

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PRIME CORE TECHNOLOGIES, INC.,¹

Debtors.

Chapter 11

Case No. 23-11161 (JKS)

(Jointly Administered)

Objection Date: Feb. 12, 2025 at 4:00 p.m. (ET)

**Proposed Hearing Date: Feb. 14, 2025 at 10:00
a.m. (ET)**

**MOTION OF COINBASE FOR LEAVE TO FILE AN
AMICUS RESPONSE TO THE PLAN ADMINISTRATOR'S MOTION FOR ENTRY
OF AN ORDER APPROVING THE PLAN ADMINISTRATOR'S DETERMINATION
THAT THE DEBTORS' ASSETS ARE PROPERTY OF THE BANKRUPTCY ESTATES**

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¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Prime Core Technologies Inc. (5317); Prime Trust, LLC (6823) ("Prime Trust"); Prime IRA LLC (8346); and Prime Digital, LLC (4528). The Debtors' mailing address is Prime Core Technologies, Inc. Plan Administrator, c/o Province Fiduciary Services, LLC, 2360 Corporate Circle, Suite 340, Henderson, Nevada 89074.

1. Coinbase, Inc. (“Coinbase”), as *amicus curiae*, by and through its undersigned counsel, submits this motion (the “Motion”) pursuant to Rule 9013(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9006-1(c)(ii) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for entry of an order under section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) permitting Coinbase to file a brief of *amicus curiae*, substantially in the form of Exhibit C hereto (the “Response”), in response to the Plan Administrator’s *Motion for Entry of an Order (I) Approving the Plan Administrator’s Determination that the Debtors’ Assets are Property of the Bankruptcy Estates; (II) Approving Distributions of Estate Property; (III) Establishing Procedures for Setting a Disputed Claims Reserve; and (IV) Granting Related Relief* [D.I. 919] (the “Determination Motion”).² In support of this Motion, Coinbase states as follows:

PRELIMINARY STATEMENT

2. As detailed more completely in the Response, the Determination Motion seeks relief that would have a profound impact on the application of Article 8 of the Uniform Commercial Code (“Article 8”) to custody arrangements, with consequences that would extend far beyond the confines of the instant case and harm the stability of the broader financial markets. Coinbase is cognizant that it is not a creditor or customer of the Debtors and does not have a direct financial interest in the claims against the Estate that are covered by the Determination Motion. However, the Determination Motion does not mention (let alone address) the provisions of the Debtors’ agreements with its customers that implicate Article 8, and Coinbase therefore believes that it is imperative to bring these provisions and their import to the Court’s attention. Otherwise,

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Determination Motion.

a decision granting the Determination Motion could serve to undermine a well-established statutory framework on which U.S. financial markets depend.

3. The Determination Motion implicates the protections afforded by Article 8 because the Custodial Agreements and End-User Agreements that form the basis of the Determination Motion’s contain what are commonly referred to as “financial asset elections.” Pursuant to these provisions, the Debtors and their customers agreed that Currency held for customers constituted “financial assets” credited to a “securities account” and that and the customers were the “entitlement holders,” each within the meaning of Article 8 of the Uniform Commercial Code (as implemented in accordance with Nevada law) (the “UCC”).³ As detailed in the Response, Article 8 contains unambiguous statutory text that parties may agree to treat a host of assets, including cash or digital assets, as financial assets credited to a securities account, and that assets subject to such agreement are not property of the custodian’s estate.⁴

4. Financial asset elections of the sort contained in the Custody Agreements and End-User Agreements are ubiquitous in U.S. financial markets and form a core part of the foundation

³ Dunn Decl., Ex. 2 at § 3.1(a) (“Customer is an ‘Entitlement Holder’ in a ‘Financial Asset,’ as defined by, and for purposes of, the Uniform Commercial Code, including Article 8 thereto, as adopted and implemented in accordance with Nevada law . . . Applicable Custodial Property are “Financial Assets” for purposes of the UCC and are not assets of Prime Trust.”); *Id.*, Ex. 2 at § 6 (“[T]he Parties agree the relationship between Prime Trust and Customer is governed by Article 8 of the UCC and that for the purposes of this Service Schedule: Customer is an “entitlement holder” and any Custodial Property will be treated as a “Financial Asset” within the meaning of Nevada Revised Statutes . . . 104.8102(h) and (j).”); *Id.*, Ex. 3 at § 2.4(a) (“Account Holder is an “Entitlement Holder” in a “Financial Asset,” as defined by, and for purposes of, the Uniform Commercial Code, including Article 8 thereto, as adopted and implemented in accordance with Nevada law . . . Applicable Custodial Property are “Financial Assets” for purposes of the UCC and are not assets of Prime Trust.”); *Id.*, Ex. 3 at § 7 (“Except as otherwise provided under Applicable Law, the Parties agree the relationship between Prime Trust and Account Holder is governed by Article 8 of the UCC and that for the purposes of this Agreement: Account Holder is an ‘entitlement holder’ and any Custodial Property will be treated as a ‘Financial Asset’ within the meaning of Nevada Revised Statutes . . . 104.8102(h) and (j).”).

⁴ UCC §§ 104.8102(j)(3) (defining financial asset as “any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article”); 104.8503 (“To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, *are not the property of the securities intermediary and are not subject to claims of creditors of the securities intermediary . . .*”) (emphasis added).

upon which custodial arrangements are built. They appear in traditional prime brokerage agreements and securities custody agreements, commodity brokerage agreements, the rules of clearing agencies and derivatives clearing organizations, digital asset custody and user agreements, and host of other documents.⁵ Financial asset elections support trillions of dollars of financial transactions because they provide market participants with certainty that the provisions of Article 8 of the UCC will apply to their relationships in accordance with their terms and that therefore financial assets held by custodians remain property of their clients.

5. The clear and simple rules of Article 8 are critical not only for allowing customers to know that their assets are their own rather than subject to their custodian's creditors. They also provide market participants with confidence that they can perfect their security interests through control⁶ and that good faith purchasers for value can take free of adverse claims. This confidence is essential for smooth and liquid markets in financial assets to function.⁷ These rules also provide custodians with certainty that assets held in a custodial capacity can be properly reflected as off

⁵ See e.g., *U.S. Prime Brokerage Agreement* (December 11, 2013), Ex. A § 2(c), <https://www.sec.gov/Archives/edgar/data/889284/000119312514026486/d647213dex99h8.htm> (accessed January, 2025) (containing a financial asset election under Article 8); *Custodial Undertaking in Connection with Master Repurchase Agreement* (December 1, 2003), § 5(A)(v), <https://www.sec.gov/Archives/edgar/data/877233/000119312508203393/dex99h8.htm> (accessed January 28, 2025) (same); *Futures and Options on Futures Account Agreement* (November 11, 2018), § 6, <https://www.sec.gov/Archives/edgar/data/916490/000119312522105588/d349045dex9928h5.htm> (accessed January 28, 2025) (same); *Coinbase User Agreement* (December 13, 2024) § 2.7.2, https://www.coinbase.com/legal/user_agreement/united_states (accessed January 28, 2025) (same); *Rules, By-Laws and Organization Certificate of the Depository Trust Company* (August 2023) at 14, https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf (accessed January 28, 2025) (defining "Security" as meaning "financial asset" within the meaning of the UCC and providing that "[a]ny item credited to an Account (by the act of being credited to the Account) shall be deemed a Security under these Rules and shall be treated as a financial asset under Article 8 of the NYUCC.").

⁶ UCC § 9-106(c) (providing that a secured party has control over security entitlements in a securities account has control over the securities account); UCC § 8-106(d) (providing that a purchaser has control of a security entitlement if such purchaser is the entitlement holder to that security entitlement).

⁷ UCC § 8-110(b) (local law of a securities intermediary's jurisdiction governs whether an adverse claim can be asserted against an acquiror of a security entitlement).

balance sheet for the custodian.⁸ Accordingly, absent this Court's close review, a decision to grant the Determination Motion could unintentionally upend this well-established certainty, with detrimental effects across financial markets.

6. For these reasons, and the reasons set forth below, Coinbase submits this motion to respectfully request that the Court grant leave to file the Response.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012, and Article 12 of the Amended Joint Chapter 11 Plan of Reorganization for Prime Core, Inc. and its Affiliated Debtors, dated December 14, 2023 (Docket No. 592), as amended (the "Plan"). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 105(a) of the Bankruptcy Code.

8. This is a core proceeding under 28 U.S.C. § 157(b). Pursuant to Local Rule 9013-1(f), Coinbase consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

BACKGROUND

9. Coinbase is a global provider of digital asset services to a variety of customers, including custody services governed by custody agreements that enjoy the protections afforded by Article 8 of the UCC.

⁸ Accounting Standards Codification § 860-10-40-5(a) (describing when a transfer of financial assets must be accounted for as a sale, including when such transfer involves assets beyond the reach of the powers of a bankruptcy trustee).

10. On December 14, 2023, the Debtors filed the Plan, which was confirmed on December 21, 2023 with the entry of the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement on a Final Basis and (II) Confirming the Amended Chapter 11 Plan of Reorganization of Prime Core Technologies Inc. and its Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 644] (the “Confirmation Order”). The Plan went effective on January 5, 2024, [D.I. 694]. The Plan calls for the winding down of the Debtors’ estates.

11. The Confirmation Order does not authorize the Plan Administrator to transfer or distribute any Non-Estate Assets or include such assets in the Cash or Cryptocurrency Allocation until a “final determination by the Debtors, the Wind-Down Debtors or the Bankruptcy Court, as applicable, in accordance with the Account Treatment Procedures” that such assets are property of the Debtors’ estates. *See* Confirmation Order at ¶ 36. The Plan further provides that “pending a determination of the Account Treatment Issues by the Bankruptcy Court, the Debtors or the Wind-Down Debtors, as applicable, will not use or transfer the funds subject to a Customer Agreement absent an order of the Bankruptcy Court.” *See* Plan § 2.5.

12. Pursuant to this requirement, the Plan Administrator filed the Determination Motion on January 15, 2025 requesting a final determination concerning the treatment of the funds subject to Customer Agreements contemplated by the Plan and Confirmation Order. [D.I. 919]. In support of the Determination Motion, the Plan Administrator filed the *Declaration of David Dunn in Support of Plan Administrator’s Motion for Entry of an Order (I) Approving the Plan Administrator’s Determination that the Debtors’ Assets are Property of the Bankruptcy Estates; (II) Approving Distributions of Estate Property; (III) Establishing Procedures for Setting a Disputed Claims Reserve; and (IV) Granting Related Relief* [D.I. 920] (the “Dunn Declaration”).

RELIEF REQUESTED

13. Coinbase seeks entry of an order, substantially in the form of the proposed order attached hereto as Exhibit B (the “Proposed Order”) authorizing Coinbase to file the Response attached as Exhibit C.

BASIS FOR RELIEF

14. Although there is no express rule governing the submission of amicus briefs or responses at the court of first impression, this Court is authorized to accept amicus briefs through the exercise of its powers under section 105(a) of the Bankruptcy Code (providing that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code) and through its inherent powers as a tribunal, which are exercisable at this Court’s discretion. *Cf. In re Nazi Era Cases Against German Defendants Litig.*, 153 F. App’x 819 (3d Cir. 2005) (“Although appellate rules regulate the submission of amicus briefs on appeal, a district court’s decision to accept or reject an amicus filing is entirely within the court’s discretion.”) (citation omitted); *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) (“[D]istrict courts possess the inherent authority to appoint ‘friends of the court’ to assist in their proceedings.”); *League of Women Voters of Ohio v. LaRose*, 2024 WL 3495332 at *21 (N.D. Ohio July 22, 2024) (“[A] district court may grant leave [to file an amicus brief] under their inherent authority where the filing may provide a unique perspective that assists the district court in resolving the pending dispute.”) (collecting cases); *Glen v. Trip Advisor LLC*, 529 F. Supp. 3d 316 (D. Del. 2021) (exercising discretion to grant motion for leave to file an amicus brief), *aff’d*, 2022 WL 3538221 (3d Cir. Aug. 18, 2022).

15. “[A]s recognized by other courts, nothing precludes a party from seeking leave to file an amicus brief.” *In re Fam. Christian, LLC*, 530 B.R. 417, 425 (Bankr. W.D. Mich. 2015).

In the absence of any applicable statute or rule, Bankruptcy Rule 8017, which is derived from Rule 29 of the Federal Rules of Appellate Procedure, and which governs the filing of amicus submissions in appeals from the Bankruptcy Court to the District Court or Bankruptcy Appellate Panel, is instructive. Under Bankruptcy Rule 8017, “permission to file a brief as amicus is within the sound discretion of the court. However, permission to file an amicus brief is freely granted, so it rarely makes sense for a party not to agree to its filing.” 10 Collier on Bankruptcy ¶ 8017.03 (16th ed. 2018).

16. Bankruptcy Courts in this district have previously exercised their discretion to grant leave to file an amicus brief where the party seeking the relief demonstrates (i) an adequate interest in the matter under consideration, (ii) that the amicus’s participation would be desirable, and (iii) that the amicus brief would be relevant to the matter. *See In re W.R. Grace & Co.*, 2016 WL 6068092 at n. 37 (Bankr. D. Del. Oct. 17, 2016), *aff’d in part, vacated in part, remanded*, 900 F.3d 126 (3d Cir. 2018). Here, Coinbase has an adequate interest in this Court’s consideration and disposition of the Determination Motion, given the centrality of Article 8 to the legal analysis necessary to resolve the Determination Motion and the importance of Article 8 to its business and the broader industry in which it operates.⁹ Coinbase’s participation similarly is desirable because it raises an issue for the Court’s attention that has not been addressed in the Determination Motion. Lastly, the Response is plainly relevant to the consideration of the Determination Motion because, as outlined in the Response itself, a straightforward application of Article 8 should be outcome-

⁹ Dunn Decl., Ex. 3 at § 2.4(a) (“Account Holder is an “Entitlement Holder” in a “Financial Asset,” as defined by, and for purposes of, the Uniform Commercial Code, including Article 8 thereto, as adopted and implemented in accordance with Nevada law Applicable Custodial Property are “Financial Assets” for purposes of the UCC and are not assets of Prime Trust.”); *Id.*, Ex. 3 at § 7 (“Except as otherwise provided under Applicable Law, the Parties agree the relationship between Prime Trust and Account Holder is governed by Article 8 of the UCC and that for the purposes of this Agreement: Account Holder is an ‘entitlement holder’ and any Custodial Property will be treated as a ‘Financial Asset’ within the meaning of Nevada Revised Statutes . . . 104.8102(h) and (j).”).

determinative of the relief sought by the Determination Motion.

17. Other Bankruptcy Courts have seen fit to grant such relief upon a determination, in their sound discretion, that the contribution of the amicus would be beneficial to the Court's adjudication of a disputed issue, or where the amicus raises a position not otherwise considered by the parties. *See e.g., In re Gawker Media LLC*, 581 B.R. 754, n. 7 (Bankr. S.D.N.Y. 2017) (granting an amicus brief by various media organizations who sought to raise the interests of journalists affected by a decision on a pending sale motion); *In re FirstEnergy Sols. Corp.*, 2018 WL 2315916 at *6 (Bankr. N.D. Ohio May 18, 2018) (granting a request to file an amicus brief by non-parties with an interest in the effect of an injunction on the application of federal energy regulations), *aff'd in part, rev'd in part and remanded*, 945 F.3d 431 (6th Cir. 2019); *In re Karlinger-Smith*, 544 B.R. 126, n. 31 (Bankr. W.D. Tex. 2016) (granting a request to file an amicus in connection with a motion to convert a case from chapter 7 to chapter 11); *In re Stringer*, 508 B.R. 668, 670 (Bankr. N.D. Miss. 2014) (granting requests to file two amicus briefs in connection with the confirmation of a chapter 13 plan).¹⁰

18. Here, and as set forth in the Response, the Plan Administrator's Determination Motion threatens to undermine the well-established application of Article 8 of the UCC, upon which Coinbase and many other industry participants rely to support and safeguard their customers' assets. As a result, this Court's decision on the Determination Motion is of great public interest to market participants and related parties, in addition to creditors in the instant proceedings, and Coinbase should be permitted to file the Response to ensure that this issue is fully raised for

¹⁰ For the avoidance of doubt, although amici are definitionally not parties to the dispute before the court, they are not precluded from advocating a position or from taking positions in support of or adverse to a particular party. *See, e.g., United States v. Michigan*, 940 F.2d 143, 166 (6th Cir. 1991); Collier ¶8017.03 ("most amicus briefs support one side or the other"); *Id.* n.7 (citing *Funbus Sys., Inc. v Cal. Pub. Utils. Comm'n*, 801 F.2d 1120, 1125 (9th Cir. 1986) (amicus curiae may "take a legal position and present legal arguments"))).

this Court's attention and the consideration of all parties in interest.

NOTICE

19. Notice of this Motion has been provided to (i) counsel to the Plan Administrator, (ii) the Office of the United States Trustee, and (iii) all parties that have requested notice of pleadings in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, Coinbase submits no other or further notice is required.

CONCLUSION

For the foregoing reasons, Coinbase respectfully requests that the Court grant this Motion, enter the Proposed Order and permit Coinbase to file the Response.

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Dated: February 5, 2025
Wilmington, Delaware

Respectfully submitted,

/s/ Brett M. Haywood

Jeremy M. Ryan (No. 4057)

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Counsel for Coinbase

* Pro hac vice pending

EXHIBIT A

NOTICE OF COINBASE'S MOTION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PRIME CORE TECHNOLOGIES, INC.,¹

Debtors.

Chapter 11

Case No. 23-11161 (JKS)

(Jointly Administered)

Objection Date: Feb. 12, 2025 at 4:00 p.m. (ET)

**Proposed Hearing Date: Feb. 14, 2025 at 10:00
a.m. (ET)**

**NOTICE OF MOTION OF COINBASE FOR LEAVE TO FILE AN
AMICUS RESPONSE TO THE PLAN ADMINISTRATOR'S MOTION FOR ENTRY
OF AN ORDER APPROVING THE PLAN ADMINISTRATOR'S DETERMINATION
THAT THE DEBTORS' ASSETS ARE PROPERTY OF THE BANKRUPTCY ESTATES**

PLEASE TAKE NOTICE that Coinbase, Inc. ("Coinbase") has filed a *Motion for Leave to File a Response to the Plan Administrator's Motion for Entry of an Order Approving the Plan Administrator's Determination that the Debtors' Assets are Property of the Bankruptcy Estates* (the "Motion").

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, are to be filed on or before **February 12, 2024 at 4:00 p.m. (Prevailing Eastern Time)**. At the same time, you must serve a copy of the objection or response on the undersigned attorneys.

PLEASE TAKE FURTHER NOTICE that a hearing with respect to the Motion will be held on **February 14, 2025 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable J.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Prime Core Technologies Inc. (5317); Prime Trust, LLC (6823); Prime IRA LLC (8346); and Prime Digital, LLC (4528). The Debtors' mailing address is Prime Core Technologies, Inc. Plan Administrator, c/o Province Fiduciary Services, LLC, 2360 Corporate Circle, Suite 340, Henderson, Nevada 89074.

Kate Stickles, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 5, 2025
Wilmington, Delaware

Respectfully submitted,

/s/ Brett M. Haywood

Jeremy M. Ryan (No. 4057)

Brett M. Haywood (6166)

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EXHIBIT B

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:
PRIME CORE TECHNOLOGIES, INC.,¹
Debtors.

Chapter 11
Case No. 23-11161 (JKS)
(Jointly Administered)

**ORDER GRANTING COINBASE’S MOTION FOR LEAVE TO FILE AN
AMICUS RESPONSE TO THE PLAN ADMINISTRATOR’S MOTION FOR ENTRY
OF AN ORDER APPROVING THE PLAN ADMINISTRATOR’S DETERMINATION
THAT THE DEBTORS’ ASSETS ARE PROPERTY OF THE BANKRUPTCY ESTATES**

Upon consideration of Coinbase’s *Motion for Leave to File a Response to the Plan Administrator’s Motion for Entry of an Order Approving the Plan Administrator’s Determination that the Debtors’ Assets are Property of the Bankruptcy Estates* (the “Motion”);² the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that good cause exists to approve the relief sought in the Motion, it is hereby ordered that:

1. The Motion is granted as set forth herein.
2. Coinbase is authorized to file the Response in conformance with Local Rule 9006-1(c)(ii).
3. The Court shall retain jurisdiction over any and all matters arising from or related

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Prime Core Technologies Inc. (5317); Prime Trust, LLC (6823); Prime IRA LLC (8346); and Prime Digital, LLC (4528). The Debtors’ mailing address is Prime Core Technologies, Inc. Plan Administrator, c/o Province Fiduciary Services, LLC, 2360 Corporate Circle, Suite 340, Henderson, Nevada 89074.

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion.

to the interpretation or implementation of this Order.

EXHIBIT C

RESPONSE TO THE DETERMINATION MOTION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PRIME CORE TECHNOLOGIES, INC.,¹

Debtors.

Chapter 11

Case No. 23-11161 (JKS)

(Jointly Administered)

Re: Docket No. 919

**COINBASE’S RESPONSE TO THE PLAN ADMINISTRATOR’S MOTION FOR
ENTRY OF AN ORDER (I) APPROVING THE PLAN ADMINISTRATOR’S
DETERMINATION THAT THE DEBTORS’ ASSETS ARE PROPERTY OF THE
BANKRUPTCY ESTATES; (II) APPROVING DISTRIBUTIONS OF ESTATE
PROPERTY; (III) ESTABLISHING PROCEDURES FOR SETTING A DISPUTED
CLAIMS RESERVE; AND (IV) GRANTING RELATED RELIEF**

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Coinbase, Inc. (“Coinbase”), as *amicus curiae*, by and through its undersigned counsel, submits this response (the “Response”) to the Plan Administrator’s *Motion for Entry of an Order (I) Approving the Plan Administrator’s Determination that the Debtors’ Assets are Property of the Bankruptcy Estates; (II) Approving Distributions of Estate Property; (III) Establishing Procedures for Setting a Disputed Claims Reserve; and (IV) Granting Related Relief*[D.I. 919] (the “Motion”)² and states as follows:

PRELIMINARY STATEMENT

The Motion’s request for relief flatly and inexplicably contradicts the plain terms of the parties’ agreement and Article 8 of the Uniform Commercial Code (the “UCC”) and seeks a result that, if granted, would undermine key legal foundations of the U.S. financial system. Prime Trust’s Custodial Agreements and End-User Agreements (collectively, the “Relevant Agreements”) expressly provide that Prime Trust agrees to hold Currency received from customers as “financial assets” credited to a “securities account” and that customers are the “entitlement holders” with respect to such financial assets, in each case within the meaning of Article 8 of the UCC as implemented in Nevada (“Article 8”).³ The Relevant Agreements further provide that the

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion. The Motion is supported by the *Declaration of David Dunn in Support of Plan Administrator’s Motion for Entry of an Order (I) Approving the Plan Administrator’s Determination that the Debtors’ Assets are Property of the Bankruptcy Estates; (II) Approving Distributions of Estate Property; (III) Establishing Procedures for Setting a Disputed Claims Reserve; and (IV) Granting Related Relief* [D.I. 920] (the “Dunn Declaration”). For the limited purposes of this Response, and solely to the extent applicable and not otherwise disputed herein, Coinbase incorporates into this Response the facts set forth by the Plan Administrator in the Motion and Dunn Declaration.

³ Dunn Decl., Ex. 2 at § 3.1(a) (“Customer is an ‘Entitlement Holder’ in a ‘Financial Asset,’ as defined by, and for purposes of, the Uniform Commercial Code, including Article 8 thereto, as adopted and implemented in accordance with Nevada law Applicable Custodial Property are ‘Financial Assets’ for purposes of the UCC and are not assets of Prime Trust.”); *Id.*, Ex. 2 at § 6 (“[T]he Parties agree the relationship between Prime Trust and Customer is governed by Article 8 of the UCC and that for the purposes of this Service Schedule: Customer is an “entitlement holder” and any Custodial Property will be treated as a ‘Financial Asset’ within the meaning of Nevada Revised Statutes . . . 104.8102(h) and (j).”); *Id.*, Ex. 3 at § 2.4(a) (“Account Holder is an ‘Entitlement Holder’ in a ‘Financial Asset,’ as defined by, and for purposes of, the Uniform Commercial Code, including Article 8 thereto, as adopted and implemented in accordance with Nevada law Applicable Custodial Property are ‘Financial Assets’ for purposes of the UCC and are not assets of Prime Trust.”); *Id.*, Ex. 3 at § 7 (“Except as otherwise provided under Applicable Law, the Parties agree the relationship between Prime Trust and Account Holder is governed by Article 8

relationship between Prime Trust and the customers is subject to Article 8.

Despite the Plan Administrator’s unjustifiable disregard of this financial asset election (as this type of provision is commonly called), it sits at the heart of the matter at issue. Article 8 states in plain and unambiguous terms that financial assets credited to a securities account “are not the property of the securities intermediary” (*i.e.*, the custodian holding those assets—here, Prime Trust).⁴ Rather, entitlement holders have a pro rata property interest in those assets.⁵ This precept—that assets held with a custodian under Article 8 are *not* the custodian’s property—underpins trillions of dollars of custodial arrangements involving cash, securities, derivative and digital assets across the U.S. financial services industry.⁶ It allows market participants to have confidence that the assets they entrust to custodians, ranging from limited purpose trust companies like The Depository Trust Company, to banks, to Delaware corporations, will not be exposed to the claims of the custodians’ creditors. The relief requested by the Motion would threaten this vital legal tenet, contravene clear statutory text and cause severe disruption across financial and

of the UCC and that for the purposes of this Agreement: Account Holder is an ‘entitlement holder’ and any Custodial Property will be treated as a ‘Financial Asset’ within the meaning of Nevada Revised Statutes . . . 104.8102(h) and (j).”).

⁴ UCC § 8-503(a) (providing that “all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and *are not subject to claims of creditors of the securities intermediary*”) (emphasis added).

⁵ UCC § 8-503(b) (“An entitlement holder’s property interest with respect to a particular financial asset under subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.”).

⁶ *See, e.g., U.S. Prime Brokerage Agreement* (December 11, 2013), Ex. A § 2(c), <https://www.sec.gov/Archives/edgar/data/889284/000119312514026486/d647213dex99h8.htm> (accessed January, 2025) (containing a financial asset election under Article 8); *Custodial Undertaking in Connection with Master Repurchase Agreement* (December 1, 2003), § 5(A)(v), <https://www.sec.gov/Archives/edgar/data/877233/000119312508203393/dex99h8.htm> (accessed January 28, 2025) (same); *Futures and Options on Futures Account Agreement* (November 11, 2018), § 6, <https://www.sec.gov/Archives/edgar/data/916490/000119312522105588/d349045dex9928h5.htm> (accessed January 28, 2025) (same); *Coinbase User Agreement* (December 13, 2024) § 2.7.2, https://www.coinbase.com/legal/user_agreement/united_states (accessed January 28, 2025) (same); *Rules, By-Laws and Organization Certificate of the Depository Trust Company* (August 2023) at 15, https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf (accessed January 28, 2025) (defining “Security” as meaning “financial asset” within the meaning of the UCC and providing that “[a]ny item credited to an Account (by the act of being credited to the Account) shall be deemed a Security under these Rules and shall be treated as a financial asset under Article 8 of the NYUCC.”).

digital asset markets. Coinbase therefore respectfully requests that this Court deny the Plan Administrator’s Motion.

ARGUMENT

I. Article 8 of the UCC Governs the Relationship Between Prime Trust and its Counterparties, and Provides Unambiguously That the Currency is not Property of the Debtors’ Estate

The terms of the Relevant Agreements and statutory text plainly and incontrovertibly establish that the Currency is not property of the Estate. It is therefore astounding—and given the importance of Article 8 to the financial system, deeply concerning—that the Plan Administrator seeks a contrary result. To begin, it is axiomatic that the scope of the Debtors’ estate is determined by reference to applicable state law. *Butner v. United States*, 440 U.S. 48, 54 (1979) (“Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law.”); *Miller v. Mott*, 2023 WL 6467368 at *3 (Bankr. D. Del. Oct. 4, 2023) (“The substance of the rights held by a trustee (whether a chapter 7 trustee, a chapter 11 trustee, or a debtor in possession) are defined by non-bankruptcy law, typically state law.”); *In re Delta Petroleum Corp.*, 2015 WL 1577990 at *7 (Bankr. D. Del. Apr. 2, 2015) (“It is well settled that property interests in bankruptcy, absent some compelling federal interest, are determined by reference to state law.”) (quoting *D’Angelo v. Blue Chip Federal Credit Union (In re D’Angelo)*, 524 B.R. 624, 630 (Bankr. M.D. Pa. 2015)). Here, given the undisputed governing law clauses in the Relevant Agreements, Nevada law controls the determination sought by the Motion.⁷ Therefore, in light of the financial asset election in the Relevant Agreements, Nevada law, which has adopted the UCC,⁸ is clear that the Currency does not constitute property of Prime Trust.

⁷ Dunn Decl., Ex. 1 § 13.1 (subjecting the MSA, and accordingly any associated Custodial Agreement, to Nevada law); *Id.*, Ex.3 § 15.13 (subjecting the End-User Agreement to Nevada law).

⁸ NRS § 104.

A. *By Entering Into the Relevant Agreements, Prime Trust and its Customers Agreed That Their Relationship is Governed by Article 8 of the UCC.*

In entering into the Relevant Agreements, Prime Trust agreed with its customers that Currency it held constitutes financial assets credited to a securities account. In particular, the Relevant Agreements provide that:

[Customer] is an ‘Entitlement Holder’ in a ‘Financial Asset,’ as defined by, and for purposes of, the Uniform Commercial Code, including Article 8 thereto, as adopted and implemented in accordance with Nevada law (‘UCC’). [Custodial Property, including Currency] are ‘Financial Assets’ for purposes of the UCC and are not assets of Prime Trust.

Dunn Decl., Ex. 2 at section 3.1(a); *Id.*, Ex. 3 at section 2.4(a).

The Relevant Agreements also contain a second, standalone section entitled “Application of UCC” specifically providing that Article 8 of the UCC governs the relationship between Prime Trust and customers:

Except as otherwise provided under Applicable Law, the Parties agree the relationship between Prime Trust and [Customer] is governed by Article 8 of the UCC and that for the purposes of this Agreement: [Customer] is an ‘entitlement holder’ and any Custodial Property will be treated as a ‘Financial Asset’ within the meaning of Nevada Revised Statutes (‘NRS’) 104.8102(h) and (j).

Id., Ex. 2 at section 6; *Id.*, Ex. 3 at section 7.

- i. The Currency Held by Prime Trust for its Customers Under the Relevant Agreements is a “Financial Asset.”

Article 8 is the body of state law that addresses, among other things, a customer’s property interest in securities held with an intermediary, such as a bank or broker. *See generally* James Steven Rogers, *Policy Perspectives on Revised U.C.C. Article 8*, 43 UCLA L. Rev. 1431, 1496 (1996). However, Article 8 is, by its express terms, not limited to securities. Rather, the drafters of Article 8 intentionally drafted it in broad terms so as to allow parties to opt for it to apply to other custodial relationships. *See* NRS § 103.8103, cmt. 1 (noting that the defined terms in Article

8, including “financial assets,” “are worded in general terms, because they must be sufficiently comprehensive and flexible to cover the wide variety of investment products that now exist or may develop” and that “[t]he rules in this section are intended to foreclose interpretive issues concerning the application of the general definitions to several specific investment products.”).

Consequently, the definition of “financial asset” includes not only securities, but also “[a]ny property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.” NRS § 104.8102(1)(j)(3).

The official commentary to recent revisions to Article 8, which the Nevada Legislature adopted in 2023, leaves no doubt that this definition includes Cryptocurrency and other “controllable electronic records” if a securities intermediary and its customer agreed to treat such assets as financial assets credited to a securities account. In particular, the preamble to the official commentary notes that “[t]he amendments include several revisions to the official comments to Article 8 (investment securities), in particular to make clear that a controllable electronic record may be a ‘financial asset’ credited to a securities account.”⁹

The preamble is not alone. The capacious intent of Article 8 is evident throughout the commentary. Comment 9 to UCC Section 8-102 specifically notes that parties may “agree to treat a digital asset as a financial asset,” Comment 18 to UCC Sections 8-102 notes that “a controllable electronic record may be a ‘financial asset,’” and Comment 2 to UCC Section 12-102 explains that, while a controllable electronic record “is not itself a ‘security,’” entitlement holders have rights to “a controllable electronic record that is a financial asset.” Indeed, the UCC explicitly

⁹ UCC, UNIFORM COMMERCIAL CODE AMENDMENTS (2022), OFF. TEXT WITH COMMENTS 3 (AM. L. INST. & NAT’L CONF. OF COMM’RS ON UNIF. STATE L. 2022)

provides that a “controllable electronic record”¹⁰ will be treated as a “financial asset” to the extent UCC Section 8-102(1)(j)(3) (the UCC provision that allows parties to make a “financial asset election”) applies.¹¹ Although the commentary does not include similar language related to cash, it is widely recognized that the plain and unambiguous terms of UCC Section 8-102(j)(3) permit cash to be subject to a financial asset election.¹²

ii. Prime Trust is a “Securities Intermediary” Under the Relevant Agreements.

Under the UCC, a “securities intermediary” includes “[a] person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.” NRS § 104.8102(1)(m)(2). Consistent with the flexible approach adopted by the drafters of Article 8, this definition notably does not require that a securities intermediary be a bank or broker-dealer. Rather, a securities intermediary includes any person that maintains “securities accounts” for others in the ordinary course of its business and is acting in that capacity.

Id.

A “securities account” is defined as “an account to which a *financial asset* is or may be credited in accordance with an agreement under which the person maintaining the account

¹⁰ NRS § 104B.12102(1)(a) (“‘Controllable electronic record’ means a record stored in an electronic medium that can be subjected to control under NRS 104B.12105. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, investment property, a transferable record or an electronic record that is currently authorized or adopted by a domestic or foreign government and is not a medium of exchange that was recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by a government.”).

¹¹ See NRS § 104.8103(8).

¹² See, e.g., *U.S. Prime Brokerage Agreement* (December 11, 2013), Ex. A § 2(c), <https://www.sec.gov/Archives/edgar/data/889284/000119312514026486/d647213dex99h8.htm> (accessed January, 2025) (financial asset election includes all property and assets, including cash); *Futures and Options on Futures Account Agreement* (November 11, 2018), § 6, <https://www.sec.gov/Archives/edgar/data/916490/000119312522105588/d349045dex9928h5.htm> (accessed January 28, 2025) (financial asset election “include[s] cash Collateral”); *Coinbase Prime Broker Agreement* (January 6, 2023) § 7, <https://www.sec.gov/Archives/edgar/data/1527762/000149315223040693/ex99-1.htm> (accessed January 29, 2025) (“Client Assets” subject to financial asset election include a Client’s cash).

undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the *financial asset*.” NRS § 104.8501(1) (emphasis added). Here, because the Relevant Agreements designated the Currency as “financial assets” under Article 8, and because Prime Trust agreed to credit the Currency to a securities account held on behalf of its customers, Prime Trust operated as a securities intermediary within the meaning of Article 8.

The official commentary to the UCC amendments recently adopted by the Nevada legislature put to rest any question as to whether an entity that custodies exclusively Cryptocurrency and cash, but not any securities, can be a securities intermediary:

a person need not be [a bank or broker] in order to be a securities intermediary. Because a “securities account” is an account to which a financial asset is or may be credited under Section 8-501(a) and the definition of “financial asset” is not limited to securities, a person may be a “securities intermediary” even if that person does not credit “securities” (as defined in Article 8) to the account. Rather, the securities accounts that a securities intermediary maintains may consist exclusively of financial assets [that are not securities]. For example, a cryptocurrency exchange that holds only cryptocurrencies (and not securities) for customers might be a securities intermediary.¹³

Accordingly, because Prime Trust agreed with customers in the Relevant Agreement to treat Currency as financial assets credited to a securities account, the Currency constitutes “financial assets” credited to a “securities account” subject to the provisions of Article 8.

B. *Article 8 Contains Clear Statutory Language Providing That Financial Assets Held by a Securities Intermediary are not Property of the Securities Intermediary.*

By virtue of the financial asset election, Prime Trust’s customers constitute “entitlement holders” with “security entitlements” to the financial assets held by Prime Trust. NRS § 104.8102(f) (defining entitlement holder as “a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary”); NRS

¹³ UCC § 8-102 cmt. 14.

§ 104.8102(f) (defining “security entitlement” as “the rights and property interest of an entitlement holder with respect to a financial asset specified in part 5 of this Article”).

UCC Section 8-503 addresses the rights of an entitlement holder to financial assets held with a securities intermediary. It plainly states that “[t]o the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, *are not the property of the securities intermediary and are not subject to claims of creditors of the securities intermediary*, except as otherwise provided in [UCC Section 8511].” NRS § 104.8503 (emphasis added).¹⁴

As the official commentary to Article 8 notes, this provision is not a departure from established understanding, but instead a codification of it:

It expresses the ordinary understanding that securities that a firm holds for its customers are not general assets of the firm subject to the claims of creditors. Since securities intermediaries generally do not segregate securities in such fashion that one could identify particular securities as the ones held for customers, it would not be realistic for this section to state that “customers’ securities” are not subject to creditors’ claims. Rather subsection (a) provides that to the extent necessary to satisfy all customer claims, all units of that security held by the firm are held for the entitlement holders, are not property of the securities intermediary, and are not subject to creditors’ claims, except as otherwise provided in Section 8-511.¹⁵

In other words, Section 8-503 of the UCC confirms the basic principle on which a modern financial economy depends: if assets are entrusted to a custodian, those assets should not be the custodian’s property, but instead reserved for the entrusting customers. There is not some requirement that talismanic “fiduciary” or “trust” language be used or that a customer be able to

¹⁴ UCC § 8-511 contains two narrow exceptions to this rule, which would only apply in the event Prime Trust pledged the Currency to a creditor who obtained control of such Currency within the meaning of Article 8. *See* NRS § 104.8511. The Debtors have not asserted that there was any such pledge.

¹⁵ NRS § 104.8503 cmt. 1.

trace its particular asset. Such requirements would be entirely out of step with the contemporary financial markets in which fungible assets of multiple customers are regularly held on an omnibus basis. Rather, Article 8 is simple: if a customer and its custodian make a financial asset election in respect of particular assets—as the parties to the Relevant Agreements did here—then those assets are not property of the securities intermediary. In this case, there should likewise be no dispute: Prime Trust and its customers made clear and unequivocal financial asset elections in relation to the Currency. Therefore, under Nevada law, the Currency does not constitute estate property. NRS § 104.8503(a) .

The simplicity of Article 8’s plain and unequivocal text is not an accident. As courts and scholars have recognized, the drafters of Article 8 specifically sought to “supplant a pastiche of common law rules” so as to “to provide a uniform method of resolving issues in order to promote liquidity and finality.” *See In re Estate of Rider*, 407 S.C. 386, 398 (2014).¹⁶ Indeed, Article 8’s simplicity and clear rules, especially as compared to the common law, has been cited as one of the reasons why its provisions have so rarely been subject to dispute. *Id.*, at 397 (“As one legal commentator has opined, a significant body of case law has not developed for the indirect holding system, and the reported cases generally have applied whatever principles were necessary to protect an innocent investor.”) (citing Russell A. Hakes, *UCC Article 8: Will the Indirect Holding of Securities Survive the Light of Day?*, 35 Loy. L.A. L.Rev. 661, 678 (2002)).

II. The Relief Requested by the Motion Would Upend the Legal Certainty on Which Financial Markets Rely

¹⁶ *See also SEC v. Credit Bancorp, Ltd.*, 2000 WL 1752979 at *24 (S.D.N.Y. 2000) (“Where, as here, the U.C.C. states specifically that an entitlement holder’s property rights over assets held by its securities intermediary are defined by the U.C.C. and not by the common law, and specific U.C.C. provisions are identified as the ‘only’ mechanism for enforcing those rights, then the common law has been supplanted.”); *In re Lehman Brothers Holdings Inc.*, 2018 WL 1441407 at *4 (S.D.N.Y. 2018) (“[W]hile ‘entitlement holders of a securities intermediary . . . have a property interest in the financial assets held by the intermediary . . . incidents of this property are established by the rules of Article 8, not by common law property concepts.’”).

Because of Article 8’s clarity, ease of application and benefits to custodians and customers, financial asset elections of the sort implemented in the Relevant Agreements are widespread across the financial services industry.¹⁷ Although Prime Trust’s use of a financial asset election in the Relevant Agreements is thus by no means unique or unprecedented, the Plan Administrator’s request for relief very much is, and it threatens to cause severe disruption far beyond the confines of this case.

Intermediaries and their customers in a wide variety of markets, including securities, derivatives, physical commodities, insurance and other sectors, regularly leverage the flexibility of Article 8 to provide certainty and legal clarity regarding the nature of their relationships.¹⁸ Indeed, the world’s largest custodian, which custodies over \$80 trillion in assets, includes such an election in its rules.¹⁹ Similar elections appear in digital asset custody agreements, commodity brokerage agreements, securities custody agreements, agreements providing liquidity to the

¹⁷ See supra, note 6

¹⁸ See e.g., *id.*; see also *Custodial Services Agreement* (May 20, 2024) at Section 2(B), <https://www.sec.gov/Archives/edgar/data/2000046/000119312524151982/d759655dex103.htm> (accessed January 29, 2025) (containing a financial asset election for digital assets and cash custodied at custodian); *Securities Account Control Agreement* (November 14, 2023) at Section 4(e)(ii), <https://www.sec.gov/Archives/edgar/data/1131131/000092963823003105/exhibit4-6.htm> (accessed January 29, 2025) (treating all credit balances and property held in an account as “financial assets”).

¹⁹ See *The Depository Trust Company (DTC)*, <https://www.dtcc.com/about/businesses-and-subidiaries/dtc> (accessed January 29, 2025) (“DTC brings efficiency to the securities industry by retaining custody of more than 1.4 million active securities issues valued at US\$87.1 trillion, including securities issued in the US and more than 131 countries and territories.”) *Rules, By-Laws and Organization Certificate of the Depository Trust Company* (August 2023) at 15, https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf (accessed January 28, 2025) (defining “Security” as meaning “financial asset” within the meaning of the UCC and providing that “[a]ny item credited to an Account (by the act of being credited to the Account) shall be deemed a Security under these Rules and shall be treated as a financial asset under Article 8 of the NYUCC.”); *The Depository Trust Company Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures* (March 2023) at 76, https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf (accessed January 29, 2025) (“The DTC holding structure for interests in securities exemplifies the indirect holding system that has developed in the U.S., as reflected in Article 8 of the UCC.”).

insurance business,²⁰ clearinghouse rules,²¹ and other agreements. Granting the relief sought by the Motion would risk putting all of these agreements, businesses and their customers, in legal peril. For Prime Trust, a securities intermediary, to challenge or ignore the application of Article 8, is akin to an electrician seeking to rip out the wiring, not only from his own house, but from the nation's entire electrical grid.

Financial market participants depend on Article 8 not only to ensure that the assets they entrust to custodians will be properly recognized as outside of the custodian's estate, but also to leverage Article 8's other practical rules. These include rules allowing a good faith purchaser for value to take free of adverse claims and rules allowing secured parties to perfect security interests through control.²² These rules allow market participants to transfer assets readily and quickly to one another in ways that are vital in an active financial economy. In addition, intermediaries rely upon Article 8 as the basis for certain of their financial statements, as Section 8-503's clear and unambiguous text allows custodians to keep custodied assets off of their balance sheet and thereby provide an accurate representation of their assets and liabilities.²³

²⁰ See *Remarks of Sandra M. Rocks Cleary Gottlieb Steen & Hamilton LLP on the U.S. Commercial Law Response to the Development of Intermediated Securities Holding Systems* (October 27, 2006) at 4, <https://www.imf.org/external/np/seminars/eng/2006/mfl/sr.pdf> (accessed January 29, 2025) (“One current example of a non-traditional asset being treated as a financial asset is a life insurance policy. This approach has begun to appear in the ‘life settlement’ business, as investors seek to acquire and transfer interests in life insurance policies without the need to involve the insurer when changing ‘ownership’.”).

²¹ See *Options Clearing Corporation By-Laws* (January 21, 2025) at Article IX, Section 10(c), https://www.theocc.com/getmedia/3309eceb-56cf-48fc-b3b3-498669a24572/occ_bylaws.pdf (accessed January 29, 2025).

²² See, e.g., NRS §§ 104.8510, 104.8106, 104.9106; see also *Memorandum To The Futures Industry Association and The International Swaps And Derivatives Association, Inc. Regarding Futures and Options Transactions, Cleared Swaps and Foreign Futures Transactions Executed and Carried by Futures Commission Merchants for Their Customers* (November 17, 2021) at Section X (accessed January 29, 2025) (describing how cleared derivatives can be treated as financial assets for purposes of Article 8 and the relevant UCC rules required to perfect a security interest in a cleared derivative treated as a financial asset).

²³ Accounting Standards Codification § 860-10-40-5(a) (describing when a transfer of financial assets must be accounted for as a sale, including when such transfer involves assets beyond the reach of the powers of a bankruptcy trustee).

The effectiveness of Article 8 in providing legal certainty has not been limited to U.S. markets. Other jurisdictions, such as the United Kingdom and Canada, have looked to Article 8's flexible and practical rules to identify what changes they can make to their own laws.²⁴

In light of the prevalence of Article 8 financial asset elections and the market's general dependence on its simple and clear rules, granting the Motion's proposed relief would have detrimental consequences. It would introduce chaos across various markets, with harmful implications for customers and intermediaries alike. Customers that thought their assets were their own would need to begin treating their custodians as debtors, custodians might need to restate their financial statements, lenders might need to recall loans until they can file financing statements or take other perfection steps, and markets would need to slow processing times to allow comprehensive diligence for everyday asset transfers. In short, granting such relief would threaten the legal tenets that allow modern U.S. financial markets to function.

²⁴ See, e.g., *Financial Markets Law Committee Issue 3 – Property Interests in Investment Securities*, <https://fmlc.org/wp-content/uploads/2018/02/Issue-3-Background-paper-on-Article-8-of-the-Uniform-Commercial-Code.pdf> (accessed January 29, 2025); *Modernizing Securities Transfer Rules in Federal Statutes* (November 2007) at 7, <https://www.cba.org/CMSPages/GetFile.aspx?guid=051b0b36-ee9d-4907-a98d-ff894477211c> (accessed January 29, 2025) (noting that the adoption of the Canadian Securities Transfer Act was “closely modelled on Article 8”).

CONCLUSION

For the foregoing reasons, the Court should deny the Plan Administrator's Motion or, in the alternative, order supplemental briefing on the issues raised in this Response.

Dated: February 5, 2025
Wilmington, Delaware

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brett M. Haywood, do hereby certify that on February 5, 2025, I caused a copy of the foregoing **Motion of Coinbase for Leave to File an Amicus Response to the Plan Administrator's Motion for Entry of an Order Approving the Plan Administrator's Determination that the Debtors' Assets Are Property of the Bankruptcy Estates** to be served on the parties listed on the attached service list in the manner indicated.

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