



**BANK ISSUANCE OF STABLECOINS AND RELATED SERVICES:
LEGAL AUTHORITY AND POLICY CONSIDERATIONS**

WHITE PAPER

This Memorandum outlines the legal authority of insured depository institutions (“*IDIs*”) to issue stablecoins and engage in related activities. This Memorandum also explains the policy reasons why the federal banking agencies should not preclude banks from engaging in these lawfully permissible activities. In view of the rapidly growing volume of digital assets, and of stablecoins in particular, resolution of this issue should be a regulatory priority.¹

I. Background

In late 2020 and early 2021, the OCC issued letters describing the clear legal authority of national banks to engage in stablecoin issuance and related activities. The OCC letters were based on “the longstanding ‘transparency doctrine,’ under which the OCC looks through the means by which a product or service is delivered and focuses instead on the authority of the national bank to offer the underlying product or service.”² The OCC’s analysis would also be applicable to many state banks that are chartered in states that have adopted so-called “wild card” statutes³ and would likely be replicated for other state banks.

The OCC’s conclusion is consistent with the statutory language of the National Bank Act and numerous judicial decisions and regulatory determinations regarding a national bank’s powers and payment instruments in particular. Moreover, because the OCC has been

¹ Last year, the President’s Working Group on Financial Markets (the “*PWG*”), the Federal Deposit Insurance Corporation (the “*FDIC*”) and the Office of the Comptroller of the Currency (the “*OCC*”) concluded that insured depository institutions are the only appropriate issuers of stablecoins. See PRESIDENT’S WORKING GRP. ON FIN. MKTS., FED. DEPOSIT INS. CORP. & OFF. OF THE COMPTROLLER OF THE CURRENCY, REPORT ON STABLECOINS at 16 (Nov. 2021) [hereinafter “*PWG Report*”], available at https://home.treasury.gov/system/files/136/StableCoinReport_Nov1_508.pdf. The *PWG* includes the Secretary of the Treasury, Chair of the Board of Governors of the Federal Reserve System, Chair of the Securities and Exchange Commission and Chair of the Commodity Futures Trading Commission. There is no apparent reason that regulatory confirmation of the authority of *IDIs* to engage in stablecoin issuance and related activities should await a determination as to whether *IDIs* should be the *exclusive* issuers of stablecoins or as to the regulatory regime that should apply to non-*IDI* issuers of stablecoins. Indeed, the absence of a determination on these issues should make a prompt confirmation of *IDI* authority to issue stablecoins even more compelling.

² See OCC Interpretive Letter 1170 at 8 n.36 (July 2020), available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf>. See also OCC Interpretive Letter 1174 (Jan. 2021), available at <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf>. These letters repeatedly refer to Subpart E of the OCC’s Part 7 regulations, and in particular 12 C.F.R. § 7.500(a), which explicitly authorizes national banks to perform, provide or deliver through electronic means and facilities any activities that they are otherwise authorized to perform.

³ See Christian A. Johnson, Wild Card Statutes, Parity, and National Banks - The Renaissance of State Banking Powers, 26 Loy. U. Chi. L. J. 351, 353 (1995), available at <https://lawecommons.luc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1558&context=lucj#:~:text=A%20%22wild%20card%22%20or%20%22,those%20granted%20to%20National%20Banks.>

explicitly designated by Congress with the responsibility for administering the National Bank Act, its determinations as to national bank powers are entitled to deference.

Notwithstanding the OCC's clear conclusion as to the legal authority of national banks to issue stablecoins and engage in related activities, federal regulators have to date effectively precluded federally regulated banks from offering stablecoins or other digital asset-related services. No regulator has disagreed, at least publicly, with the OCC's legal analysis or concluded that stablecoin issuance and related activities would constitute an unsafe or unsound banking practice. Rather, the preclusion has occurred because the federal banking agencies have required that IDIs receive approval for those activities on an individual IDI basis, but there have been no public statements of approval granted to federally regulated banking institution to proceed with an issuance of customer-facing stablecoins.⁴ Accordingly, none of the stablecoins issued to date has been issued by a federally regulated bank or affiliate of a federally regulated bank.⁵ This effective preclusion of the offering of stablecoins by the most regulated and experienced financial institutions in the world deprives American consumers and businesses who wish to use this new payment mechanism of the option to do so in reliance on the protections afforded by such a robust regulatory framework. Regulatory inaction also deprives many

⁴ In late 2021, the OCC imposed a pre-launch approval requirement on all digital asset-related activities. OCC Interpretive Letter 1179 (Nov. 2021), *available at* <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>. The FDIC followed suit in April 2022, effectively issuing a blanket prohibition on all digital asset-related activities by all banks for which the FDIC serves as primary federal regulator until they have given notice to the FDIC and provided any information requested in response to the notice and the FDIC has provided "relevant supervisory feedback to the FDIC-supervised institution, as appropriate." FDIC, FIL-16-2022, Notification of Engaging in Crypto-Related Activities (Apr. 7, 2022), *available at* <https://www.fdic.gov/news/financial-institution-letters/2022/fil22016.html>. On August 16, 2022, the Board of Governors of the Federal Reserve System issued its own guidance, imposing restrictions similar to those set out in the FDIC guidance. Federal Reserve, SR 22-6, Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations (Aug. 16, 2022), *available at* <https://www.federalreserve.gov/supervisionreg/srletters/SR2206.pdf>. None of these pronouncements specifies the information required to be submitted, or a timeline for the regulator's decision.

⁵ Although federally regulated banks do hold deposits from stablecoin issuers, holding deposits is a traditional banking service. *See, e.g.*, Krisztian Sandor, Circle's Detailed Reserve Report Shows Only Cash, Short-Term Treasuries Back USDC Stablecoin (Jul. 14, 2022), *available at* <https://www.coindesk.com/markets/2022/07/14/circles-detailed-reserve-report-shows-only-cash-short-term-treasuries-back-usdc-stablecoin/>.

In contrast, state-regulated banking institutions that are not subject to federal regulatory oversight have been permitted to issue stablecoins pursuant to applicable state regulations. *See, e.g.*, <https://paxos.com/usdp/>, describing the Paxos U.S. dollar-denominated stablecoin, issued pursuant to regulations adopted by the New York Department of Financial Services. In 2015, Paxos was granted a trust company charter by the New York State Department of Financial Services to engage in digital asset-related activities, including issuing digital assets. This stablecoin has a market capitalization of approximately \$945 million as of August 25, 2022. *See* <https://coinmarketcap.com/currencies/paxos-standard/>.

consumers and businesses of the option to conduct these activities through financial institutions with which they have long-established relationships of trust.

Regulators must, of course, assure that bank issuance of stablecoins does not negatively impact the safety and soundness of individual banks and the financial system and protects customers. As discussed below, however, the issuance of stablecoins by banks and the provision of related services is simply a new means of accepting, holding and transferring deposits, which is a core element of the banking business. It should not require specific approval, much less be subject to effective denial, simply because it utilizes new technologies and methodologies. Given the clear legal authority of banks to issue stablecoins and engage in related activities, and the fact that banks are well equipped to handle corresponding challenges, regulators should not impose an effective ban on these activities.

II. Authority of Banks to Engage in Stablecoin Activities

A. Stablecoins Addressed in this Memorandum

The term “stablecoin” does not have a fixed definition but is generally used to refer to a digital asset, token or “coin” that is intended to maintain a stable value by being “pegged” to the value of a fiat currency or commodity in some way, using a wide range of financial and technological mechanisms.⁶ Most stablecoins that have been issued to date are collateralized, seeking to maintain a stable value by maintaining a reserve of assets denominated in the relevant “pegged” currency. Others, including one prominent example of a failed stablecoin,⁷ are “algorithmic” stablecoins, which seek to use an algorithm and related market mechanism to maintain a stable value. Stablecoins facilitate the execution of transactions in digital assets on crypto exchanges and decentralized trading mechanisms and may also be used to make ordinary payments in the relevant currency.

Although banks, like other stablecoin issuers, could take a number of approaches to issuing stablecoins, the type of stablecoin discussed in this Memorandum is a token that

⁶ PWG Report at 1.

⁷ See Lawrence Wintermyer, *From Hero To Zero: How Terra Was Toppled In Crypto’s Darkest Hour* (May 25, 2022), *available at* <https://www.forbes.com/sites/lawrencewintermyer/2022/05/25/from-hero-to-zero-how-terra-was-toppled-in-cryptos-darkest-hour/?sh=796e007a389e>.

represents the bank’s own deposits – *i.e.*, a “digitized deposit.”⁸ Digitized deposits constitute digital representations of customer deposits held at the issuing bank, with ownership of those deposits recorded and transferred on a ledger that is maintained by or on behalf of the bank using digital ledger technology⁹ implemented in a manner approved by the bank. If a token representing \$1 worth of deposits is minted and delivered to a customer, the customer’s “ordinary” deposit account would be debited for the \$1 represented by the token and the customer would own, by virtue of holding the token, \$1 of a deposit represented by that token. If the customer transferred the digitized deposit to another person by transferring the token to that person, the dollar would remain on deposit and the deposit would remain represented by the token, but the deposit would now be owned by the new holder of the token.¹⁰ If the digitized deposit is “burned” or destroyed by the issuing bank at the request of the holder, the \$1 deposit represented by the token would be debited and the \$1 would be paid to the holder or credited to the “ordinary” deposit account of the person who held the digitized deposit before it was burned.

As deposits, these stablecoins would be backed by the assets and capital of the bank, as well as federal deposit insurance and depositor preference statutes, rather than by the “reserves” that are expected to back stablecoins issued by nonbank issuers. Further support for the bank’s obligations would be provided by bank liquidity requirements and the host of regulatory requirements relating to the quality of a bank’s assets and the bank’s safety and soundness more generally. In other words, digitized deposits would be backed to the same extent as all other deposits. Consumers utilizing bank-issued stablecoins would thereby be protected to

⁸ The term “tokenized deposit” has also been used to describe customer deposits held at a bank and represented by a token. *See, e.g.*, Gordon Liao & John Caramichael, *Stablecoins: Growth Potential and Impact on Banking* at 5, 12-13 (Jan. 2022), *available at* <https://www.federalreserve.gov/econres/ifdp/files/ifdp1334.pdf> (“Equivalently, it is possible that commercial banks issue stablecoins or provide tokenized deposits that are used for fractional reserve banking. . . . [T]he stablecoin issuers rely on commercial bank deposits as assets, and the commercial banks practice fractional reserve banking with the stablecoins and/or stablecoin deposits, meaning the stablecoins are ultimately backed by a mix of loans, assets, and central bank reserves.”); U.S. Department of the Treasury, *The Future of Money and Payments: Report Pursuant to Section 4(b) of Executive Order 14067* at 31 (Sep. 2022), *available at* <https://home.treasury.gov/system/files/136/Future-of-Money-and-Payments.pdf>.

⁹ The OCC has defined distributed ledger technology as a shared electronic database where copies of the same information are stored on multiple computers. This shared database functions as both a mechanism to prevent tampering and as a way to add new information to the database. *See* OCC Interpretive Letter 1170 (July 2020).

¹⁰ The digitized deposit would be similar, in this respect, to a negotiable instrument, as described in 12 C.F.R. § 330.5(b)(4), which provides that a deposit obligation evidenced by a negotiable instrument will be recognized as the owner of the deposit obligation to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution, so long as the owner can prove that the instrument was negotiated to the owner before the failure of the depository institution.

the same extent as consumers utilizing “regular” deposits. This consumer protection has been developed and honed over decades. There have been no losses for depositors to the extent that the depositors are insured and only negligible loss for uninsured deposits.

In short, digitized deposits would be a digital representation of demand deposits held by the issuing bank, entitled to all the regulatory safeguards to which deposits are generally subject. However, they would provide the same stable value, and permit the same types of transactions, as the types of instruments that have been referred to as stablecoins to date, and we refer to them interchangeably as “stablecoins” and “digitized deposits” in this Memorandum.

Issuing tokens representing digitized deposits and providing a mechanism for their transfer from one holder to another is a means of establishing and facilitating the transfer of the ownership of deposits on the books of the issuing bank. A digitized deposit “provide[s] access to money at a depository institution.”¹¹ A customer’s funds underlying a digitized deposit are, like those underlying stored value cards and other modern access mechanisms, “no different, in substance, than the funds underlying traditional access mechanisms such as checks, official checks, traveler’s checks and money orders,”¹² and the token relating to the digitized deposits should be recognized as nothing more than the mechanism for accessing those deposits.

As noted above, various types of stablecoins have already been developed, and banks or other parties may invent new approaches and structures that have not been identified. By analyzing digitized deposits and demonstrating the clear legal authority of banks to issue them, this Memorandum does not suggest that the issuance of other types of stablecoins developed by banks or nonbank issuers would not be equally within a bank’s powers.

¹¹ FDIC General Counsel’s Opinion No. 8 (2008), *available at* <https://www.govinfo.gov/content/pkg/FR-2008-11-13/pdf/E8-26867.pdf>.

¹² *Id.*

B. National banks have been permitted to develop innovative deposit and payment mechanisms from the time of their creation¹³

Receiving deposits¹⁴ and acting as financial intermediaries¹⁵ are two of a national bank's core functions. Indeed, the authority to accept deposits is the quintessential power of a bank, and it is one of the few that *only* banks are permitted to exercise.¹⁶ The ability to act as a financial intermediary by providing payments services is also a fundamental power of national banks.¹⁷ Through these powers, national banks have facilitated the formation and efficient operation of the financial system and the economy.

The ability of national banks to support economic growth through broad and flexible powers is the result of intentional congressional design. National banks were created by Congress to support a stable national currency, finance commerce, act as private depositories, and generally support the nation's economic growth and development.¹⁸ In order to fulfill these purposes, Congress granted national banks powers that were intended to be dynamic and capable of evolving over time.¹⁹ This intention was affirmed in *NationsBank v. Variable Annuity Life Ins.*

¹³ This section discusses the National Bank Act and related regulations, court decisions and other materials. Although we have not surveyed the laws of the 50 states at this time, we believe that the analysis under most state statutes would be similar. As noted above, to the extent a particular state's banking statute does not directly authorize these activities, the state may be able to rely upon a state "wild card" or "parity" statute to enable the applicable state banking regulator to grant banks chartered in that state the powers of a national bank described here.

¹⁴ 12 U.S.C. § 24(Seventh).

¹⁵ See *Auten v. U.S. Nat'l Bank of New York*, 174 U.S. 125, 143 (1899); OCC Interpretive Letter 1174 (Jan. 2021); see also OCC Interpretive Letter 1102 (Nov. 2008); OCC Interpretive Letter 718 (Mar. 1996); OCC Interpretive Letter 499 (Feb. 1990).

¹⁶ 12 U.S.C. § 378(a)(2) and discussion *infra*.

¹⁷ 12 U.S.C. § 24(Seventh). See also OCC Conditional Approval 220 at 7 (Dec. 1996), available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/1996/ca220.pdf> ("Banks are the most important institutional participants in the nation's payments system. They deal with cash, issue, process, clear and settle checks and similar monetary instruments, administer credit card and debit card programs for consumers and merchants, and transfer funds electronically in a variety of situations and circumstances.").

¹⁸ See OCC, National Banks and The Dual Banking System (Sep. 2003), <https://www.occ.treas.gov/publications-and-resources/publications/banker-education/files/pub-national-banks-and-the-dual-banking-system.pdf>. Congress modeled the authority granted to national banks under 12 U.S.C. § 24(Seventh) on the bank charter authorized by the New York Free Banking Act, a type of charter that the New York courts explicitly had found to possess flexible and adaptive powers. See OCC, National Banks and The Dual Banking System (Sep. 2003). Shortly before enactment of the National Bank Act, the New York Court of Appeals described the dynamic nature of the New York bank charter, stating that "[t]he implied powers [of a bank] exist by virtue of the grant [to do the banking business], and are not enumerated and defined; because no human sagacity can foresee what implied powers may, in the progress of time, the discovery and perfection of better methods of business, and the ever varying attitude of human relations, be required to give effect to the express powers." *Curtis v. Leavitt*, 15 N.Y. 9, 157 (1857).

¹⁹ *Id.*

Co., when the U.S. Supreme Court declared that the national bank powers clause of 12 U.S.C. § 24(Seventh) is a broad grant of power to engage in the business of banking that is not limited to the enumerated powers listed therein.²⁰ Stemming from this ruling (and reinforced over time) is the understanding that national banks may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is physically or otherwise authorized to perform, provide or deliver – often referred to as the “transparency doctrine.”²¹

Under the transparency doctrine, when evaluating whether a bank may provide a particular service or product, the OCC focuses on the authority of the national bank to offer the underlying product or service rather than on the means by which that product or service is delivered.²² Regulators have long acknowledged this principle in permitting banks to issue and handle a wide variety of types of payment instruments, deposit products and mechanisms for delivering funds from one person to another, including those involving technological innovations. Some examples of the types of permitted innovations include: traveler’s checks,²³ credit cards,²⁴ automated teller machines,²⁵ debit cards,²⁶ ACH/EFTs,²⁷ electronic toll collection,²⁸ stored value products²⁹ and real-time settlement systems.³⁰ As set forth in the

²⁰ See *NationsBank v. Variable Annuity Life Ins. Co.*, 513 U.S. 251 (1995).

²¹ 12 C.F.R. § 7.5002(a).

²² See 67 FR 34992, 34996 (May 17, 2002).

²³ OCC, Activities Permissible for National Banks and Federal Savings Associations, Cumulative (October 2017), available at <https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-activities-permissible-for-nat-banks-fed-saving.pdf>.

²⁴ *Id.* at 34.

²⁵ OCC Interpretive Letter 772 (Mar. 1997), available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/1997/int772.pdf>.

²⁶ OCC Conditional Approval 220, *supra* note 16, at 7.

²⁷ OCC Interpretive Letter 854 (Mar. 1999), available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/1999/int854.pdf>; OCC Interpretive Letter 732, reprinted in [Current Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81,049 (May 10, 1996) (payments by EFT); OCC Interpretive Letter 419, reprinted in [1988-1989 Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 85,643 (February 18, 1988) (payment of health claims using EFT technology).

²⁸ OCC Interpretive Letter 731, reprinted in [Current Transfer Binder] Fed. Banking Law. Rep. (CCH) ¶ 81,048 (July 1, 1996).

²⁹ See, e.g., OCC Conditional Approval 220, *supra* note 16 (Mondex stored value); OCC Interpretive Letter 737 (Aug. 19, 1996) (stored value/smart card system), available at <https://occ.gov/topics/charters-and-licensing/interpretations-and-actions/1996/int737.pdf>. See also <https://occ.gov/topics/supervision-and-examination/bank-operations/bit/opinion-letters/opinions-and-letters-electronic-payments.html>.

³⁰ OCC Interpretive Letter 1174 at 5 (Jan. 2021) (acknowledging that the OCC has previously concluded that national banks may engage in activities related to real-time settlement systems); see, e.g., OCC Interpretive Letter

OCC’s letter authorizing national banks to engage in the issuance of stored value products, “just as the automobile leasing program approved for national banks in *M&M Leasing* . . . represented a new way of conducting the business of making secured loans, the issuance and redemption of stored value represents a new way of conducting one aspect of the payments business of banks: issuing and circulating notes.”³¹ In doing so, the OCC unequivocally acknowledged that national banks are permitted to conceive and adopt innovative (electronic) methods of carrying out activities considered part of their core banking functions.

Thus, if a bank were to issue digitized deposits and allow them subsequently to be used in payments, the bank would be engaging in the core functions of a national bank to take deposits and transmit the value those deposits represent. Lawmakers, courts and banking regulators have long acknowledged the importance of holding and transmitting value to the business of banking. As the OCC has explained in the context of the repeal of the obsolete provisions in the National Bank Act relating to national bank notes: “[M]ore modern substitutes for currency, such as travelers checks, cashiers checks, and other bearer instruments issued or sold by banks, have developed as components of the payments system and as part of the business of banking.”³² Digitized deposits are simply the most recent of these developments.

The courts have also recognized the crucial role of banks in holding and transmitting value, with the Supreme Court stating that “[t]he very object of banking is to aid the operation of the laws of commerce by serving as a channel for carrying money from place to place”³³ Similarly, the OCC “[has] long recognized that the primary role of banks is to act as financial intermediaries, facilitating the flow of money and credit among different parts of the economy”³⁴ and has said that “[t]he transfer of funds from one account to another is a fundamental part of the business of banking.”³⁵

1157 (Dec. 2017), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2017/int1157.pdf>; OCC Interpretive Letter 1140 (Feb. 2014), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2014/int1140.pdf>.

³¹ OCC Conditional Approval 220, *supra* note 16, at 8. The letter further concluded that the “record keeping, data analysis, and other support services for the stored value system” were also “part of the business of banking.” *Id.* at 10.

³² OCC Conditional Approval 220, *supra* note 16, at 8 n.11.

³³ *Auten v. U.S. Nat’l Bank of New York*, 174 U.S. 125, 143 (1899); OCC Interpretive Letter 1174 (Jan. 2021).

³⁴ OCC Interpretive Letter 1174 (Jan. 2021); *see also* OCC Interpretive Letter 1102 (Nov. 2008); OCC Interpretive Letter 499 (Feb. 1990).

³⁵ OCC Interpretive Letter 718 (Mar. 1996).

Furthermore, as noted above, there is substantial precedent for the recognition of new mechanisms for conducting the business of banking *without* legislative action. No legislative change was required to permit banks to issue stored value products, and no legislative change is required to permit banks to issue digitized deposits. It is simply a continuation of the business of banking.

C. *Based on the statutory language, judicial precedent and history, the OCC was correct in finding that national banks have the inherent power to issue digitized deposits and perform related functions*³⁶

As noted above, the OCC issued an interpretive letter in January of 2021 explicitly recognizing the authority of national banks to issue and exchange stablecoins as a means of facilitating payments. This conclusion aligns with regulators' and lawmakers' historical practice with regards to innovative forms of providing banking services, such as stored value products, as discussed above. Moreover, because this conclusion is consistent with the statutory language and long-standing and consistent interpretation by the OCC and the courts, that conclusion must be respected. Because the OCC is the government agency explicitly designated by Congress to administer and interpret the National Bank Act, its conclusions are entitled to deference.³⁷ Even if, however, deference were not the relevant standard for judicial evaluation *i.e.*, a court were reviewing the issue *de novo*, the overwhelming weight of judicial and regulatory precedent supports the OCC's conclusion.

D. *There is no other basis for the regulators to bar the issuance of digitized deposits*

Separate and apart from the analysis of whether national banks have the legal authority to issue digitized deposits is the question of whether the regulators should bar banks from that activity because it is so inherently unsafe and unsound that it cannot be conducted by banks. An activity authorized by Congress must be strongly presumed not to be precluded by this high bar. None of the guidance issued by the federal regulators regarding crypto activities makes the case that this presumption should be inapplicable. They present no evidence that digitized deposits, an evolutionary development of traditional forms of business for banks, present risks

³⁶ OCC Interpretive Letter 1174 (Jan. 2021) granted banks permission to use “new technologies, including . . . stablecoins, to perform bank-permissible functions, such as payment activities.”

³⁷ See *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 468 U.S. 837, 843-44 (1984). See also *Wells Fargo Bank N.A. v. Boutris*, 419 F.3d 949, 958 (9th Cir. 2005) (finding that the OCC's interpretation of the National Bank Act is entitled to deference under the *Chevron* framework).

that are so extraordinary as to be unmanageable.³⁸ To the extent that regulators are concerned that digitized deposits may cause excessive deposit growth or similar risks, they may use existing regulatory powers to ensure that banks maintain adequate capital and liquidity to meet any resulting risks. Likewise, to the extent that the regulators are concerned about operational risk, they can require banks to adopt appropriate operational safeguards. Particularly because digitized deposits are a means of performing core functions of a bank, preclusion of their issuance by federally regulated banks (as well as certain related activities as discussed below) would violate Congress' intent.

1. *Bank issuers of digitized deposits will bring the use of stablecoins fully within the framework of anti-money laundering and countering terrorist financing regulations*

One risk that has received particular attention in relation to existing stablecoins is the risk that they may be used to facilitate money laundering and terrorist financing.³⁹ Although most entities engaged in issuing and holding stablecoins are subject to FinCEN regulations applicable to money services businesses,⁴⁰ the requirements applicable to these entities are not as extensive as those applicable to banking entities. Of perhaps even more importance, these entities are not subject to the extensive examination process to which banks are subject in relation to the “four pillars” of Bank Secrecy Act compliance.

Digitized deposits issued by banks would be subject to the full range of anti-money laundering and know-your-customer (“AML/KYC”) requirements applicable to other deposits and payment activities involving banks. Banks will therefore be required to structure digitized deposits, and related mechanisms, to comply with existing AML/KYC and sanctions regimes. The issuance of stablecoins may bring new risks to participating banks in the same way that any new payment mechanism may, but banks are uniquely suited to identify and address such risks as they emerge.

³⁸ Indeed, if those risks were unmanageable, it would seemingly be incumbent upon government authorities to prohibit issuance of stablecoins by institutions that did not have a bank charter as well.

³⁹ See, e.g., PWG Report, *supra* note 1, at 19.

⁴⁰ See generally FinCEN Guidance: Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G0001 (May 9, 2019), available at <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

A bank may seek to assure compliance with AML/KYC and sanctions requirements by limiting transfers of the stablecoins to existing customers of the issuing bank, permitting the bank to rely on existing procedures applicable to depositors generally, with any modifications needed to reflect the use of a distributed ledger. Alternatively, a bank may permit the stablecoins to be transferred only to hosted wallets⁴¹ offered by a group of third-party hosts,⁴² pre-approved by the bank, that are subject to FinCEN’s AML/KYC requirements, pursuant to agreements with those hosts to provide related services. Those agreements would be subject to the applicable federal regulatory guidance for third-party risk management, which would require the bank to manage the risks associated with such arrangements, including by conducting due diligence on and pre-clearing the host’s AML/KYC and sanctions procedures.⁴³ By either means, the issuing bank can be assured that any transfer of the stablecoins, and any person to whom the stablecoins are transferred, will be subject to the existing AML/KYC and sanctions regimes applicable to the bank itself or to the bank or money service business hosting the wallet.

Other approaches to compliance with AML/KYC requirements may also be possible; these approaches may depend on the specific structure of the digitized deposit, and may require updates to current technologies used for AML/KYC compliance and/or updates to current AML/KYC regulations to accommodate such stablecoins.⁴⁴ Banks have had extensive experience in developing appropriate AML/KYC procedures for new payment systems, and there

⁴¹ Wallets are programs that store cryptographic keys associated with a particular unit of digital currency. OCC Interpretive Letter 1170 at 5 (July 2020), *available at* <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf>. “A hosted wallet is an account-based software program for storing cryptographic keys controlled by an identifiable third party.” OCC Interpretive Letter 1172 at 1 n.2 (Oct. 2020), *available at* <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1172.pdf>.

⁴² Hosted wallets for digital assets could be limited to those offered and managed by an established intermediary that is itself a bank or any nonbank entity registered as a money services business with FinCEN. Providers of such hosted wallets are required to register with FinCEN as money services businesses and comply with its AML program, recordkeeping, monitoring and reporting requirements, including requirements to establish procedures for identifying, verifying and monitoring those to whom the value of the wallet belongs (the “owners”). See FIN-2019-G001, *Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies* at 12-16 (May 2019), *available at* <https://www.fincen.gov/index.php/resources/statutes-regulations/guidance/application-fincens-regulations-certain-business-models>.

⁴³ See 3SR Letter 13–19/CA Letter 13–21, “Guidance on Managing Outsourcing Risk” (December 5, 2013, updated February 26, 2021); FIL–44–2008, “Guidance for Managing Third-Party Risk” (June 6, 2008); OCC Bulletin 2013–29, “Third-Party Relationships: Risk Management Guidance”; OCC Bulletin 2020–10, “Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013–29.”

⁴⁴ We expect, however, that whatever structure is chosen, banks will have to “have the capability to obtain and verify the identity of all transacting parties.” See President’s Working Grp. on Fin. Markets Releases Statement on Key Regulatory & Supervisory Issues Relevant to Certain Stablecoins, Treas. SM-1223 (Dec. 23, 2020).

is no reason to assume that they will not be capable of doing so in connection with stablecoin arrangements.

2. *FDIC Insurance and Recordkeeping Requirements*

Assuming an appropriate structure, digitized deposits, like other deposits, should be eligible for FDIC insurance, subject to the statutory limitations applicable to all deposits. Under 12 C.F.R. Part 330, the FDIC generally will rely on an IDI's "deposit account records" to determine the ownership of deposits held by the institution.⁴⁵ For this purpose, "deposit account records" are defined as:

account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts *in the possession of the insured depository institution* and other books and records of the insured depository institution, *including records maintained by computer*, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.⁴⁶

In the case of a bank-issued digitized deposit that can be transferred only to the bank's existing customers, the bank may maintain a centralized ledger recording ownership and transfers of the digital deposits. In that case, the bank may be the only party maintaining copies of the ledger, and the only party capable of updating the ledger, similar to the manner in which deposit records are typically maintained. In other cases, such as where the digitized deposits can be transferred to third-party hosted wallets, the bank may utilize a "distributed" ledger to record ownership and transfer of the digitized deposits – *i.e.*, a ledger that is maintained on multiple "nodes"⁴⁷ operated by different parties (*e.g.*, both the issuing bank and any third-party host of a wallet with which the issuing bank has an arrangement). If the bank utilizes a distributed ledger, then it is possible that other parties who maintain a copy of the ledger may also be able to make or approve changes to the ledger (but subject to the rules established by the bank in developing the stablecoin arrangement). In other words, the ledger maintained by the bank on its own node

⁴⁵ 12 C.F.R. § 330.5.

⁴⁶ *Id.* ¶ 330.1(e) (emphasis added).

⁴⁷ A "node" is an individual system within a blockchain network. A "full node" in a distributed ledger network maintains a complete copy of the ledger, whereas a "lightweight node" does not store a full copy and often passes its data to full nodes to be processed. *See* National Institute of Standards and Technology, NISTIR 8202, Blockchain Technology Overview at 52 (Oct. 2018), *available at* <https://doi.org/10.6028/NIST.IR.8202>. "Full nodes verify transactions, maintain consensus between other nodes, and contain a full copy of the ledger's entire history." OCC Interpretive Letter 1174, *supra* note 2, at 1 n.3.

may be changed by updates to the ledger made on a node operated by another party (but subject to the rules established by the bank). However, so long as the bank operates a node through which it maintains a complete copy of the ledger, a definitive copy of the distributed ledger would always be “in the possession of” the issuing bank. This ledger would enable the determination of insurance coverage for the digitized deposits, because the copy of the ledger in the possession of the bank will record the ownership of the digitized deposits at all times.

As noted above, if the bank permits the digitized deposits to be held through hosted third-party wallets, the distributed ledger may not reflect all ownership information; the bank may have to rely upon records maintained by the hosts of digital wallets. Even in the latter case, however, distributed ledger technology should make such record-keeping at least as straightforward as existing recordkeeping systems, as the issuing bank will have clear records showing the coins held in wallets operated by the third-party host. In its agreement with the third-party hosts, the issuing bank may engage those hosts to update the distributed ledger to reflect the owners of the relevant wallets, or to maintain records on the issuing bank’s behalf, similar to the manner in which issuers of stored valued products maintain records on behalf of the banks in which their reserves are held.⁴⁸ In any event, the distributed ledger should facilitate identification of these owners as well or, at a minimum, should not impair it.

3. *The issuance of digitized deposits and related activities should not be constrained by the Volcker Rule*

We do not believe that the issuance of digitized deposits should raise concerns under the Volcker Rule. The Volcker Rule prohibits a banking entity from engaging as principal, for the trading account of the banking entity, in any purchase or sale of financial instruments.⁴⁹ At the outset, digitized deposits should not be viewed as securities,⁵⁰ derivatives or futures

⁴⁸ Cf. 12 C.F.R. § 330.5(b)(1). This provision providing for pass-through insurance would apply only if the wallet host holds the digitized deposit as trustee, agent, nominee, guardian, executor or custodian for its customers; accordingly, under current FDIC regulations, the availability of deposit insurance coverage would depend on the structure of the arrangements between the bank, the third-party wallet host, and the host’s customers.

⁴⁹ 12 C.F.R. § 44.3.

⁵⁰ The Supreme Court held in 1982 that an insured bank certificate of deposit was not a security for purposes of the federal securities laws. See *Marine Bank v. Weaver*, 455 U.S. 551 (1982). The Ninth Circuit came to a similar conclusion with respect to a certificate of deposit issued by a Mexican bank, based on the regulatory framework applicable to the issuing bank. See *Wolf v. Banco Nacional de Mexico, S.A.*, 739 F.2d 1458, 1463 (9th Cir. 1984) (“when a bank is sufficiently well regulated that there is virtually no risk that insolvency will prevent it from repaying the holder of one of its certificates of deposit in full, the certificate is not a security for purposes of the

contracts and thus should not be considered to be “financial instruments” that are covered by the Volcker Rule. In any event, as the issuance of digitized deposits by banks does not involve the bank’s “trading account” for any purchase or sale of financial instruments, the Volcker Rule is not applicable. Moreover, the purpose of the Volcker Rule (*i.e.*, to prevent banking entities from engaging in speculative trading) is not implicated by banks’ issuances of digitized deposits for use by bank customers any more than it is implicated by the bank’s acceptance of other deposits or the issuance of travelers’ checks, debit cards or stored value products. The bank is not trading, or selling and buying in any capacity; there is no “principal” risk.

4. *Any bank seeking to engage in the issuance of a stablecoin or related activities, or to hold stablecoins for its customers, would need to consider the impact of SAB 121, but SAB 121 would not prohibit the issuance of stablecoins by a bank*

The staff of the Securities and Exchange Commission (the “SEC”) recently issued Staff Accounting Bulletin No. 121 (“SAB 121”), which imposes burdensome, and, for banks, virtually preclusive, new accounting requirements on parties offering custody of digital assets.⁵¹ SAB 121 does not address the authority of a bank to engage in stablecoin activities, nor is that question within the purview of the SEC. As discussed in more detail in a letter submitted to the Department of Treasury, the FDIC, the Board of Governors of the Federal Reserve System and the OCC by the American Bankers Association, the Bank Policy Institute and Securities Industry and Financial Markets Association, we believe that SAB 121 reflects a fundamental

federal securities laws” (citing *Marine Bank*, 455 U.S. at 558)). Later cases have found that deposits may be securities for purposes of the federal securities laws based on the factors outlined in the *Reves* case, namely (1) the motivation of the parties, (2) the plan of distribution, (3) the reasonable expectations of the investing public, and (4) the existence of factors which would reduce the risk of the instrument. *See, e.g., Sec. & Exch. Comm’n v. Stanford Int’l Bank, Ltd.*, No. 3:09-CV-0298-N, 2011 WL 13160374, at *3 (N.D. Tex. Nov. 30, 2011) (citing *Reves v. Ernst & Young*, 494 U.S. 56, 66, 110 S. Ct. 945, 951, 108 L. Ed. 2d 47 (1990)). With respect to digitized deposits, we would expect that issuing banks would not market them as “investments” or include characteristics that would lead them to be “naturally conceived as an investment in a business enterprise rather than . . . a purely commercial or consumer transaction. *See Reves v. Ernst & Young*, 494 U.S. 56, 68, 110 S. Ct. 945, 953, 108 L. Ed. 2d 47 (1990). Furthermore, digitized deposits of the type discussed in this memorandum would be “insured by the Federal Deposit Insurance Corporation and subject to substantial regulation under the federal banking laws,” as described above, bringing them well within the Supreme Court’s analysis in *Marine Bank*. Accordingly, although the matter has not yet been addressed by any court and will depend on the specific characteristics of the specific token and the manner in which it is sold and used, we believe it is unlikely that a court would conclude that a digitized deposit of the type described in this memorandum would be viewed as a security for purposes of the federal securities laws.

⁵¹ We note that, contrary to long-standing practice, SAB 121 was apparently issued without any prior consultation with the Financial Accounting Standards Board, accounting firms or end users; there was also apparently no prior consultation with the bank regulatory agencies.

misunderstanding of the treatment of assets held in custody by banks, both in ordinary circumstances and in the event of the bank's insolvency, and that SEC staff should clarify that Question 1 of SAB 121 does not apply to bank custodians.⁵² Given that the stringent prudential and supervisory standards to which banks are subject substantially mitigate the risks cited in SAB 121 and that the balance sheet treatment contemplated in Question 1 would have a disparate and distortive impact on banks (in particular, sharply heightened regulatory capital requirements), banks should be exempt from Question 1 of SAB 121 when engaging in custody and other stablecoin-related activities. Furthermore, SAB 121 would have particularly inappropriate results when a stablecoin is held in custody by the issuer of that stablecoin, effectively resulting in the issuing bank twice reflecting its own deposit as an asset on its balance sheet. Nevertheless, in the absence of such a clarification from the staff of the SEC, any bank seeking to engage in the issuance of a stablecoin or related activities would need to consider the potential impact of SAB 121 on its balance sheet and other regulatory requirements stemming from the accounting impact of SAB 121.

Despite the inappropriate burden imposed by SAB 121, and the practical difficulties that it may impose upon a bank seeking to engage in some stablecoin-related activities, as noted, SAB 121 would not affect the authority of a bank to engage in stablecoin issuance, nor would it increase the operational risk to such a bank engaging in that activity.

III. Services relating to stablecoin issuance and the use of stablecoins in commerce are also part of the business of banking, and banks need no additional statutory authority to engage in them

In addition to issuing stablecoins, banks may be called upon to provide related services in the digital economy. As digital assets become more widely used, and stablecoins become a more widely used means of transferring funds, banks may be asked to provide services relating to stablecoins issued by other banks or other stablecoin issuers. These may include both holding deposits by stablecoin issuers of reserves underpinning the stablecoins they have issued, and holding stablecoins in custody for customers. Both of these services are within the existing powers of a national bank.

Under current law, no additional authority is required to permit a bank to hold cash deposits of an issuer of collateralized stablecoins when those deposits serve as collateral

⁵² ABA, BPI, SIFMA, Letter in Response to Staff Accounting Bulletin No. 121 (June 23, 2022).

(subject, as any activity by a bank is, to precautions relating to safety and soundness). This is true regardless of the structure of the stablecoin. National banks are expressly authorized to receive deposits.⁵³ Furthermore, national banks may provide permissible banking services to any lawful business, so long as they effectively manage the risks and comply with applicable law.⁵⁴

Consequently, no specific authority is required for a national bank to be able to receive deposits from third-party stablecoin issuers, including deposits that are reserves for a stablecoin, as long as the national bank effectively manages the risks and complies with all applicable law.⁵⁵

Similarly, under current law, banks are permitted to provide custody services for stablecoins. National banks are authorized to provide electronic safekeeping activities,⁵⁶ and it is well established that national banks may provide custody services to their customers.⁵⁷ National banks generally are not prohibited from providing such services for any particular type of asset, as long as the banks are capable of holding the asset, and the assets are not illegal in the jurisdiction where they will be held.⁵⁸ Again, as discussed above, national banks are authorized to perform or provide through electronic means any activities that they are otherwise authorized to perform. Because national banks are authorized to perform custody services for physical

⁵³ 12 U.S.C. § 24(Seventh).

⁵⁴ OCC Interpretive Letter 1170 (July 2020); OCC Interpretive Letter 1172 (Oct. 2020); *see also* Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (July 2019), *available at* <https://www.occ.gov/news-issuances/news-releases/2019/nr-ia-2019-81a.pdf> (banks are encouraged to manage customer relationships and mitigate risks based on customer relationships rather than declining to provide banking services to entire categories of customers).

⁵⁵ In the context of deposits from nonbank issuers of stablecoins, it is critical that both third-party issuers and the depository banks themselves avoid making any misleading statements to consumers, including statements regarding the existence or extent of FDIC insurance coverage or the rights (if any) of the holders of the stablecoins to the deposits.

⁵⁶ *See* 12 C.F.R. §§ 7.5002(a)(4) and 7.5005(a).

⁵⁷ *See* OCC Interpretive Letter 1170 (July 2020).

⁵⁸ *See* Comptroller's Handbook on Custody Services (Jan. 2002).

assets,⁵⁹ there is no justification for preventing them from providing such services through electronic means, *i.e.*, providing custody services for stablecoins.⁶⁰

IV. Importance of Bank Involvement in Stablecoins

A. *Banks are a position to support the development of a workable regulatory framework around stablecoins and risk management best practices*

Consumers have made it plain that they find value in the ability to hold and make payments using stablecoins. As such, the prudential federal bank regulators must now choose between one of two options: allow banks to begin issuing stablecoins within the federal regulatory perimeter, or continue to allow only nonbank entities to meet this emerging consumer demand without coordinated federal oversight. From a risk management perspective, regulators should unequivocally pick the former. Not only are banks already subject to the highest levels of regulatory scrutiny (*e.g.*, comprehensive supervision and examination processes, consumer protection laws, capital, liquidity and reporting requirements, and AML/KYC requirements), they also have substantial experience adopting new technologies into the financial system. However, as the already significant demand for stablecoins continues to grow, if banks are unable to engage in stablecoin activities, competitive options will be foreclosed, and consumers have no choice but to use less-regulated entities as the sole source of the benefits they seek.

Bringing stablecoins under the comprehensive regulated framework that currently governs the banking industry should make it less likely that stablecoins are subjected to runs and value-instability,⁶¹ both of which have been recurring problems with certain nonbank issuers stemming from the lack of transparency about the reserves (or lack of reserves) backing these

⁵⁹ Although banks have historically provided custody services for physical securities, banks' securities custody accounts no longer have predominantly physical securities; instead, securities are now generally represented by an electronic book-entry. *See* Paige Pidano Paridon, *Three Things to Know About the Custody Services Provided by Banks*, Bank Policy Institute (Sep. 2016), available at <https://bpi.com/three-things-to-know-about-the-custody-services-provided-by-banks/>.

⁶⁰ It should be noted that, as discussed above, certain aspects of the Securities and Exchange Commission's Staff Accounting Bulletin No. 121 apply to a bank that provides stablecoin custody services. Thus, any bank engaging in such activity would need to ensure that this Bulletin does not subject the bank to inappropriate balance sheet and other regulatory requirements. That analysis, however, relates to the manner in which the bank would be required to report and account for the services that it provides, and not whether the bank has the authority to provide the service in the first place.

⁶¹ We believe it would be appropriate that bank issuers of stablecoins be required to disclose that their stablecoins are not separately backed by allocated reserves, and that nonbank issuers of stablecoins be required to disclose explicitly that their stablecoins are not deposits and not protected by Federal deposit insurance.

nonbank stablecoins.⁶² Moreover, banks have the experience and possess the resources and expertise needed to implement appropriate risk management and compliance systems with respect to stablecoins. Indeed, they have already proceeded with extensive testing and trialing of blockchain-related functions and have subjected them to comprehensive internal examination.⁶³ Given that the widespread adoption of stablecoins as a means of payment facilitation appears inevitable, regulators should encourage banks to be issuers of these products. In doing so, they can promote the development of this new product under a pre-existing, comprehensive regulatory framework and the conduct of this activity by entities well versed in developing innovative and secure methods of payment facilitation. Ultimately, this will enable regulators to protect consumers who are determined to utilize this technology regardless of its issuer.

B. Glass-Steagall Act Implications

A fundamental piece of the legislative response to the financial collapse in 1929 and the ensuing Great Depression was Section 21(a) of the Glass-Steagall Act. This Section, which is the only provision of the statute that was not subsequently repealed, makes it a crime to take deposits without a banking license or an equivalent state license.

Section 21(a)(2) does not define “deposits.”⁶⁴ Nonetheless, if a stablecoin is promoted by its issuer (or on the issuer’s behalf) as the equivalent of a deposit and the issuer

⁶² See David Jolly, *Colossal Terra Crash Amplifies Calls to Open Stablecoin Books*, Bloomberg Tax (May 24, 2022), available at <https://news.bloombergtax.com/financial-accounting/colossal-terra-flop-amplifies-calls-to-open-stablecoin-books>; Fran Velasquez, *Tether ‘Transparency Is Needed’ Following Terra’s UST Collapse: Analyst*, Coindesk (May 24, 2022), available at <https://www.coindesk.com/layer2/2022/05/24/tether-transparency-is-needed-following-terras-ust-collapse-analyst/>; Ryan Browne, *The World’s Second-Largest Stablecoin Is Undergoing a Massive Change*, CNBC (Aug. 23, 2021), available at <https://www.cnbc.com/2021/08/23/crypto-usdc-stablecoin-to-change-reserves-composition.html>; Press Release, *Attorney General James Ends Virtual Currency Trading Platform Bitfinex’s Illegal Activities in New York* (Feb. 23, 2021), available at <https://ag.ny.gov/press-release/2021/attorney-general-james-ends-virtual-currency-trading-platform-bitfinexs-illegal>; Tether Reserves Breakdown at March 31, 2021, available at <https://tether.to/wp-content/uploads/2021/05/tether-march-31-2021-reserves-breakdown.pdf>.

⁶³ See Eddie Mitchell, *What Is JPM Coin and How Do You Buy It?* (Jan. 10, 2021), available at <https://www.bitcoinmarketjournal.com/jpm-coin/>; *USDF Consortium™ Launches to Enable Banks to Mint USDF Stablecoins* (Jan. 12, 2022), available at <https://www.prnewswire.com/news-releases/usdf-consortium-launches-to-enable-banks-to-mint-usdf-stablecoins-301458911.html>; Board of Governors of the Federal Reserve System and Powell, Jerome H., *Innovation, Technology, and the Payments System: Remarks at Blockchain: The Future of Finance and Capital Markets?*, The Yale Law School Center for the Study of Corporate Law, Weil, Gotshal & Manges Roundtable, Yale University, New Haven, Conn. (Mar. 3, 2017), available at <https://fraser.stlouisfed.org/title/statements-speeches-jerome-h-powell-1164/innovation-technology-payments-system-576483>.

⁶⁴ The PWG has recommended that federal regulators work to clarify how Section 21(a)(2) applies to stablecoins.

does not have a banking or equivalent license, there would be a serious question whether the issuer is in violation of that statute by creating the same risks that Congress sought to avoid.⁶⁵

V. Conclusion

The federal bank regulators' current approach to stablecoins is stifling the development of new products and services that are the subject of significant customer demand, and is leaving the issuance of stablecoins, an increasingly significant financial instrument, solely in the hands of entities that are not subject to the full range of capital, liquidity, cybersecurity and other safety and soundness and customer protection requirements applicable to federally regulated banks.

As explained above and as directly determined by the OCC, issuing digitized deposits and engaging in stablecoin-related activities are activities that clearly fall within the existing legal authority of banks to conduct the business of banking. They represent functions that banks perform day in and day out – recording deposits and transferring of deposits on their books – accomplished through the application of a new technology. Regulators have repeatedly found that the business of banking does not require the continuing application of outmoded technology or avoidance of technological advances, and that regulatory oversight and requirements can control for risks that innovation may bring. In time, the now-novel activity of banks issuing digitized deposits could become as unremarkable as a bank clearing checks using computers and MICR codes is today. As a result, and given the stability, safety and transparency of banks, regulators should enable banks to enter into stablecoin issuance by working with them to develop a clear and consistent regulatory regime, and not discourage them based on untenable legal analysis or nebulous safety and soundness concerns.

⁶⁵ This risk may inherently exist because stablecoins share key functional characteristics of deposits: (1) they involve the placing of funds for custody and safekeeping, and (2) depositors possess the ability to withdraw or transfer such funds on demand. *See MoneyGram Int'l, Inc. v. Commissioner*, No. 15-60527, 664 Fed. Appx. 386, 392 (5th Cir., Nov. 15, 2016).

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