



April 23, 2021

Daniel Burstein
General Counsel and Chief Compliance Officer
Paxos
130 5th Avenue, Floor 3
New York, NY 10011

Re: Application to charter Paxos National Trust, New York, New York
OCC Control Number: 2020-NE-Charter-318305
OCC Charter Number: 25252

Dear Mr. Burstein:

The Office of the Comptroller of the Currency (OCC) hereby grants preliminary conditional approval of the application to charter Paxos National Trust, New York, New York (Bank) having determined that the proposal meets the relevant statutory and regulatory requirements. This preliminary conditional approval also grants to the Bank the authority to exercise fiduciary powers under 12 USC 92a and 12 CFR 5.26. This preliminary conditional approval is granted after a thorough review of the application, other materials supplied by the applicant's representatives, and all information available to the OCC, including commitments and representations made in the application and during the application process. This approval is subject to the conditions set out herein.

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open and engage in fiduciary activities will not be granted until all pre-opening requirements are met. The OCC's decision to grant preliminary conditional approval is made with the understanding that the Bank will apply for Federal Reserve membership.

I. The Proposed Bank

An application was made to the OCC under 12 USC 21 through 27 and 12 CFR 5.20 to charter the Bank, an uninsured national bank whose operations would be limited to those of a trust company and activities related thereto. See 12 USC 27(a) (last sentence). The Bank also requested OCC approval to exercise fiduciary powers pursuant to 12 USC 92a and 12 CFR 5.26.

The Bank will be an uninsured national bank whose operations will be limited to those of a trust company and activities related thereto. The Bank will provide a range of services associated with digital assets that are permissible for a national bank, including custody services for digital assets; custody and management of USD stablecoin reserves; payment, exchange, and other

agent services; other cryptocurrency services, such as trading services and enabling partners to buy and sell cryptocurrency; and “know your customer” as a service, which includes customer identification, sanctions screening, enhanced due diligence, customer risk rating, and other related services. These activities are currently being conducted by Paxos Trust Company, LLC, a New York-chartered limited liability trust company (Paxos Trust Company). The Bank and Paxos Trust Company will be affiliates and direct wholly owned subsidiaries of Kabompo Holdings Ltd., Grand Cayman, Cayman Islands (Kabompo).

II. Public Comment and Analysis

The OCC received one comment letter signed by a number of trade groups representing banks relating to the OCC’s authority to charter the Bank, asserting, among other things, that the proposed activities do not align with OCC precedent with respect to fiduciary activities conducted by national trust banks. The comment further asserts that the public portion of the application does not provide sufficient information on the Bank’s business model and operations and requests the OCC postpone consideration of the application until the public receives a more complete description.

The OCC is authorized to charter national banks, including those that limit their activities to those of a trust company pursuant to 12 USC 27(a).¹ At chartering, the Bank will conduct activities permissible for a New York trust company. In fact, the Bank, at chartering, will perform only a subset of the activities currently conducted by its affiliate, Paxos Trust Company, as authorized under New York state law for a trust company. Therefore, the OCC has authority to charter the Bank as a national trust bank under the plain terms of 12 USC 27(a). Additionally, based on the long-established standards the OCC follows, the OCC has determined that the Bank will perform activities in a fiduciary capacity.

In addition to assessing the legal permissibility of the Bank’s activities, the OCC’s supervisory, policy, and other functional areas have assessed the prudential, safety and soundness, and other relevant aspects of the proposal under long-established policy and procedures, applying equally long-established statutory and regulatory factors, that the OCC applies to all licensing transactions. Based on this thorough review, the OCC determines that it is appropriate to grant preliminary conditional approval to allow the organizers to proceed with the organization of the

¹ The OCC has issued conditional approvals for a range of applications for uninsured national trust banks “whose operations would be limited to those of a trust company and activities related thereto” (quoting 12 USC 27(a) (last sentence)). *See e.g.*, OCC Conditional Approval (CA) 1235 (March 2020); CA 1210 (March 2019); CA 1110 (Oct. 2014); CA 1085 (Jan. 2014); CA 1004 (Aug. 2011); CA 954 (June 2010); CA 938 (Jan. 2010); CA 897 (May 2009); CA 804 (June 2007). *See also* OCC Interpretive Letter No. 1176 (I.L. 1176) (Jan. 11, 2021). As discussed in I.L. 1176, “[a] national trust bank may be permitted to engage in any and all activities permitted under state law for a state trust company located in the same state under the plain terms of 12 U.S.C. § 27(a),” as well as other activities “permitted for a national bank under other sources of authority such as 12 U.S.C. §§ 24(Seventh) or 92a...” In I.L. 1176, the OCC also discusses the standards considered when assessing whether an activity is conducted in a fiduciary capacity.

Mr. Dan Burstein
April 23, 2021
Page 3 of 6

Bank with commencement of business subject to the OCC's final approval, consistent with the OCC's precedents and past decisions regarding licensing transactions.

The comment also raised concerns about the sufficiency of the information made available to the public and requested the OCC postpone a decision on the application. However, the commenters do not suggest or indicate what additional information they would provide to the OCC for consideration to support the assertion in their comment letter if the OCC were to postpone its decision. Thus, it is unclear that a postponement would result in a more informed decision.

More importantly, the Bank filed all required publicly available information on a timely basis. The public information required for this application is the same as required to be in all licensing applications, including applications that might be submitted to the OCC by entities that are members of the trade groups that commented on this application. In considering the Bank's identification of public information and request for confidential treatment of specific information pursuant to 12 CFR 5.9(c), the OCC followed its established policies and procedures. Therefore, the OCC declines to require the Bank to provide different or additional information in its public filing than is required of other applicants under well-established OCC policies and procedures. The OCC believes it is important for it to adhere to its existing policies and procedures and not to engage in arbitrary and capricious actions by changing the rules for one applicant as suggested by the commenters.

Moreover, the OCC notes the public portion of the application indicated the Bank would conduct some of the same activities currently conducted by its future affiliate, Paxos Trust Company, and identified those activities. Since the Bank's activities will be similar to those of an operating entity, general information as to the business model and operations of the Bank is publicly available.

Finally, the OCC relies on all information provided to it as part of the licensing process, including confidential and proprietary business information provided by the applicant as well as confidential information from other regulators and sources. In this case, the OCC has received sufficient information to make an informed decision regarding the Bank's chartering application, consistent with established agency policy and procedures, applying equally established statutory and regulatory factors. Accordingly, the OCC declines to require the Bank to provide information in the public portion of its application that other applicants are not required to provide or to postpone a decision in order to include unspecified additional information in the public file.

III. Organizers, Directors, and Officers

At this time, the OCC does not have a specific objection to the following persons serving as executive officers, directors, and/or organizers as proposed in the application.

Mr. Dan Burstein
April 23, 2021
Page 4 of 6

<u>Name</u>	<u>Title</u>
Daniel M. Burstein	Organizer/General Counsel/CCO
Charles G. Cascarilla	Organizer/Director/CEO
Sheila C. Bair	Organizer/Director
Robert H. Herz	Organizer/Director
Jim Manzi	Organizer/Director
William W. Bradley	Director
Duncan L. Niederauer	Director
Brian S. Stern	Director
Emil K. Woods	Director

Background checks and other reviews for the executive officers and directors are still in process. Accordingly, the continued service of these individuals will be dependent on satisfactory completion of the background investigation process.

Prior to the Bank's opening, the Bank must obtain the OCC's prior written determination of no objection for any additional organizers or executive officers or directors appointed or elected before the person assumes the position.

IV. Organizational Phase Requirements

The Bank's initial paid-in capital, net of all organizational and pre-opening expenses, and initial liquidity shall comply with applicable requirements under the Operating Agreement, Capital and Liquidity Support Agreement, and Capital Assurance and Liquidity Maintenance Agreement required as conditions to this preliminary conditional approval. The manner in which capital is raised must not deviate from that described in the application without prior written OCC notification. If the capital transaction for the Bank is not completed as described within 12 months or if the Bank is not opened for business 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.

The "Charters" booklet in the *Comptroller's Licensing Manual* provides guidance for organizing your bank. The booklet contains steps you must take to receive final approval and is located at the OCC's web site:

<https://www.occ.gov/publications/publications-by-type/licensing-manuals/charters.pdf>.

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 Senior Licensing Analyst Patricia Roberts for review and acceptance. As a "body corporate"

Mr. Dan Burstein
April 23, 2021
Page 5 of 6

or legal entity, you may begin taking those steps necessary for obtaining final approval. The Bank may not open for business until it fulfills all requirements for a bank in organization and the OCC grants final approval.

A “Pre-Opening Checklist for Organizers,” which details certain procedural requirements that must be met before the bank opens, is also available and located at the OCC’s web site: <https://www.occ.gov/static/licensing/Preopening-Checklist-for-Organizers.doc>.

The Bank must also satisfy the pre-opening requirements outlined in a separate letter of today’s date (the “Supplementary Letter”) before the OCC will grant final approval for the Bank to commence business.

V. Conditions

This preliminary conditional approval is subject to the following conditions:

1. The Bank shall limit its business to the operations of a trust company and activities related thereto. The Bank shall not engage in activities that would cause it to be a “bank” as defined in section 2(c) of the Bank Holding Company Act.
2. Within three (3) business days after opening, the Bank shall enter into a written Operating Agreement with the OCC on terms and conditions acceptable to the OCC. The Bank shall thereafter implement and adhere to the terms of the Operating Agreement. This condition shall remain in effect until the Operating Agreement is terminated under the provisions set forth in the Operating Agreement.
3. Within three (3) business days after the effective date of the Operating Agreement between the Bank and the OCC, the Bank shall enter into a written Capital and Liquidity Support Agreement (CSA) with Kabompo and the OCC on terms and conditions acceptable to the OCC, setting forth Kabompo’s obligation to provide capital and liquidity support to the Bank, if and when necessary. The Bank shall thereafter implement and adhere to the terms of the CSA.
4. Within three (3) business days after the effective date of the Operating Agreement between the Bank and the OCC, the Bank shall enter into a written Capital Assurance and Liquidity Maintenance Agreement (CALMA) with Kabompo on terms and conditions acceptable to the OCC, setting forth Kabompo’s obligation to provide capital and liquidity support to the Bank, if and when necessary. The Bank shall thereafter implement and adhere to the terms of the CALMA.

Mr. Dan Burstein
April 23, 2021
Page 6 of 6

These conditions of 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.

VI. 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.

This preliminary conditional approval is based on the applicant’s representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind this preliminary conditional approval if a material change in the information on which the OCC relied occurs prior to the date of any final approval. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, please contact Senior Licensing Analyst Patricia Roberts at (202) 649-6336 or by email at patricia.roberts@occ.treas.gov. Please include the OCC Control Number on all correspondence.

Sincerely,

//signed//

Stephen A. Lybarger
Deputy Comptroller Licensing

cc: Michael Nonaka, Covington & Burling LLP