

No. 24-8024

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**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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CUSTODIA BANK, INC.,  
*Plaintiff-Appellant,*

v.

FEDERAL RESERVE BOARD OF GOVERNORS;  
FEDERAL RESERVE BANK OF KANSAS CITY,  
*Defendants-Appellees.*

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On Appeal from the United States District Court for the District of Wyoming, No. 1:22-cv-00125-SWS, Hon. Scott W. Skavdahl

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**UNOPPOSED JOINT MOTION FOR LEAVE TO  
FILE SUPPLEMENTAL JOINT APPENDIX VOLUMES  
IV, V, AND VI UNDER SEAL BY APPELLEES  
FEDERAL RESERVE BANK OF KANSAS CITY AND  
FEDERAL RESERVE BOARD OF GOVERNORS**

Pursuant to Federal Rule of Appellate Procedure 27 and Tenth Circuit Rule 25.6, Appellees Federal Reserve Bank of Kansas City (“FRBKC”) and the Board of Governors of the Federal Reserve System (“the Board”) respectfully submit this Unopposed Motion for Leave to File Supplemental Joint Appendix Volumes IV, V, and VI Under Seal.

The Joint Appendix previously filed by appellant Custodia Bank, Inc. contains items that were filed under seal in the district court pursuant to a protective order requiring confidential treatment of

designated information. *See* Custodia’s Motion to Seal, Exhibit 1 (June 26, 2024). Custodia’s motion to file those documents under seal—which FRBKC and the Board did not oppose—was provisionally granted by this Court. *See* Custodia’s Motion to Seal (June 26, 2024); Order Provisionally Granting Custodia’s Motion (June 27, 2024).

FRBKC and the Board intend to file a Supplemental Joint Appendix that contains additional items that were filed under seal in the district court. Just as Custodia moved for leave to file under seal certain volumes of the Joint Appendix that contained documents filed under seal below, FRBKC and the Board now move for leave to file under seal certain volumes of the Supplemental Joint Appendix that contain documents filed under seal below. FRBKC conferred with counsel for Custodia, who stated that Custodia does not intend to oppose this motion.

At the district court level, the parties relied on the protective order to collaborate on targeted confidentiality assertions for certain exhibits that the parties then filed under seal. No objections were filed in the district court to the sealing of any of these documents, and the district court granted each limited request by the parties to seal certain

information. *See, e.g.*, ECF Nos. 125, 128, 179, 180, 192, 193, 203, 204, 212, 213, 229, 232, 265, 266, 288, 290, 304, & 306.

The reasons that supported the sealing of these documents below continue to apply and warrant allowing them to be filed under seal in this Court as well. *See Luo v. Wang*, 71 F.4th 1289, 1304 (10th Cir. 2023) (“Although ‘this court is not bound by a district court’s decision to seal a document,’ 10th Cir. R. 25.6(A)(4), we are persuaded by the district court’s reasoning in doing so.”). Certain of the sealed documents at issue contain confidential information relating to Custodia that is competitively sensitive. Other sealed documents reflect internal, confidential guidance and/or work product used by FRBKC or the Board to perform sensitive and important functions.

Documents may be sealed if the presumptive right to access “is outweighed by the interests favoring nondisclosure.” *United States v. McVeigh*, 119 F.3d 806, 811 (10th Cir. 1997). Courts regularly permit sealing of the types of sensitive information at issue here. *See* Fed. R. Civ. P. 26(c)(1)(G) (“A trade secret or other confidential research, development, or commercial information” is subject to the courts’ protection.); *see also Luo*, 71 F.4th at 1304 (noting that “confidential

business records are examples of the types of private information this court has allowed to be sealed”); *Siegel v. Blue Giant Equip. Corp.*, No. 18-5113, 2019 WL 5549331, at \*5 (10th Cir. Oct. 28, 2019) (same); *ClearOne Commc’ns, Inc. v. Chiang*, 617 F. App’x 862, 867 (10th Cir. 2015) (granting motion to seal brief and appendix); *Sorenson Commc’ns, Inc. v. FCC*, 659 F.3d 1035, 1041 n.4 (10th Cir. 2011) (making permanent provisional seal of briefs and portion of appendix when “materials were filed under seal to protect confidential information relating to [company’s] finances and business practices”).<sup>1</sup>

As Custodia did with the sealed documents in the Joint Appendix, FRBKC and the Board will file public redacted versions of the sealed documents contained in the Supplemental Joint Appendix where such redacted public versions were filed below. The filing of such public redacted versions where practicable will minimize the impact on public access. Under these circumstances, the interest in protecting the parties’ confidential information outweighs the public interest in viewing

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<sup>1</sup> As noted, many of the documents at issue contain information that Custodia sought to file under seal to avoid unwarranted competitive harm, and by this motion FRBKC and the Board seek to ensure that Custodia’s confidentiality designations below continue to be honored, in addition to their own.

documents that are “unnecessary to the determination of the parties’ substantive rights.” *Deherrera v. Decker Truck Line, Inc.*, 820 F.3d 1147, 1162 n.8 (10th Cir. 2016).

For these reasons, this Court should grant Appellees’ Unopposed Motion for Leave to File Supplemental Joint Appendix Volumes IV, V, and VI Under Seal.

Dated: August 28, 2024

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2024, the foregoing was electronically filed with the Clerk of Court for the United States Court of Appeals for the Tenth Circuit by suing the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*/s/ Jeffrey S. Bucholtz* \_\_\_\_\_  
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