

February 15, 2024

Conditional Approval #1318
March 2024

Jeffrey L. Hare, Partner
DLA Piper LLP
500 8th Street, NW
Washington, DC 20004-2131

Re: Application to Charter FundBank, National Association, Austin, Texas (Proposed),
Applications for Citizenship Waivers & Applications for Residency Waivers

OCC Control Numbers: 2023-Charter-332228
2023-Waiver-332787
2023-Waiver-332790

OCC Charter Number: 25304

Dear Mr. Hare:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national trust bank, with the title of FundBank, National Association (proposed Bank or FundBank). The OCC hereby grants preliminary conditional approval of your charter application along with the granting of fiduciary powers upon determining that your proposal meets certain regulatory and policy requirements. Additionally, the OCC also approves the request for waiver of citizenship requirements and residency requirements for FundBank pursuant to 12 USC 72.

This preliminary approval is granted based on a thorough evaluation of all information available to the OCC, review of the applications, including the representations made in the applications and by the applicant's representatives during the application process. We also made our decision to grant preliminary conditional approval based on your representation that the proposed Bank will apply for Federal Reserve membership.

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted until all pre-opening requirements are met. Until final approval is granted, the OCC has the right to modify, suspend or rescind this preliminary conditional approval should the OCC deem any interim development to warrant such action.¹

Proposed Bank

An application was made to the OCC, pursuant to 12 USC 21 through 27, 92a, and 12 CFR 5.20 to charter the proposed Bank, an uninsured national bank whose operations will be limited to those of a trust company and activities related thereto. FundBank requested full fiduciary

¹ 12 CFR 5.13(i).

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powers under 12 USC 92a. FundBank will be a wholly-owned subsidiary of FB Financial Holdings, Inc., a Delaware corporation. The controlling shareholder of FB Financial Holdings, Inc., will be Don M. Seymour. Mr. Seymour also indirectly controls DMS Bank & Trust, a Cayman Islands bank.

FundBank will be a limited purpose trust bank and will not engage in traditional retail or commercial banking operations. FundBank will offer asset management, custody solutions, payment solutions, and other financial services to hedge funds, private equity funds, venture capital funds, investment managers, and family offices within the alternative investment industry across the United States and Canada.

Conditions

This preliminary conditional approval is subject to the following conditions:

1. The proposed Bank shall limit its business to the operations of a trust company and activities related or incidental thereto, as specifically stated in the business plan;
2. The proposed Bank: (i) shall give the Midsize and Trust Bank Supervision Office at least sixty (60) days prior written notice of the proposed Bank's intent to significantly deviate or change from its business plan or operations and (ii) shall obtain the OCC's written determination of no objection before the proposed Bank engages in any significant deviation or change from its business plan or operations. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank's notice. This condition shall remain in effect during the Bank's first three years of operation;
3. FundBank must maintain minimum capital of \$15 million and a liquidity floor that equals or exceeds 180 days of operating expenses; and
4. After the proposed Bank commences business, prior to the appointment of any new executive officer, including any "senior executive officer" as defined in 12 CFR 5.51(c)(4), or the appointment of any individual to the board of directors, the proposed Bank shall submit to the OCC the information described in the "Changes in Directors and Senior Executive Officers" booklet of the Comptroller's Licensing Manual, and receive a letter of no objection from the OCC. This information is required by the authority of 12 USC 1818(b) and 12 CFR 5.20(g) and does not require the OCC to review or act on any such information within ninety (90) days. This condition shall remain in effect during the Bank's first three years of operations; and
5. FundBank must meet the independent director requirements for the bank's fiduciary audit committee in 12 CFR 9.9(c).

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The conditions of this approval are conditions “imposed in writing by a federal banking agency in connection with any action on any application, notice, or other request” within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

Organizers, Directors and Officers

The OCC poses no objection to the following person(s) serving as executive officer(s), directors, and/or organizers as proposed in the application:

<u>Name</u>	<u>Title</u>
Kenneth S. Gerstein	Organizer, Director
Fred Wilkins Jacobs III	Organizer, COB
Colm Patrick O’Driscoll	Organizer, Director
Dana Fisk Pitts	Organizer, Director
John D. Rosanelli	Organizer, Director, CEO, President & Chief Investment Officer
Gillain Van Schnick	Organizer, Director
Michael J. Serota	Organizer, Director
Don M. Seymour	Organizer, Director
Chase Anderson	Chief Financial Officer & Cashier

The trust officers and staff should become thoroughly familiar with 12 CFR 9, “Fiduciary Activities of National Banks” and the series of Comptroller’s Handbooks for Asset Management (available electronically at <https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/index-comptrollers-handbook.html>).

As indicated above, the OCC also grants your request to waive the residency requirements of 12 USC 72 for the eight proposed members of the board of directors of the Bank. The waivers are granted based upon a review of all available information, including the filing and any subsequent correspondence and telephone conversations, and the Bank’s representation that the waivers will not affect the board’s responsibility to direct the Bank’s operations in a safe, sound, and legal manner. The OCC reserves the right to withdraw or modify the waivers and, at its discretion, to request additional information at any time in the future.

Organizing Steps and Pre-Opening Requirements

The “Charters” booklet in the *Comptroller’s Licensing Manual* provides guidance for organizing your bank. The booklet is located at the OCC's web site:

<https://www.occ.gov/publications/publications-by-type/licensing-manuals/charters.pdf>. The booklet contains steps you must take to receive final approval. As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt and forward Articles of Association and the Organization Certificate to the Director for Licensing in the Washington, DC Office for the OCC’s review and acceptance. Once those documents are accepted, the proposed Bank will be deemed a “body corporate” or legal entity, and you may

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begin taking the steps necessary for obtaining final approval. The proposed Bank may not engage in fiduciary activities until it fulfills all requirements for a bank in organization and the OCC grants final approval.

The proposed Bank's initial paid-in capital, net of all organizational and pre-opening expenses, shall be no less than \$18.25 million. The manner in which capital is raised must not deviate from that described in the application without prior written OCC notification. If the capital for the Bank is not raised within 12 months or if the Bank is not opened within 18 months from the preliminary conditional approval date, this approval expires. The OCC is opposed to granting extensions, except under the most extenuating circumstances and when the OCC determines that the delay is beyond the applicant's control. The organizers are expected to proceed diligently, consistent with their application, for the Bank to open for business as soon as possible.

Enclosed are standard requirements and minimum policies and procedures for new national banks (or Federal savings associations). The Bank must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation.

In addition to the standard requirements for all new national banks, the proposed Bank must also meet the following special requirements prior to requesting its pre-opening examination and before the OCC will grant final charter approval:

1. As the proposed Bank will be commonly controlled with one or more foreign banks, proposed Bank shall enter into parallel-owned banking commitments, in a form acceptable to the OCC, before the OCC will issue final approval and allow the Bank to commence business;²
2. Executive management must develop a plan for Midsize and Trust Bank Supervision Office non-objection to provide training to the Board and other members of management specific to fiduciary operations, compliance requirements, and operating a nationally chartered trust bank. The plan must establish deadlines and monitor progress towards completion, with regular updates provided to the Supervisory Office, and training must be completed prior to opening;
3. The proposed Bank must appoint a risk officer counterpart to the Chief Technology Officer to allow for a risk balanced perspective on technology;
4. The Bank must submit to the Midsize and Trust Bank Supervision Office for review, and prior written determination of no supervisory objection, a complete description of the

² When a person owns a foreign bank and a domestic national bank, the OCC may impose conditions, or seek commitments, to understand how the parallel-owned bank may affect the national bank and to facilitate supervision of the national bank. *See* The "Change in Control" booklet of the *Comptroller's Licensing Manual* (February 2023 at Appendix.)

Bank's final information systems and operations architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items:

Vendor due diligence and contracts; electronic banking security mechanisms and policies; information systems personnel; internal controls; audit plans; and operating policies and procedures, including, but not limited to, vendor management, weblinking, customer authentication and verification, and business resumption contingency plans.

5. The Bank must have performed an independent security review and test of its electronic banking platform. The Bank must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. If the Bank outsources the technology platform, it can rely on testing performed for the service provider to the extent that it satisfies the scope and requirements listed herein. The review must be conducted by an objective, qualified independent source (Reviewer). The scope should cover:

All access points, including the Internet, Intranet, or remote access.

The adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access.

By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, refer to the "[Information Security Booklet](#)" of the FFIEC IT Examination Handbook.

6. The Bank must have a security program in place that complies with the "Interagency Guidelines Establishing Standards for Safeguarding Customer Information" specified at 12 CFR 30, Appendix B.

Conclusion

This preliminary conditional approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

The OCC's approval is based on the representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind these approvals if a material

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change in the information on which the OCC relied occurs prior to the date of the transaction to which these decisions pertain.³

Please include the OCC control numbers on any correspondence related to these filings. If you have any questions, contact Paula Dejmek Woods, Bank Examiner (Licensing Analyst) at (312) 660-8710 or at Paula.DejmekWoods@occ.treas.gov

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller Licensing

Attachments: Standard Requirements
 Minimum Policies and Procedures Checklist
 Pre-Opening Checklist

³ 12 CFR 5.13(i).