



TESTIMONY OF CAITLIN LONG, CEO OF CUSTODIA BANK

Select Committee on Blockchain, Financial Technology and Digital Innovation Technology
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Co-Chairs and Members of the Select Committee: Thank you for asking me to testify today. I'll discuss 10 learnings relevant to the future of Wyoming SPDI banks at the Fed, gleaned from [publicly-disclosed documents](#) in our lawsuit or my direct knowledge, and then will recommend an action step for the State.

Custodia Bank currently provides U.S. dollar banking and money market fund services, as well as segregated Bitcoin custody services, to business customers in 32 states. We have an office in Cheyenne and 36 employees. We are operating with two hands tied behind our back – not just because the Fed denied our master account and disparaged us publicly, but also because without a Fed master account, we must rely on partner banks to clear U.S. dollar payments for our customers – and this has proven anything but durable. For context, it's well-documented that federal bank regulators have been [pressuring banks](#) to debank digital asset companies as part of Biden's all-of-federal-government attempt to kill the industry (other than the Bitcoin ETFs). [And there's data](#): while only 3% of American banks service financial technology companies, [Klaros Group](#) found that those 3% of banks received 50% of the FDIC's enforcement actions last quarter. Wyoming businesses have faced debanking like this before (during [Operation Choke Point](#) from 2013-17) – indeed, during a hearing about the original SPDI bank bill in 2019, one of your former House colleagues testified that his business had been debanked and he voted for the SPDI bank bill to ensure Wyoming had a way to fight back against politicized D.C. bank regulators abusing their power. I'll return to the debanking issue momentarily.

Here are the 10 things learned about the future prospects for Wyoming SPDI banks at the Fed, again all [publicly-disclosed](#) or from my direct knowledge:

1. The Wyoming Legislature reached an agreement with the Fed in December 2018 to recognize SPDI banks, but the Fed broke that agreement. [Multiple documents uncovered in discovery refer to that agreement, and show how much the Fed really really wanted it.](#) At the time, the lawyer for the Wyoming Legislature told us that the general counsel of the Kansas City Fed called the Wyoming Legislature to demand removal of a provision from the draft SPDI bank bill requiring the Wyoming Attorney General to sue the Fed if the Fed didn't give master accounts to Wyoming SPDI banks – she said that the issue had already been litigated and the Fed didn't want to litigate

it again. The legislators sponsoring the SPDI bank bill agreed to remove that provision from the draft legislation in reliance on the Kansas City Fed general counsel's representation that the Fed would open master accounts for chartered Wyoming SPDI banks.

2. Discovery confirmed that, [once the Fed and the Wyoming Legislature reached that agreement, the two groups started meeting weekly to develop the SPDI bank program – they met more than 100 times total](#). Discovery also confirmed Wyoming officials had [good reason](#) to expect the Fed to grant master accounts to chartered SPDI banks on a timely basis, which comports with what then-officials of the Wyoming Division of Banking told me in January 2020: that they met with then-Kansas City Fed President Esther George in her office and she told them that she, quote, “did not want to get sued again” and she promised to run an open and transparent master account process for Wyoming SPDI banks. [We know from discovery that did not occur](#).
3. SPDI banks' Fed master account applications languished, and in May 2021 it became clear why: the Fed in Washington, D.C. suddenly [changed the rules](#) for master account access. Lawsuit discovery revealed the Fed in D.C. drafted the new [Guidelines](#) largely in reaction to Wyoming's SPDI bank initiative. The Fed took 15 months to finalize the Guidelines, which relegate all Wyoming SPDI banks into [third-tier status – which means dead-end \(as confirmed by various internal Fed documents disclosed in discovery: e.g., “No for Tier 3”\)](#). In those Guidelines, the Fed is acting outside its authority by [granting itself a veto over State bank chartering authorities' decisions](#) for the first time in U.S. history.
4. In January 2023, the [Fed announced its denials of Custodia](#). Discovery revealed what led up to that:
 - a. On November 11, 2022, FTX, the fraudulent offshore crypto exchange, [filed for bankruptcy](#).
 - b. Up through [November 18, 2022](#), evidence confirmed the Fed was still discussing restrictions to put on Custodia's master account – i.e., things were still proceeding.
 - c. But a few days later, right before [Thanksgiving 2022](#), staff at the D.C. Fed held a meeting with Fed Vice Chair Michael Barr to discuss Custodia.
 - d. [Days later](#), the first draft of the Custodia denial letter appeared.
 - e. In other words, the D.C. Fed decided to deny Custodia two weeks after FTX failed.Ironically: months before FTX failed, [I arranged for evidence of probable crimes committed by FTX to be delivered to the FBI](#). Shame on the federal government for shooting a messenger who tried to stop that horrific fraud.

5. Before announcing the Custodia denial in January 2023, the Fed used aggressive press leaks to try to intimidate Custodia into withdrawing. A reporter told us that the Fed's Board would deny Custodia two days before the Fed's Board actually voted. This is among 23 violations by the Fed of its own policies and procedures during Custodia's application process, which are detailed in a [now-public complaint we filed with the Fed's Inspector General](#).
6. Multiple insiders came forward to tell us that the White House orchestrated the hit on the digital asset industry, including the denial of Custodia, and [one insider gave us the name of the White House official who coordinated it](#). A few days later, Illinois Sen. Dick Durbin attacked Custodia by name on the U.S. Senate floor. No one at Custodia has ever met either that White House official or Sen. Durbin. This was all political and all coordinated.
7. Incumbent bankers have lobbied to stymie certain Wyoming blockchain initiatives – you already know this, but here are two new facts uncovered in discovery:
 - a. A now-public chat log confirmed “regulatory capture” of the Fed by the large banks: [Fed staff drafting the Custodia denial letter consulted a misinformation-filled blog about Wyoming SPDI banks](#) sent to it by the lobbying organization for America's biggest banks, encouraging the Fed to block Wyoming SPDI banks. Unfortunately, the Fed listened.
 - b. The now-retired CEO of a Wyoming bank that has been particularly public about its opposition to certain of Wyoming's blockchain initiatives, and who was on the board of the Kansas City Fed, [showed up in handwritten notes of then-Kansas City Fed president Esther George revealed in discovery](#). I'm not permitted to say more at this time. Connect the dots.

To be clear, we're grateful for the support Custodia has received from *many* individual banks who see where the world is going. But other banks and their lobbyists have hurt us and Wyoming – because, in addition to influencing the Fed's denial of Custodia and hamstringing this Select Committee's efforts to bring jobs to Wyoming, they harmed a material revenue initiative for the State. How? SPDI banks pay a 2 basis point annual fee on assets under custody – indeed all Wyoming businesses pay a 2 basis point fee on their assets except for the incumbent banks, which are exempt. There's no difference between the supervisory fees paid by incumbents and SPDI banks – we pay the same – but, again, only the SPDI banks also pay that asset-based fee. So, stymying the SPDI banks hurt that revenue stream to the State, and the amount of lost revenue is not small.

8. [Discovery](#) revealed the truth about Custodia, clearing our good name. The publicly-disclosed assessment of Custodia by the Fed was negative, but – privately – [Fed staff actually viewed Custodia positively](#).
 - a. Here are just 3 of many 180-degree flip-flop examples disclosed in Court documents:
 - i. “Strong” risk management became “significant risk management gaps”;
 - ii. “Impressive” and “extensive” management team became “lack of collective depth of relevant banking experience;” and
 - iii. “Adequate” capital became “lack of a robust capital requirement framework.”
 - b. With every passing day it becomes clearer that the Fed’s public order about Custodia was a *political* document. We knew the Fed’s disparagement of Custodia was combat-tactics, trying to intimidate us to “[go away](#).” So I asked one of the insiders who came forward why the Fed would do this to a good actor like Custodia, and he explained that, in the post-FTX interagency power struggle in D.C., the Fed was at risk of losing jurisdiction over stablecoins to the Securities & Exchange Commission (SEC), which was planning an aggressive move against digital assets at that time, so the Fed used Custodia as a sacrificial lamb to prove its *bona fides* and catch up to the SEC. Members of the Select Committee, the Fed used Custodia and Wyoming SPDI as expendable pawns in a D.C. power game.

9. Three new facts relevant to the future prospects for Wyoming SPDI banks obtaining Fed access have come to light:
 - a. [More than 400 Tier 3 entities have Fed master accounts. Last year, the Fed was forced by Congress to disclose a database](#) of who currently has master accounts, and it confirmed what we suspected: the Fed previously approved many Tier 3 entities (>400). But when Wyoming entities came knocking at the front door (again, after holding >100 prep meetings with the Fed), the Fed in D.C. changed the rules.
 - b. The Fed’s database lists [32 applicants to which the Fed assigned the “scarlet-letter” Tier 3, including the 4 Wyoming SPDI banks. Tier 3s come from 10 states and territories](#), so Wyoming is far from alone. But the Fed is stonewalling the Tier 3s. “[They just don’t want to do it](#),” Julie Hill, incoming dean of UW Law School, told *American Banker* regarding why the Fed is now blocking access for Tier 3 applicants. Custodia tried literally everything to break the impasse: we tried to climb out of Tier 3 by [applying for FDIC insurance](#) and to become a Fed member bank, but found both avenues blocked politically by D.C.; [we proposed a revised business plan, but the Fed never responded to it; we](#)

[completed a “punch list” the Fed gave us, but the Fed ignored us on that too](#)¹ – and these are just a few of the many things we tried. Nothing worked; the Fed forced us to litigate.

- c. And...the day after the district court released its opinion in our case, the Fed’s Inspector General in D.C. suspended [his investigation into the Fed’s master account practices](#).

10. A politicized Fed is a risk to existing banks everywhere, not just to new applicants like SPDI banks. Recently, the Fed quietly closed a slew of existing institutions’ master accounts in Puerto Rico, with no recourse to those banks or to their customers. That hasn’t happened in Wyoming yet, but law firm [Davis Polk](#) warned of this in its analysis of our case’s district court opinion:

“Tomorrow, the term “novel charters” might be expanded to include providing traditional banking services to other politically controversial groups, such as gun advocacy groups, gun manufacturers, payday lenders, pro-choice or pro-life advocacy groups, LGBTQ+ groups, religious freedom or freedom from religion groups or even fossil fuel companies.”

They’re right – no one is immune from a politicized Fed that believes it can close any bank’s master account for any reason, without judicial review, and which ignores Congressional oversight over master accounts, and whose own Inspector General won’t investigate.

Wyoming’s first Congressman, Frank Mondell – a rancher from Newcastle – [warned about the Fed during a 1913 debate about its creation](#):

“Not only is its power, authority and control vast,’ [Mondell] warned of the prospective Fed, ‘but it is of a character which in practical operation will tend to increase and centralize.”

Mondell was spot-on, and here’s a fact newly made public in discovery that shows just how prescient he was: [the Fed created a Loss Sharing Agreement between the 12 regional Federal Reserve Banks beginning January 1, 2016](#),² not long after [the Fed first asserted power to deny master accounts](#) – the point is that this is all connected and it’s a big power grab by the Fed in D.C. Here’s why this matters: [the Fed’s framers in 1913](#) did not want centralization of power at the Fed in D.C. – they wanted federalism at the Fed, dispersing power among the 12 separate, regional and mostly autonomous Federal Reserve Banks (Wyoming within the Kansas City district) – in order to protect against the siphoning of credit and wealth to New York and D.C. from us in the heartland, and to reinforce the States as equal power to the federal government in the dual banking system. But the 12 Reserve Banks quietly lost that separation and autonomy in

¹ Custodia is in the final stages of BSA/AML model validation, for which a prerequisite was 120 days of transaction volume to test its model.

² [“Significant losses” that are accrued by one Reserve Bank are “shar\[fe\]d\] with other Reserve Banks” in accordance with the \[Federal Reserve\] System’s existing loss sharing agreement...The Loss Sharing Agreement of the Federal Reserve Banks, dated January 1, 2016, governs loss sharing among the Reserve Banks.”](#)

2016 – they functionally now share one balance sheet at the end of the day, controlled by Washington D.C. (by a politicized Fed in D.C., I might add).

Next, here's my recommendation: The State of Wyoming should immediately apply for its own Fed master account. The [State of Texas](#) has a [Fed master account](#), so why not us? Texas went further and set up its own securities custody account at the DTC too. A spokesman for Texas recently told *American Banker*: "Direct access to the Fed and DTC [saves the state millions in fees](#) that would otherwise be paid to commercial banks for these services." I estimate Wyoming, too, could save millions in fees and should do the same.

Finally, back to the debanking topic. It came out during discovery that federal bank regulators privately applied "[regulatory pressure](#)" on Custodia's partner bank, which resulted in the closure of our bank account due to no fault of our own. And it happened again recently – again, due to no fault of our own. Debankings are costly, enormously disruptive internally and set us back many months. So, the SPDI banks haven't yet solved the debanking problem for Wyomingites. But the fight is far from over. From the very inception of the United States, the States have had power to charter banks without needing permission from D.C. It's time the States reassert their power.

I'll close by thanking the Select Committee, the Wyoming Legislature, Governor Gordon, and Senator Lummis for your support. Thank you.