

## MEMORANDUM

**DATE:** March 23, 2021  
**TO:** Senate Industry, Business and Labor Committee  
**FROM:** Lise Kruse, Commissioner  
**SUBJECT:** Testimony Regarding House Concurrent Resolution No. 3024

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify regarding House Concurrent Resolution No. 3024.

Mr. Chairman and members of the Committee, our Department is neutral on this resolution since it is a study to be conducted by a legislative committee. However, since we are the chartering agency of banks and financial institutions, I would like to take this opportunity to provide information about special purpose depository institutions and to update you on what the Department is working on when it comes to virtual currency regulation. Virtual currency is currently not regulated in North Dakota, so there are no regulatory restrictions for utilization of the underlying blockchain technology – or the use of virtual currency, although some virtual currency money transmitters and exchanges are licensed with our department for other activities. I appreciate Rep. Toman's intention to make sure

North Dakota does not fall behind or in any way inhibit innovation, particularly when it comes to financial services and products. Our Department is always closely following the financial marketplace and are constantly looking for ways to make sure we are modernizing to allow for innovation and technology without compromising consumer confidence in the financial products they use.

In 2019 the state of Wyoming authorized the chartering of special purpose depository institutions (SPDI). It is the only such charter in the nation; however, the federal government is looking at similar options. These institutions are considered banks that receive deposits and also conduct fiduciary asset management, custody and related activities. It is expected that these institutions will focus on digital assets, such as virtual currencies. Where a SPDI differs from a trust company is that they take customer deposits. Where they differ from a traditional bank, is that these deposits are not required to be FDIC insured since a SPDI is prohibited from making loans with customer deposits of regular currency. When the FDIC was created in 1933, a much-needed confidence was infused into the banking system, since without FDIC insurance, the failure of a bank could result in financial losses for depositors. The SPDI charter does not appear to be intended for government-issued virtual currencies such as those issued by the Bahamas or China, or the considered Digital Euro or US based Fedcoin. On a federal level, the Office of the Comptroller of the Currency (OCC) has clarified banks' authority regarding stablecoins. If the federal government comes with further solutions, the Wyoming SPDI charter may become obsolete.

My Wyoming counterpart informed me that they worked extensively over a 2-year period to write rules and create the proper regulatory and legal framework for the SPDI charter. Changes had to be made to Wyoming laws, specifically the law that prohibits chartering a bank without deposit insurance and Uniform Commercial Code Law clarifications. The estimated cost to establish the program was about \$1 million. They estimated a 20% increase in their budget and four additional FTEs to start. Their State Banking Board has approved two applicants and have had two more apply. None of these entities have started operations, so the overall viability of the program and the charter has not been fully proven. Legislation for this type of charter has been introduced in a few other states, including South Dakota, but has not passed. Wyoming recently developed an examination program for this charter type, and in the fall of 2021, training will be offered to regulators outside of Wyoming. Our Department's examiners, including myself, plan to attend training so that we can learn as much as possible and are fully informed about these new market entrants. This includes not only SPDIs but also the overlapping concept of crypto currency regulation as part of money transmission.

I would like to highlight additional work we are doing in this area. Most states that regulate virtual currency have done so by recognizing virtual currency in the definition of currency and using existing regulatory frameworks such as money transmitter rules. Our Department has 140 money transmitters licensed. None of our money transmitters are headquartered in North Dakota, rather every company

we license operates in multiple states. For that reason, we are coordinating and cooperating with other states in our licensing and oversight. Our Department is actively engaged in what we on a national basis call “networked supervision” to provide efficiencies by leveraging our collective intelligence across the states and with federal regulators. Part of this effort is work on a model law for money transmitters, which we anticipate we will introduce in a bill for your consideration in 2023. This is a coordinated effort between all 50 states with input from the industries we regulate; a 33-member industry panel has provided feedback. By listening to the industry itself, I believe we can foster innovation and provide a good balance between regulation, consumer protection, and availability of services and products. The model law will replace our current money transmitter statute and has three primary objectives: 1) Consumer protection regulation; 2) Preserve public confidence; and 3) Prevention of unlawful individuals from entering the money services industry. The law contains licensure standards and financial responsibility requirements for money service businesses and includes the licensure of virtual currency. The law will provide clarity around when and how to regulate virtual currency businesses. For those conducting virtual currency activity, it includes transferring, storing and exchanging virtual currency. We do not expect the proposed law to regulate or otherwise inhibit the underlying blockchain technology or be burdensome for startup companies.

The reason we are neutral to this study is that it does not necessarily determine any future action on behalf of our Department – we are monitoring the

marketplace regardless of a study. We will continue to monitor the charters in Wyoming, observe the viability and engage with federal regulators. We will ensure our examiners are trained and up to date on any new technologies or products offered by our industries. As with any new financial product, if our Department finds that we should introduce or modernize regulation and licensing obligations to accommodate new products and to protect our citizens, or make sure products are available, we will do so when we believe the time is right.

Finally, I understand this resolution to be a study conducted by a legislative subcommittee, not the Department. If that is incorrect, if the intention was for the Department to lead this study and report back, we have not budgeted for this, and this resolution may need a fiscal note. If the intention is for the study to reside with a legislative subcommittee, we would be happy to assist in locating industry consultants who have been involved with the creation of these types of charters. Also, if it is ultimately determined that the legislative body wants to move forward with a bill to create an entirely new regulatory regime for a digital asset charter in addition to the model money transmitter law previously discussed, we would be happy to work with the bill authors to ensure the Department is able to fulfill any new mandates.

Mr. Chairman, thank you for the opportunity to provide this testimony. I would be happy to answer any questions the Committee may have.