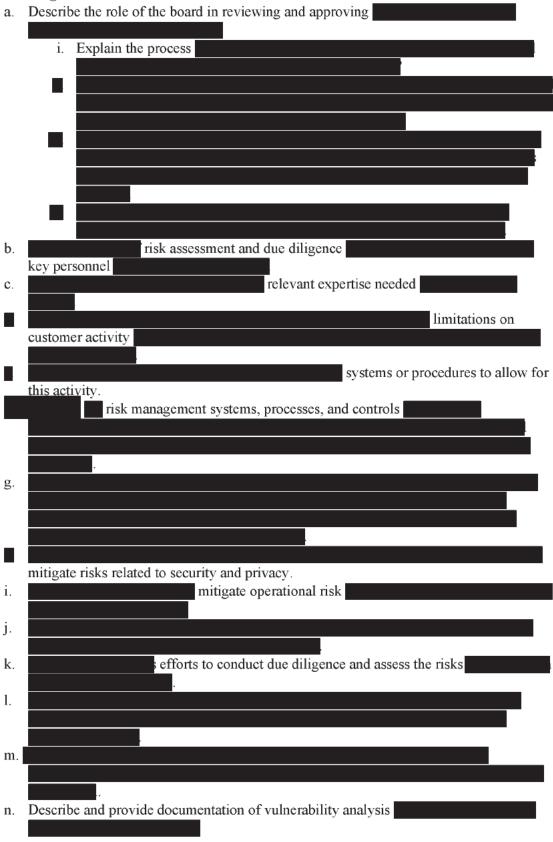
Attachment

¹ See e.g., Section 39 of the Federal Deposit Insurance Act and Part 364 of the FDIC Rules and Regulations

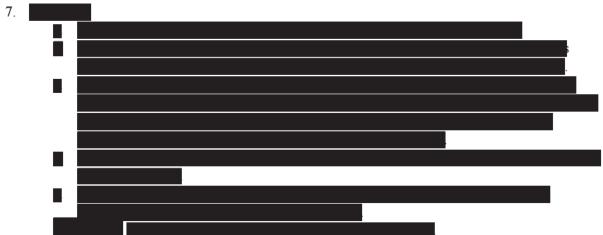
| | Structure |
|----|--|
| a | Describe the activities conducted by the assets held by the relationship |
| | |
| b | processes for decision-making, key participants, and key |
| | personnel. In your response, indicate |
| | |
| | |
| C | Describe what role, |
| d | I. Describe what role, |
| _ | Describe what fole, |
| | |
| e | Provide the terms of documents that describe the terms |
| | Identify the party responsible for |
| f | Example in detail |
| 1 | Explain in detail Identify all persons that control 5 percent or more and |
| | provide the percentage controlled. |
| g | Explain any dispute resolution processes |
| h | n. Provide a list of the fees and and estimated expenses |
| | moving forward. In your response, please clarify what the fees are for |
| 99 | |
| 1. | Discuss the permissibility under section under section Federal Deposit Insurance Act, the FDIC Rules and |
| | Regulations, |
| j. | . Clarify whether |
| | |
| | |
| | |
| k | Describe what involvement, if any, |
| 1. | . Identify the steps |
| n | n. Describe key third-party relationships |
| | |
| | business-to-business payments, merchant payments |
| | to ensure privacy, confidentiality and/or data security for the different types of |
| | customers and their data. |
| 0 | Explain any restrictions in place regarding the use of data |
| | In your response identify the parties with access to such data and the type(s) of data they |



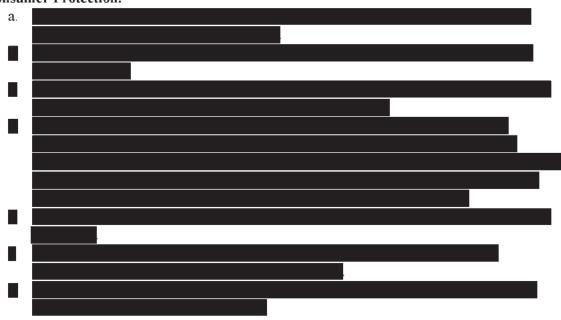
5. Risk Management and Controls.







8. Consumer Protection.



| h. | Describe any representations that is making or plans to make regarding |
|----|--|
| | |
| i. | |
| | |
| | |
| ١. | Identify the consumer data that will be shared with |
| | well as any controls in place to protect PII and limit snaring. In your response, indicate |
| | whether any PII will be stored |
| | |



Dallas Regional Office 600 North Pearl Street, Suite 700 Dallas, Texas 75201 (214) 754-0098 FAX (972) 761-2082

SENT VIA SECURED ELECTRONIC MAIL

May 4, 2022

| The Board of Directors | |
|--|--|
| | |
| | |
| Subject: Proposed Crypto Asset Capability | |
| Dear Members of the Board: | |
| This office received hat provided high-level information about the bank's intent to prov | vide a crypto asset capability |
| | t . We |
| hank you for your timely notification as requested by Financial Inst 2022. | itution Letter (FIL-16-2022) dated April 7, |
| At this time the FDIC has not yet determined what, if any, regulatory engage in this type of activity. As a result, we respectfully ask that y consider this crypto asset-related activity. | |
| As we review your proposed activity, we will continue to correspond information requests to aid us in our assessment of the activity. In this matter to be addressed to Kristie K. Elmquist, Regional Director, FDIC, Dallas Information the FDIC's Secure Email portal (https://securemail.fdic.gov Information about how to use secure emainttps://www.fdic.gov/secureemail/. | the meantime, you may direct questions on Written correspondence should Regional Office, and sent as a PDF document // using the following e-mail address: |
| | |
| | Sincerely, |
| | /s/ J. Mark Love |
| | J. Mark Love |
| | Assistant Regional Director |
| | |

cc: Federal Reserve Bank of Dallas



Dallas Regional Office 600 North Pearl Street, Suite 700 Dallas, Texas 75201 (214) 754-0098 FAX (972) 761-2082

May 13, 2022

| Board of Directors | |
|--|---|
| Subject: | |
| Dear Members of the Board: | |
| By letter dated advised the FDIC and the offer Bank customers | of the Bank's intent to |
| By letter dated additional inform this service, and a brief conference call and outlined certain information | nation was received By letter dated , the FDIC |
| On April 7, 2022, the FDIC issued a Financial Institu and supervisory feedback process concerning a ba activity. That FIL is available here: https://www.fd letters/2022/fil22016.html . | nk's current or planned crypto-asset related |
| | |
| The FDIC continues to review outstanding, including with respect to the legal per applicability of part 362 of the FDIC Rules and Regular protection principles. Consistent with the procedular future information requests to assist us in reviewing to the Bank. Accordingly, until we complete our respanding this service to additional customers. | ulations, and safety and soundness and consumer ures outlined in FIL-16-2022, the FDIC will make ng the activity and providing supervisory feedback |

Page 2

If you have any questions, please contact Assistant Regional Director Cindy Scott at Written correspondence should be addressed to my attention at the Dallas Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (https://securemail.fdic.gov/) using the following e-mail address: DALMailRoom@fdic.gov. Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/.

Sincerely,

Kristie K. Elmquist Regional Director

Federal Deposit Insurance Corporation

Division of Risk Management Supervision and Division of Depositor and Consumer Protection 350 5th Avenue, New York, NY 10018

New York Regional Office

June 22, 2022

| Board of Directors Subject: Notice to Engage in Digital Asset Activities under FIL-16-2022 |
|---|
| Dear Members of the Board: |
| We received the subject correspondence in response to Financial Institution Letter 16-2022, notifying the FDIC of the Bank's intent to engage in activities involving digital assets. New York Regional Office staff has met numerous times with Bank management over the past several months regarding these proposed activities. We appreciate management's efforts to keep us informed as the Bank has conducted due diligence and explored its entry into the digital asset space. |
| The FDIC has a number of questions regarding the activities based on the information provided to date. The FDIC plans to conduct a targeted review of the Bank's planned digital asset activities to gain an understanding of how the Bank will ensure continued safe and sound operations and consumer protections, should these activities be implemented. A document request list related to this targeted review was provided under separate cover. The Bank should address these questions, in advance of implementation of the proposed activities, in order for the FDIC to assess the safety and soundness of the proposed activities and compliance with laws and regulations. |
| If you have any questions, please contact Assistant Regional Director Ashley M. Amicangioli at or Assistant Regional Director Kara L. Ritchie at |
| Sincerely, Jessica A. Kaemingk Acting Regional Director |
| CC: |

¹ See e.g., Section 39 of the Federal Deposit Insurance Act and Part 364 of the FDIC Rules and Regulations.



Federal Deposit Insurance Corporation

Division of Risk Management Supervision
Division of Depositor and Consumer Protection
300 South Riverside Plaza, Suite 1700, Chicago, IL 60606

Chicago Regional Office
Phone (312) 382-7500
Fax (312) 382-6901

June 27, 2022

| Board of Directors |
|---|
| Subject: |
| Members of the Board: |
| By letter dated advised the FDIC, in response to Financial Institution Letter 16-2022 (FIL-16-2022),¹ and of the Bank's intent to offer Bank cus omers |
| |
| |
| The FDIC continues to review and various questions remain outstanding. Consistent with the procedures outlined in FIL-16-2022, the FDIC will request additional information to assist us in reviewing the activity and providing supervisory feedback to the Bank. Accordingly, until we complete our review, we request that the Bank refrain from expanding this service. |
| If you have any questions, please contact Written correspondence should be addressed to my attention at the Chicago Regional Office, and sent as a PDF document through |

¹ On April 7, 2022, the FDIC issued FIL-16-2022, explaining a notification and supervisory feedback process concerning a bank's current or planned crypto-asset related activity. FIL-16-2022 is available here: https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html.

the FDIC's Secure Email portal (securemail.fdic.gov) using the following e-mail address: CHIMailRoom@FDIC.gov.

Sincerely,

Gregory P. Bottone Regional Director

New York Regional Office

June 30, 2022

| Board of Directors | |
|--|--|
| Subject: | |
| Dear Members of the Board: | |
| | |
| |) |
| | |
| Financial Institution Letter, FIL-16-2022, | due diligence activities in response to the FDIC dated April 7, 2022 (FIL-16-2022). FIL-16-2022 eedback process concerning current or planned cryptoe Bank, the FDIC, and discussed the program again. |
| additional information to assist us in review | and various questions remain es outlined in FIL-16-2022, the FDIC will request wing the activity and providing supervisory feedback ete our review, we request that the bank refrain from |
| at Written correspondence York Regional Office, and sent as a PDF de | ontact Assistant Regional Director Catherine H. Gonice should be addressed to my attention at the New locument through the FDIC's Secure Email portal e-mail address: NYMailroom@fdic.gov . Information about the service can be found at |
| | Sincerely, Jessica A. Kaemingk Acting Regional Director |
| | |
| 1 | |



Division of Risk Management Supervision Division of Depositor and Consumer Protection

Dallas Regional Office 600 North Pearl Street, Suite 700 Dallas, Texas 75201 (214) 754-0098 FAX (972) 761-2082

July 14, 2022

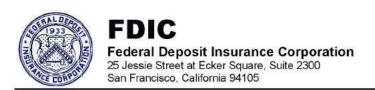
| Board of Directors |
|--|
| Subject: |
| Members of the Board: |
| By letter dated provided notification pursuant to Financial Institution Letter-16-2022, Notification of Engaging in Crypto-Related Activities (FIL-16-2022), of its program offering customers |
| On |
| During the meeting, informed the FDIC that the program is live as of |
| |
| The FDIC continues to review crypto-related activities and various questions remain outstanding. Consistent with the procedures outlined in FIL-16-2022, the FDIC may request additional information to assist us in reviewing the activity and providing supervisory feedback to the Bank. Accordingly, until we complete our review, we request that the Bank refrain from expanding this service. |
| If you have any questions, please contact ARD Love at addressed to Kristie K. Elmquist, Regional Director, FDIC, Dallas Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (https://securemail.fdic.gov/) using the following e-mail address: DALMailRoom@fdic.gov . Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/ . |

Sincerely,

/s/ Kristie K. Elmquist

Kristie K. Elmquist

Regional Director



Division of Risk Management Supervision San Francisco Regional Office (415) 546-0160

July 27, 2022

| July 27, 2022 | |
|---|-----------------------|
| Board of Directors | |
| Subject: Notification of Counts Related Activity | |
| Subject: Notification of Crypto-Related Activity Dear Members of the Board: | |
| By letter dated FDIC and Bank will provide its customers | notified the that the |
| | |
| On April 7, 2022, the FDIC issued a Financial Institution Letter, FIL-16-2022, exp notification and supervisory feedback process concerning a bank's current or plant asset related activity. That FIL is available here: https://www.fdic.gov/news/finaninstitution-letters/2022/fil22016.html . | ed crypto- |
| | |
| On Safety and Soundness examination bega examiners and bank management held an MS Teams Meeting to present request list related to the proposed crypto activities. During the meeting, | 8 |

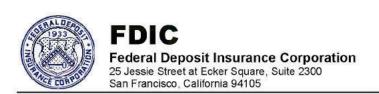
| The FDIC continues to review | and various questions remain outstanding. |
|--|--|
| Consistent with the procedures outlined in | FIL-16-2022, the FDIC has requested information as |
| part of the examination process and may re | quest additional information to assist us in reviewing |
| the activity and providing supervisory feed | back to the Bank. Accordingly, until we complete our |
| review, we request that the Bank refrain fro | om expanding this service to its customers. |

If you have any questions, please contact RMS Assistant Regional Director David Wong at or DCP Assistant Regional Director Matthew Sheeren at written correspondence should be addressed to my attention at the San Francisco Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (https://securemail.fdic.gov/) using the following e-mail address: SFMailroom@FDIC.gov. Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/.

Sincerely,

KATHY MOE Digitally signed by KATHY MOE Date: 2022.07.27 15:37:45-07'00'

Kathy L. Moe Regional Director

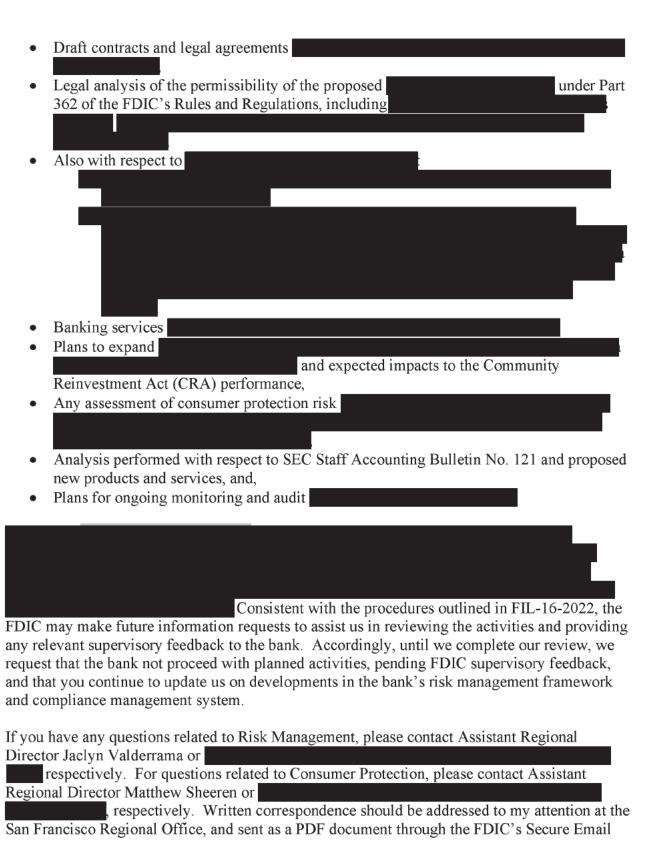


Division of Risk Management Supervision Division of Consumer Protection San Francisco Regional Office (415) 546-0160

| Sent via secure email to |
|---|
| July 28, 2022 |
| Board of Directors |
| Subject: Notification of Engaging in Crypto-Related Activities |
| Dear Members of the Board: |
| On draft three-year business plan (Plan) pursuant to FDIC's Financial Institution Letter-16-2022, Notification of Engaging in Crypto-Related Activities (FIL-16-2022). We also held a brief discussion with As discussed during the call, the Plan the bank's business model While the FDIC continues to review the bank's Plan pursuant to FIL-16-2022, in order to assess the safety and soundness and consumer protection implications of such activities, additional information is needed and questions remain outstanding. it is essential for management to prior to implementation to ensure planned activities and strategies are consistent with current laws, rules and regulations, as well as safety and soundness and consumer protection principles. Examples |
| of incomplete, but essential, elements that we request the opportunity to review, when available, include the following: |
| Risk assessments Due diligence |
| Policies and procedures |
| Project plans and cost benefit analysis |
| • Formal succession plan |

Board of Directors

Page 2



Board of Directors

Page 3

portal (https://securemail.fdic.gov/) using the following e-mail address: SFMailRoom@fdic.gov. Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/.

Sincerely,

/s/ Kathy L. Moe

Kathy L. Moe Regional Director

cc:

1100 Walnut Street, Suite 2100, Kansas City, MO 64106

Division of Risk Management Supervision

August 9, 2022

| Board of Directors | |
|--|--|
| | |
| Subject: | I |
| Dear Members of the Board: | |
| By letter dated advised the FDIC of the bank's intent to offer cu | estomers |
| $2022.^{1}$ | in response to FIL-16- |
| 2022. | 1 |
| | |
| | |
| On the Bank discussed the of Depositor and Consumer Protection – Kansas discussions were held on discussions Bank management explained | with the FDIC Division City Regional Office (RO). Follow-up During the course of those |
| , additional information from the Bank was | By letter , forwarded to the RO documenting |
| | |
| The FDIC continues to review outstanding. Consistent with the procedures outstanding in requests to assist us in review feedback to the Bank. Accordingly, until we correfrain from expanding this service to additional | ing the activity and providing supervisory nplete our review, we request that the Bank |

¹ On April 7, 2022, the FDIC issued a Financial Institution Letter, FIL-16-2022, explaining a notification and supervisory feedback process concerning a bank's current or planned crypto-asset related activity. That FIL is available here: https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html.

| Case 1:24-cv-01857-ACR | Document 26-1 | Filed 12/06/24 | Page 51 of 75 |
|--------------------------------------|------------------------|---------------------|--------------------|
| If you have any questions, please co | ontact Assistant Regi | onal Director Mich | ele Sharp or Case |
| Manager Nick Ellwanger at | Written co | rrespondence shoul | d be addressed to |
| my attention at the Kansas City Reg | gional Office, and ser | nt as a PDF docume | ent through the |
| FDIC's Secure Email portal (https:/ | /securemail.fdic.gov |) using the followi | ng e-mail address: |
| KCMailRoom@fdic.gov. Informati | ion about how to use | secure email and F | AQs about the |
| service can be found at https://www | fdic.gov/secureema | il/. | |

Sincerely, James D. LaPierre Regional Director



Atlanta Regional Office Division of Risk Management Supervision Division of Depositor and Consumer Protection (678) 916-2200

August 26, 2022

| Board of Directors |
|---|
| |
| Subject: Notification of Crypto-Related Activity |
| Dear Members of the Board: |
| On the FDIC received notification, in response to Financial Institution Letter (FIL), FIL-16-2022, Notification of Engaging in Crypto-Related Activities, of the Bank's intent to engage in crypto-asset related activity by offering customers FIL-16-2022 |
| requested that all FDIC-supervised institutions that intend to engage in, or that are currently engaged in, any activities involving or related to crypto-assets (also referred to as "digital assets") promptly notify the appropriate FDIC Regional Director. |
| As stated in FIL-16-2022, the FDIC may request that institutions provide information necessary to allow the FDIC to assess the safety and soundness, consumer protection, and financial stability implications of such activities. To assess these risks, the FDIC is reviewing the notification and information provided, and is also assessing whether |
| To assist in our review of the proposed activities, please provide the documentation referenced in the Appendix attached to this letter. We will review this documentation to assess the safety and soundness, consumer protection, and stability implications of such activities as it is received and in conjunction with the safety and soundness examination. When we have completed our review, the FDIC will provide the institution with relevant supervisory feedback, as appropriate. Accordingly, until we complete our review, we request that the Bank refrain from providing this service to its customers. |
| Please submit the information requested in the Appendix to the FDIC as a PDF file to |

ATLMailRoom@fdic.gov using the secure message center at https://securemail.fdic.gov. The

Case 1:24-cv-01857-ACR Document 26-1 Filed 12/06/24 Page 54 of 75

| information should be submitted to this office by meeting this deadline, please contact the individ | . If you foresee any issues with uals identified below. |
|---|---|
| If you have any questions related to Risk Manage | |
| | . If you have any questions related to Consumer |
| Protection, please contact | |
| 1 0 | |
| | Sincerely, |
| | Frank R. Hughes |
| | Acting Regional Director |
| cc: | |

Appendix Crypto-Related Activity Request List

Please provide the following documentation in relation to the proposed crypto-related activities:

- 1. All contracts (including any draft contracts that the Bank is reviewing/considering);
- 2. Overview of the contracting process (e.g., who is/was involved in the review, analysis, and structuring);
- 3. Any contract analysis performed prior to execution; 6. The Bank's permissibility analysis and determination with respect to each activity; 7. The Bank's analysis of SEC SAB 121 and its applicability; 8. Any cost-benefit analysis conducted; 9. Project plan for each activity; 10. 14.
- 15. Copies of consumer agreements, disclosures, and other terms and conditions related to each of the activities provided by or through the Bank and by third parties (draft or proposed);
- 16. Marketing materials, press releases, internal scripts, educational materials, and any other publicly distributed information related to each of the activities (draft or proposed). This includes screen shots/screen recordings of any online banking or mobile application user interfaces (including hidden text that must be clicked) that will be made visible to consumers by, or through, the Bank in connection with each of the activities;

- 17. Strategic plan that details how crypto-asset activities achieve the objectives of the Board and any contingency plan, should the activities fail to achieve the objectives;
- 18. Implementation plan. For each activity, please include expected volumes, income projections used to determine whether the products are financially feasible, and any other analysis performed to support launching the products;
- 19. Board and committee minutes reflecting discussion, analysis, approval, and any documentation provided on the activities;
- 20. Internal training materials related to the activities;
- 21. Policies and procedures that will govern each of the crypto-related activities, including those related to consumer compliance and complaint resolution (we acknowledge receipt of the policy outline previously submitted, this request is for the policies and procedures);
- 22. If not outlined in policies and procedures, framework of assigned responsibilities and qualifications for those involved in day-to-day administration of crypto-related activity, including internal controls responsibilities. Description of oversight responsibilities (e.g., management, staff, committees (including members, frequency of meetings), and collectively, their approval authority); and



24. Describe how the risk assessment was developed, what policies govern the structure/process for risk assessments, and which staff performed the risk assessment. Explain how the Bank determined the risk assessment scope is appropriate for all three product types collectively (trading, interest enhancement, and rewards).







cc:

Federal Reserve Bank of Chicago

Federal Deposit Insurance Corporation Division of Risk Management Supervision Division of Depositor and Consumer Protection 300 South Riverside Plaza, Suite 1700, Chicago, IL 60606

Chicago Regional Office
Phone (312) 382-7500
Fax (312) 382-6901

| September 9, 2022 |
|--|
| Board of Directors |
| Subject: Third-Party Crypto-Asset Activity |
| Dear Members of the Board: |
| On Submitted a notification of the Bank's intended crypto-asset activities in response to Financial Institution Letter-16-2022, Notification of Engaging in Crypto-Related Activities (FIL-16-2022). also held a discussion with a regarding the proposed crypto-asset activities. As discussed during the call, The FDIC requests insured depository institutions provide sufficient information to assist the FDIC to assess the safety and soundness, consumer protection, and financial stability implications of crypto-asset activities. The FDIC requests the Bank provide the information in the attached list by that the FDIC may begin those assessments. If the requested information has not yet been developed, provide the status and timeline for developing each item in the response, as applicable. Once the FDIC has completed its review of the requested information, we will determine whether additional information is necessary to complete the review of the activity. When we have completed our review, the FDIC will provide the institution with relevant supervisory feedback, as appropriate. Accordingly, until we complete our review, we request that the Bank not proceed with planned activities, pending FDIC supervisory feedback. |
| If you have any questions, please contact Written correspondence should be addressed to my attention at the Chicago Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (securemail.fdic.gov) using the following e-mail address: CHIMailRoom@FDIC.gov. |
| Sincerely, Gregory P. Bottone Regional Director |
| Enclosure – Crypto-Asset Activity Request List |

Crypto-Asset Activity Request List

- 1. Strategic Plan that details how crypto-related activity achieves objectives of the Bank's Board and the Contingency Plan in the event the activity fails to achieve those objectives.
- 2. Project/Implementation plan including, but not limited to, expected volumes of activity or contemplated activity limits, cost benefit analysis including income projections used to determine whether the services are financially feasible, and any other analysis performed to support launching the services.
- 3. Risk assessments for all crypto-related services. Consideration should be made to Safety and Soundness, Information Technology, Anti-Money Laundering/Combating the Financing of Terrorism, and Consumer Compliance.
- 4. Vendor management due diligence documentation, and analysis for all vendors that will provide crypto-related technologies or services.
- 5. Board and committee minutes reflecting approval, discussion, analysis, and any documentation provided on the activity.
- 6. Draft contracts and legal agreements between the Bank and crypto-related third party vendors.
- 7. Policies and procedures that will govern the crypto-related activity, including those related to consumer compliance and complaint resolution.
- 8. If not outlined in policies and procedures, the framework of assigned responsibilities and qualifications for those involved in day-to-day administration of digital asset activity, including internal controls responsibilities, and a description of oversight responsibilities, for example: management; staff; committees, including committee members; frequency of meetings; and collectively, their approval authority, and expertise required to be a committee member.
- 9. Draft marketing plans, including press releases, educational and training materials, and any other proposed public distributions.
- 10. Draft consumer agreements, disclosures, or other terms and conditions related to these activities provided by, or through, the Bank and by third parties.
- 11. Legal analysis of the permissibility of the proposed services under part 362 of the FDIC's Rules and Regulations, and
- 12. Analysis performed with respect to SEC Staff Accounting Bulletin No. 121 and proposed services.
- 13. Plans for ongoing monitoring and audit of crypto-related products and services.



Atlanta Regional Office Division of Risk Management Supervision Division of Depositor and Consumer Protection (678) 916-2200

September 13, 2022

| nt via secure email |
|---|
| ard of Directors |
| |
| bject: Third-Party Crypto-Asset Activity |
| ar Members of the Board: |
| |
| we received notification, in response Financial Institution Letter (FIL), <u>FIL-16-2022</u> , <u>Notification of Engaging in Crypto-Related Activities</u> , of Bank's intent to offer customers |
| -16-2022 requests that all FDIC-supervised institutions that intend to engage in, or that are |
| rrently engaged in, any activities involving or related to crypto-assets (also referred to as "digital sets") promptly notify the appropriate FDIC Regional Director. |

As stated in FIL-16-2022, the FDIC may request that institutions provide information necessary to allow the FDIC to assess the safety and soundness, consumer protection, and financial stability implications of such activities. In order to begin those assessments, please provide the information in the attached list by November 14, 2022. If the requested information has not yet been developed, include the status and timeline for developing each item in the response, as applicable. Once the FDIC has completed its review of the above-requested information, we will determine whether additional information is necessary to complete the review of the activity. When we have completed our review, the FDIC will provide the institution with relevant supervisory feedback, as appropriate. Accordingly, until we complete our review, we request that the Bank refrain from providing these services to its customers.

cc:

Enclosure

Crypto-Asset Activity Request List

Documentation (Prospective):

- 1. Contracts (including any draft contracts that bank is reviewing/considering);
- 2. Overview of the contracting process (e.g., who is/was involved in the review, analysis, and structuring)
- 3. Any contract analysis performed prior to execution
- 4. The bank's permissibility analysis and determination with respect to the activity
- 5. Bank's analysis of SEC SAB 121 and its applicability
- 6. Cost-benefit analysis
- 7. Project plan

| 8. | |
|----|--|
| | |
| | |
| | |

 Description of any fees that will be charged to consumers related to the activity, and how they will be calculated. Also, describe if and how fees are split amongst the bank and any third parties involved in the activity.

| | involved in the activity. |
|-----|---------------------------|
| 11. | |
| | |

This includes providing an explanation of how any market price is determined and how the spread, if any, is calculated.

- 13. Consumer agreements, disclosures, and other terms and conditions related to the activities provided by or through the bank and by third parties (draft or proposed)
- 14. Marketing materials, press releases, internal scripts, educational materials, and any other publicly-distributed information related to the activity (draft or proposed). This includes screen shots/screen recordings of any online banking or mobile application user interfaces (including hidden text that must be clicked) that will be made visible to consumers by, or through, the bank in connection with activities.
- 15. Any other due diligence materials.
- 16. Strategic plan that details how crypto-asset activity achieves objectives of the board and the contingency plan should the activity fail to achieve the objectives.
- 17. Implementation plan. Please include expected activity volumes, income projections used to determine whether the products are financially feasible, and any other analysis performed to support launching the products.
- 18. Board and committee minutes reflecting discussion, analysis, approval, and any documentation provided on the activity.
- 19. Risk assessment(s) related to the activity.
- 20. Internal training materials related to the activity.
- 21. Policies and procedures that will govern the crypto-related activity, including those related to consumer compliance and complaint resolution.
- 22. If not outlined in policies and procedures, framework of assigned responsibilities and qualifications for those involved in day-to-day administration of crypto-related activity, including internal controls responsibilities. Description of oversight responsibilities (e.g. management, staff, committees (including members, frequency of meetings), and collectively, their approval authority).



Dallas Regional Office Division of Risk Management Supervision Division of Depositor and Consumer Protection

SENT VIA SECURE ELECTRONIC EMAIL

September 14, 2022

Board of Directors

Subject: Notification of Crypto-Asset Related Activity

Dear Members of the Board:

By email dated notified us of intent to provide its customers

As stated in FIL-16-2022, <u>Notification of Engaging in Crypto-Related Activities</u>, the FDIC may request that institutions provide information necessary to allow the FDIC to assess the safety and soundness, consumer protection, and financial stability implications of such activities. In order to begin those assessments, please provide the information in the attached list <u>by</u>

November 14, 2022. If the requested information has not yet been developed, please include the status and timeline for developing each item in the response, as applicable. Once the FDIC has completed its review of the requested information, we will determine whether additional information is necessary to complete the review of the activity. When we have completed our review, the FDIC will provide the institution with relevant supervisory feedback, as appropriate. Accordingly, until we complete our review, we request that the bank refrain from providing this service to its customers.

This letter is confidential and may not be disclosed or made public in any manner under part 309 of the FDIC Rules and Regulations (12 CFR part 309). If you have any questions, please contac Written correspondence should be addressed to Kristie K. Elmquist, Regional Director, FDIC, Dallas Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (https://securemail.fdic.gov/) using the following e-mail address: DALMailRoom@fdic.gov. Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/.

Page 2

Sincerely,

Kristie K. Elmquist Regional Director

Attachment

cc: Federal Reserve Bank of Dallas

Crypto-Asset Activity Request List

Documentation:

- 1. Contracts (including any draft contracts that bank is reviewing/considering)
- 2. Overview of the contracting process (e.g., who is/was involved in the review, analysis, and structuring)
- 3. Any contract analysis performed prior to execution
- 4. Description of the transaction flows and related controls
- 5.
- The bank's permissibility analysis and determination with respect to the activity
- 7. Bank's analysis of SEC SAB 121 and its applicability
- 8. Cost-benefit analysis
- 9. Project plan
- 10.

 11.
- 12. Description of any fees that will be charged to consumers related to the activity, and how they will be calculated. Also, describe if and how fees are split amongst the bank and any third-parties involved in the activity.
- 14.
- 15. Consumer agreements, disclosures, sample account statement, sample transaction receipt, and other terms and conditions related to the activities provided by or through the bank and by third parties (draft or proposed)
- 16. Marketing materials, press releases, internal scripts, educational materials, and any other publicly-distributed information related to the activity (draft or proposed). This includes screen shots/screen recordings of any online banking or mobile application user interfaces (including hidden text that must be clicked) that will be made visible to consumers by, or through, the bank in connection with activities.
- 17. Any other due diligence materials
- 18. Strategic plan that details how crypto-asset activity achieves objectives of the board and the contingency plan should the activity fail to achieve the objectives
- 19. Implementation plan. Please include expected activity volumes, income projections used to determine whether the products are financially feasible, and any other analysis performed to support launching the products.
- 20. Board and committee minutes reflecting discussion, analysis, approval, and any documentation provided on the activity
- 21. Risk assessment(s) related to the activity
- 22. Internal training materials related to the activity

23. Policies and procedures that will govern the crypto-related activity, including those related to consumer compliance and complaint resolution

24. If not outlined in policies and procedures, framework of assigned responsibilities and qualifications for those involved in day-to-day administration of crypto-related activity, including internal controls responsibilities. Description of oversight responsibilities (e.g. management, staff, committees (including members, frequency of meetings), and collectively, their approval authority).



Federal Deposit Insurance Corporation

Division of Risk Management Supervision 25 Jessie Street at Ecker Square, Suite 2300 San Francisco, CA 94105



Transmitted by Electronic Correspondence

October 17, 2022



RE: Notification of Crypto-Related Activities

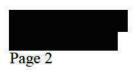
Dear :

of your institution's involvement in crypto-related activities, in response to Financial Institution Letter (FIL), <u>FIL-16-2022</u>, <u>Notification of Engaging in Crypto-Related Activities</u>. FIL-16-2022 requested that all FDIC-supervised institutions that intend to engage in, or that are currently engaged in, any activities involving or related to crypto-assets (also referred to as "digital assets") promptly notify the appropriate FDIC Regional Director.

After a review of the Bank's notification letter, we have determined that additional information is needed to further clarify the crypto-related activities being conducted by the Bank.

As stated in FIL-16-2022, the FDIC may request that institutions provide information necessary to allow the FDIC to assess the safety and soundness, consumer protection, and financial stability implications of such activities. To assist in the review of the Bank's crypto-related activities, please provide the documentation listed below within 30 days of the date of this letter.

This letter is confidential and may not be disclosed or made public in any manner. Additional information regarding these confidentiality restrictions may be found both in Part 309 of the FDIC Rules and Regulations and Chapter 167 Section 2 of Massachusetts General Law. Please notify regulators immediately if you receive a subpoena or other legal process calling for the production of this letter or a description of its content.



Provide supporting documentation and analysis. Include financial statement disclosures concerning these activities.

Until we complete our review, we request the Bank refrain from
When we have completed our review, we will provide the institution with relevant supervisory feedback, as appropriate.

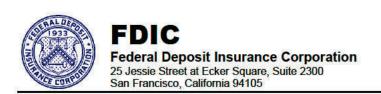
Please notify us of any material changes in these activities or intent to engage in other cryptorelated activities. This letter is confidential and may not be disclosed or made public in any manner under part 309 of the FDIC Rules and Regulations (12 CFR part 309). Questions should be directed to FDIC

Sincerely,

/s/ Kathy L. Moe

Kathy L. Moe Regional Director Federal Deposit Insurance Corporation





Division of Risk Management Supervision Division of Consumer Protection San Francisco Regional Office (415) 546-0160

Sent via secure email

October 21, 2022

| Subject: Notification of Engaging in Crypto-Related Activities | |
|--|--|
| Dear Members of the Board: | |
| During a virtual meeting held on | |
| and other bank personnel presented and discussed the bank's | |
| During the | the FDIC and he meeting, offer bank |
| | ney also |
| planned timeframe for implementation; the extent of | |
| On staff on the project and their ongoing due diligence. Bank management also padditional documents and information on up requests from the FDIC. On | |
| notified that the project had as part of the bank's ongoing due diligence. | |
| On Engaging in Crypto-Related Activities"). FIL-16-2022 requested that all FDIC-superinstitutions that intend to engage in, or that are currently engaged in, any activities in related to crypto-assets (also referred to as "digital assets") promptly notify the appr Regional Director and outlined a supervisory feedback process concerning a bank's planned crypto-asset related activity. The FIL is available at https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html . As state 2022, the FDIC may request that institutions provide information necessary to allow | ervised nvolving or copriate FDIC current or ed in FIL-16- |

| Board of Directors | |
|---|---------------|
| Page 2 | |
| which is currently under review as part of the examination that began on When we have completed our review, the FDIC will provide the bank with relevant supervifeedback, as appropriate. Until we complete our review, we request that the bank refrain fr providing this service to its customers. | |
| Please notify us during our review period if there are any material changes in the planned service, the status of this project, or its planned implementation, to ensure that the bank is operating in a safe and sound manner and in compliance with consumer protection regulation. | ons. |
| This letter is confidential and may not be disclosed or made public in any manner under part of the FDIC Rules and Regulations (12 CFR part 309). If you have any questions related to Management, please contact Assistant Regional Director Jaclyn Valderrama at For questions related to Consumer Protection, please contact Assistant Regional Director Matthew Sheeren at Review Examiner Rolin Thomas at Written correspondence should be addressed to my attention at the San Francisco Regional Office, and sent as a PDF document through the FDIC's Secure Email portal (https://securemail.fdic.gov/) using the following eaddress: SFMailRoom@fdic.gov . Information about how to use secure email and FAQs about the service can be found at https://www.fdic.gov/secureemail/ . | or Risk or nt |
| Sincerely, | |
| /s/ Kathy L. Moe | |
| Kathy L. Moe Regional Director | |
| cc: | |
| Federal Reserve Bank of San Francisco | |