STATE OF NEW YORK

8364

IN SENATE

January 22, 2024

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law and the financial services law, in relation to limited purpose trust companies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The banking law is amended by adding a new article 3-C to read as follows:

ARTICLE 3-C

LIMITED PURPOSE TRUST COMPANIES

Section 156. Limited purpose trust company creation.
157. Application to commence operation as a limited purpose trust company.
158. Limited purpose trust company operation.
159. Special provisions relating to digital assets.

§ 156. Limited purpose trust company creation. 1. If the superintendent shall find that a trust company has met the conditions of this article, and has in good faith complied with all other requirements of law and fulfilled all conditions precedent to commencing business as a limited purpose trust company pursuant to this article, the superintendent shall promptly issue and execute under the official seal of the department, in triplicate, an authorization certificate to the person or persons named in such organization certificate.

2. Such authorization certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that a limited purpose trust company has been formed under this article, except in an action or special proceeding brought by the superintendent or the attorney general. The superintendent shall cause one of the triplicate authorization certificates to be transmitted to such limited purpose trust company, one to be filed in the office of the department, and one to be filed in the county clerk's office of the county in which such organization certificate has been filed. The copies of the authorization certificate filed in the offices of the superintendent and the county clerk shall be attached to the previously filed copies of the organization certificate

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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and such certificates shall be recorded in the records of incorporation therein.

3. Any limited purpose trust company which does not commence business as such within six months after the date on which its authorization certificate is issued by the superintendent pursuant to subdivision one of this section shall forfeit such trust company's rights and privileges as a limited purpose trust company and corporate powers shall cease and desist, unless the time within which such business may be commenced has been extended by the superintendent. The superintendent may grant one or more such extensions upon satisfactory cause being shown. Such extension shall be granted by order executed, transmitted, and filed in the manner provided for an authorization certificate pursuant to subdivision one of this section.

§ 157. Application to commence operation as a limited purpose trust company. 1. The superintendent shall establish by regulation the form of an application for any corporate entity to operate as a limited purpose trust company, provided that such entity meets all other requirements of this article.

2. The superintendent shall conduct an investigation of the application, including an assessment of the character and fitness of the members of the board of directors and the management of the proposed limited purpose trust company.

3. The name of the limited purpose trust company shall contain the words "trust company" as part of its corporate name and any doing business as designation filed with the department. The superintendent shall be authorized to establish other guidelines on the suitability of certain names of limited purpose trust companies, and deemed to be necessary and appropriate.

4. (a) Any limited purpose trust company shall be organized in the state of New York, and shall have a board of directors of no fewer than three individuals. Any member of the board of directors shall be subject to a review of their character and fitness to serve as a member of such board. Such limited purpose trust company shall designate a president or chief executive officer, a secretary, and a general counsel which shall all be subject to review by the department for suitability to serve in their fiduciary roles.

(b) The limited purpose trust company shall describe its intended business plan, including the type or types of fiduciary activities to be undertaken and whether any trust assets are to be offered. Such limited purpose trust company shall provide a statement summarizing the proposed market and target customers to the department for approval, including financial projections for the first three years of such company's operation and all relevant assumptions upon which such projections are based.

5. (a) Each member of the board of directors and members of senior management and major shareholders shall provide fingerprints to be verified against the criminal history database maintained by the division of criminal justice services.

(b) Each member of the board of directors, major shareholders, and members of senior management that proposes to contribute capital to the limited purpose trust company by purchasing stock of such trust company shall submit financial information to the department.

(c) An organization chart shall be included in an application to the department to operate as a limited purpose trust company, which shall outline the roles and responsibilities of the senior management of such trust company.

(d) The department shall develop a questionnaire to determine the suitability of any individual to serve as a member of the board of directors or hold any other key position in a limited purpose trust company.

(e) The plan of operations of the limited purpose trust company shall be provided to the department, which shall include the operating procedures of the legal, accounting, investment, and recordkeeping functions of such trust company and information regarding any plans to obtain related services from outside sources.

(f) (i) Major shareholders shall be identified to the department. If an individual's ownership interest constitutes statutory control by constituting twenty-five percent or more of the proposed limited purpose trust company's capital stock, then certified public accountant-prepared and reviewed financial statements may be provided in lieu of audited financial statements. Any corporation, or limited liability company, which is a major shareholder, shall disclose the individual owners of such entity to the department.

(ii) For the purposes of this paragraph, a "major shareholder" shall mean any individual or corporate entity owning or controlling twenty-five percent or more of the proposed trust company's capital stock.

(g) A limited purpose trust company shall provide evidence of minimum primary coverage of one million dollars. A bond or other surety may be acceptable, at the discretion of the department.

(h) The number of shares to be issued and par value for such shares shall be included in an application to operate as a limited purpose trust company.

(i) If a trust company is a subsidiary of another corporate entity, then a description of the type of business conducted by the parent company, and biographical information on each of its owners and directors, including any entities which have ownership interests of five percent or more of such parent company, shall be provided to the department. Audited financial statements of such parent company shall be provided to the extent they are available. A stipulation of financial surety may be required from such limited purpose trust company by such parent company, in an amount to be determined by the superintendent.

§ 158. Limited purpose trust company operation. 1. Any limited purpose trust company shall receive a certificate of authority prior to offering any fiduciary services pursuant to section one hundred fifty-six of this article. Any transfer of the majority of the assets of such limited purpose trust company, or any merger, shall require the approval of the superintendent.

2. Any limited purpose trust company shall submit its plans for internal audit and control to the department for approval. Such plans shall include, but not be limited to, a policy for internal controls, a relationship with a full-time auditor, engagement with a certified public accountancy firm for a periodic external audit, and maintenance of a conflict-of-interest policy.

3. (a) Any limited purpose trust company shall establish policies and procedures for compliance with the bank secrecy act, and exercise reasonable diligence regarding opening and maintaining every account, in order to know and retain the essential facts concerning every customer, and the authority of each person acting on behalf of such customer.

(b) (i) For the purposes of this subdivision, "essential facts" include those required to:

(A) effectively service the customer's account;

(B) act in accordance with any special handling instructions for the account;

(C) understand the authority of each person acting on behalf of the customer; and

(D) comply with applicable state and federal laws and regulations.

(ii) Any customer for which a limited purpose trust company has performed the reasonable diligence required pursuant to subparagraph (i) of this paragraph shall be a known customer of such trust company.

4. Any limited purpose trust company shall develop and maintain policies and procedures designed to monitor and prevent fraud and mismanagement, which shall include independent accounting, auditing, and operational controls.

5. (a) Any limited purpose trust company shall seek the approval of the department prior to offering a materially new product, service, or business to the public, and shall provide the superintendent with a description and risk assessment of the proposed product, service, or business.

(b) The superintendent shall promptly review a request by a limited purpose trust company to approve a new product, service, or business provided by a limited purpose trust company pursuant to paragraph (a) of this subdivision, and approve or disapprove such proposed product, service, or business within one hundred eighty days of receiving such request. An application shall be promulgated by the department to facilitate such requests. Any denial of such request for approval by a proposed trust company shall be reviewable upon application before a judge in a court of competent jurisdiction. Any request to approve a new product, service, or business made pursuant to this subdivision which is not approved or disapproved by the superintendent within one hundred eighty days of receipt of such request shall be deemed approved.

(c) Provided that a request by a limited purpose trust company for approval of a new product, service, or business has been granted by the superintendent or deemed approved, no further approval is required to provide the same product, service, or business to additional customers, whether such customers reside in or outside of New York state.

§ 159. Special provisions relating to digital assets. 1. (a) Each limited purpose trust company shall be required to maintain digital currency in an amount and form as the superintendent deems necessary and appropriate to ensure the financial integrity and ongoing operations of such trust company, as based on an assessment of the specific risks applicable to each such trust company, including operational risk, liquidity risk, and management risk.

(b) The amounts of digital currency may be held by a limited purpose trust company in the form of: cash, virtual currency, precious metals, or other high quality, highly liquid, investment grade assets, in such proportions as the superintendent deems appropriate.

(c) An asset held in trust for a customer by a limited purpose trust company, or a stablecoin, if it is issued pursuant to the superintendent's approval and regulatory requirements, shall not be required to be separately capitalized by such trust company.

2. It shall be prohibited for any limited purpose trust company to act as, employ, or otherwise use the services of any proprietary trading agent in violation of its fiduciary obligations to its customers. No limited purpose trust company shall engage in activity which constitutes prearranged trading, wash trading, market manipulation, or insider trading.

3. (a) For the purposes of this article, an asset held in trust by a limited purpose trust company shall include any digital asset which is a stablecoin backed by United States dollars, or an asset-backed token which is a token for which a fixed unit of an underlying asset is held by such trust company. To qualify as a stablecoin, a ratio equal to 1.0 or greater in cash or cash equivalent must be maintained and the issuer shall manage any liquidity risk therein.

(b) For the purposes of this subdivision, "cash equivalent" shall mean:

(i) U.S. treasury bills acquired by the issuer three months or less from the respective maturities of such U.S. treasury bills;

(ii) reverse repurchase agreements fully collateralized by U.S. treasury bills, U.S. treasury notes, and/or U.S. treasury bonds on an overnight basis, subject to department requirements concerning overcollateralization. Such reverse repurchase agreements shall be either (A) tri-party or (B) bilateral with a counterparty that the issuer has found to be adequately creditworthy and whose identity has been submitted to the department in writing, without objection, together with the issuer's credit assessment, at least fourteen days prior to the commencement of a contract between such issuer and such counterparty;

(iii) U.S. government money-market funds, subject to department caps on the fraction of reserve assets to be held in such funds and department restrictions on such funds, which may include, but shall not be limited to, a minimum percentage allocation to direct obligations of the U.S. government and reverse repurchase agreements on such obligations; or

(iv) deposit accounts at U.S. state or federally chartered depository institutions, subject to department restrictions which may include, but shall not be limited to, (A) percentage-of-reserve or absolute-dollar-value caps on the assets to be deposited at any given depository institution and (B) limitations based on the department's conclusions concerning the risk characteristics of particular depository institutions, which shall take into consideration the amounts reasonably necessary to be held at depository institutions in order to meet anticipated redemption demands.

(c) In order to qualify as an asset-backed token, each unit of digital currency must be backed by a fixed unit of an underlying asset which is held by a limited purpose trust company. Such underlying asset may include, but shall not be limited to, precious metals or currency of another country.

(d) Stablecoins and asset-backed tokens held by a limited purpose trust company shall be redeemable within two full business days of a timely request from a depositor.

(e) A certified public accountant shall audit the account reserves of any limited purpose trust company on a monthly basis and verify that the required proportion of assets and segregation of such assets is maintained.

(f) Such reserved amounts held by a limited purpose trust company shall be subject to an annual audit from an independent certified public accountant.

(g) Any documents related to such reserves and backing of any issued stablecoin or asset-backed token held by a limited purpose trust company shall be produced upon request by the department.

4. (a) Upon application to the department, any limited purpose trust company shall be authorized to issue any stablecoin or asset-backed token which meets the regulatory requirements of this article. Such

application shall be made in a form and manner to be proscribed by the department. The department, in evaluating such application, shall authorize limited purpose trust companies to issue any digital asset if such trust company demonstrates to the department that such trust company has the requisite expertise, experience, and capability to issue such stablecoin or asset-backed token in a manner that will comport with the policy considerations contained in section ten of this chapter. For any other asset-backed token issuance, the superintendent shall similarly review and approve a limited purpose trust company to issue such asset-backed token. For any issuance authorized pursuant to this paragraph such, the superintendent shall conduct a review of any offering documents, or other information used for marketing such currency prior to it being offered to any consumer entity.

(b) A limited purpose trust company may list and hold in its custody any stablecoin or asset-backed token meeting the regulatory requirements of this article upon submission to the department of a certification, on a form to be provided by the department for such purpose, provided that the superintendent has reviewed and approved the issuance of such stablecoins or asset-backed tokens.

(c) The superintendent may, in his or her discretion, place any virtual currency on a list of accepted virtual currencies, which shall be published on the department's website.

(d) All applications by a limited purpose trust company to issue any stablecoin or asset-backed token shall be filed on a form prescribed by the superintendent. Any such application shall be either approved or disapproved by the department within one hundred eighty days of such filing. If the department has not disapproved such application within one hundred eighty days of such filing, it shall be deemed approved. Any disapproval of such application shall be reviewable in a court of competent jurisdiction.

(e) Provided that a limited purpose trust company is exercising reasonable diligence in its opening of accounts, as required by subdivision three of section one hundred fifty-eight of this article, no further review or approval shall be required for the sale or transfer of any virtual currency to any known customer once such initial sale or transfer has been approved by the superintendent.

(f) Encryption and data protection measures relative to virtual currency shall be reviewed and approved by the department as part of the department's review of an application by a limited purpose trust company to issue any stablecoin. The department shall promulgate requirements for data protection and encryption standards related to virtual currency.

5. The superintendent shall, where it has investigated and determined that the requirements of another state's laws are substantially equivalent to those of New York state, accept the license or approval of any digital asset or virtual currency issued by such other state, or authorize the doing business of any limited purpose trust company formed under a regulatory framework that is substantially equivalent to this article.

6. (a) Customers of a limited purpose trust company shall be recognized as the owners of funds, deposits, and assets they have placed in custody with such limited purpose trust company and such funds, deposits, and assets shall not constitute the property of such limited purpose trust company in a bankruptcy, receivership, or other dissolution, as applicable.

(b) The superintendent may review a limited purpose trust company's use of contract terms to ensure compliance with paragraph (a) of this subdivision.

(c) Any limited purpose trust company shall develop written policies that are designed to track, trace, and return customer funds, deposits, and assets to their proper owner, including, where relevant, to the holders of record, to the greatest extent possible, in the event of bankruptcy, receivership, or other dissolution, as applicable.

§ 2. Section 301 of the financial services law is amended by adding 2 new subsections (d) and (e) to read as follows:

(d) A violation of article twenty-two-A of the general business law shall constitute a violation of this chapter and a violation of the banking law. Nothing herein shall infringe on the authority of the department of law to investigate or oversee the sale or transfer of securities as provided in article twenty-one-A of the general business law. An action shall not be maintained against an entity regulated under the banking law by the attorney general unless referred thereto by the superintendent.

(e) Any out of state entity which has been granted reciprocity under this provision shall remain in good standing at all times in its state of licensure. Any suspension, revocation or termination of such licensure shall apply as if levied in New York state. The superintendent shall issue regulations to implement the provisions of this subsection.

§ 3. The opening paragraph of subdivision 1 of section 9-c of the banking law, as added by chapter 849 of the laws of 1964, is amended to read as follows:

The superintendent or the attorney-general may bring an action for the dissolution of a corporation formed under any article of this chapter or formed under any other statute or special act having as its purpose or among its purposes a purpose for which a corporation, except for a limited purpose trust company formed pursuant to article 3-C of this chapter, may be formed under this chapter upon one or more of the following grounds:

§ 4. Section 606 of the banking law is amended by adding a new subdivision 7 to read as follows:

7. For the purposes of this section, the superintendent shall not liquidate the trust assets of a limited purpose trust company which holds amounts in reserve for an asset-backed token, including stablecoin, before making a determination of whether such amounts are safeguarded from fraud, waste, or abuse. If such amounts are not determined to be at risk, such amounts may continue to be held in the name of the superintendent, or a receiver deemed appropriate by the superintendent to administer such amounts, and such funds shall not be made a part of any estate in bankruptcy. Any customer of such limited purpose trust company shall be able to transfer the amount held in trust or redeem such amounts of a stablecoin or asset-backed token as they deem appropriate. Notwithstanding the provisions of this subdivision, nothing herein shall prevent the superintendent from proceeding against accounts and property not held in trust. The accounting treatment of the amounts held in such accounts shall not be determinative of whether such amounts are fiduciary assets.

§ 5. Subdivision 1 of section 617 of the banking law, as amended by chapter 259 of the laws of 1986, is amended to read as follows:

1. The superintendent may, after he has taken possession of any banking organization, cause to be mailed to each person claiming to be, or appearing upon the books of such banking organization to be

(1) the owner of any personal property in the custody or possession of such banking organization as bailee or depositary for hire or otherwise, including the contents of any safe, vault or box theretofore opened for non-payment of rental in accordance with the provisions of this chapter, **which shall include any amounts held in trust for a customer, including a stablecoin issued or held and other trust assets held by a limited purpose trust company,** or

(2) the lessee of any safe, vault or box, a notice in writing directed by registered mail to such person at his last address as the same appears on the books of such banking organization or at his last known address if no address appears on such books, notifying such person to remove all such property or the contents of any such safe, vault or box, within a period stated in said notice, which period shall be not less than sixty days from the date of such notice, and further notifying such person of the terms and provisions of this section. The contract of bailment or of deposit for hire, or lease of safe, vault or box, if any, between the person to whom such notice is mailed and such banking organization shall cease and determine upon the date for removal fixed in such notice. Such person shall have a claim against such banking organization for the amount of the unearned rent or charges, if any, paid by such person from the date fixed in such notice, if the property or contents is removed on or before such date, or from the date of actual removal, if the property or contents is removed after such date.

As used herein the phrase "personal property in the custody or possession of such banking organization as bailee or depositary for hire or otherwise" shall include, without limitation, securities, whether held in custody directly or in book-entry form by such banking organization, its nominee, subcustodian, clearing corporation or similar entity**, and any trust assets held by a limited purpose trust company**.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.