

VOLUME IV of VI (S.J.A.552 – S.J.A.779)

No. 24-8024

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

CUSTODIA BANK, INC.,

Plaintiff-Appellant,

v.

FEDERAL RESERVE BOARD OF GOVERNORS;
FEDERAL RESERVE BANK OF KANSAS CITY,

Defendants-Appellees.

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

**APPELLEES' SUPPLEMENTAL
JOINT APPENDIX**

-- REDACTED --

Mark Van Der Weide
Richard M. Ashton
Joshua P. Chadwick
BOARD OF GOVERNORS
OF THE FEDERAL
RESERVE SYSTEM
20th Street &
Constitution Avenue NW
Washington, DC 20551
(202) 263-4835
joshua.p.chadwick@frb.gov

Jeffrey S. Bucholtz
KING & SPALDING LLP
1700 Pennsylvania Avenue NW
Washington, DC 20006
(202) 737-0500
jbucholtz@kslaw.com

*Counsel for Defendant-Appellee
Federal Reserve Bank of Kansas
City*

*Counsel for Defendant-Appellee
Board of Governors of the
Federal Reserve System*

August 30, 2024

(Additional counsel listed on inside cover)

Yvonne F. Mizusawa
Yonatan Gelblum
Katherine Pomeroy
BOARD OF GOVERNORS
OF THE FEDERAL
RESERVE SYSTEM
20th Street &
Constitution Avenue NW
Washington, DC 20551
(202) 263-4835

*Counsel for Defendant-
Appellee Board of Governors of
the Federal Reserve System*

Billie LM Addleman
Erin E. Berry
HIRST APPLGATE, LLP
PO Box 1083
Cheyenne, WY 82003
(307) 632-0541

Andrew Z. Michaelson
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036
(212) 556-2100

Christine M. Carletta
E. Caroline Freeman
KING & SPALDING LLP
1700 Pennsylvania Avenue NW
Washington, DC 20006
(202) 737-0500

Jared Lax
KING & SPALDING LLP
1401 Lawrence Street
Suite 1900
Denver, CO 80202
(720) 535-2300

*Counsel for Defendant-Appellee
Federal Reserve Bank of Kansas
City*

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**CERTIFICATE OF DIGITAL SUBMISSION
AND PRIVACY REDACTIONS**

Under the court's CM/ECF User's Manual, I certify that:

1) all required privacy redactions have been made per 10th Cir. R. 25.5;

2) hard copies of this appendix that may have to be submitted are exact copies of the ECF filing; and

3) the ECF submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Microsoft Defender and, according to the program, is free of viruses.

Date: August 30, 2024

/s/ Jeffrey S. Bucholtz
Jeffrey S. Bucholtz

*Counsel for Federal Reserve
Bank of Kansas City*

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2024, a copy of the foregoing was filed with the Court through the ECF system, which provides electronic service of the filing to all counsel of record who have registered for ECF notification in this matter.

/s/ Jeffrey S. Bucholtz
Jeffrey S. Bucholtz

*Counsel for Federal Reserve
Bank of Kansas City*

**Redacted ECF No. 274-15
FRBKC Summary Judgment Ex. 15
Credit & Risk Management PSR Unit Procedures
Manual (effective June 2019)**

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In accordance with a protective order, the enclosure(s) shall be treated as confidential and shall not be shown to any person other than those persons designated in paragraph 8.2 of the paragraph order.

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**Redacted ECF No. 274-22
FRBKC Summary Judgment Ex. 22 – Avanti Financial
Group Business Plan (Aug. 4, 2021)**

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**Redacted ECF No. 274-24
FRBKC Summary Judgment Ex. 24 – Avanti Financial
Group Presentation (May 2021)**

PROVISIONALLY FILED UNDER SEAL

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Redacted ECF No. 274-27
FRBKC Summary Judgment Ex. 27 – Pre-Membership
Examination Summary Conclusions (Nov. 2, 2022)

PROVISIONALLY FILED UNDER SEAL

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**Redacted ECF No. 274-33
FRBKC Summary Judgment Ex. 33 –
Avanti Financial Group’s Application to Open and
Maintain a Master Account (Oct. 29, 2020)**

PROVISIONALLY FILED UNDER SEAL

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EXHIBIT 35

CONFIDENTIAL

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CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF WYOMING

CUSTODIA BANK, INC.,)
)
Plaintiff,)
)
v.)
) 1:22-cv-00125-SWS
FEDERAL RESERVE BOARD)
OF GOVERNORS AND)
FEDERAL RESERVE BANK OF)
KANSAS CITY,)
)
Defendants.)

* DESIGNATED CONFIDENTIAL *
* SUBJECT TO A PROTECTIVE ORDER *

DEPOSITION OF ROSS CROUCH, a Witness,
taken on behalf of the Plaintiff before Peggy E.
Corbett, CSR, CCR, RDR, pursuant to Notice on the
25th day of October, 2023, at the offices of the
Federal Reserve Bank of Kansas City, 1 Memorial
Drive, Kansas City, Missouri 64198.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 6

1 until I finish my question, and your counsel may
2 still have an objection, and wait until that
3 happens and then answer.

4 And also I'll try not to interrupt you
5 as you're answering my question, okay?

6 A. Okay.

7 Q. And we also plan to take a break about
8 every hour, but if you need to take a break
9 earlier than that for any reason, we're happy to,
10 as long as if there's a pending question, answer
11 that, and then ask to take a break, okay?

12 A. Okay.

13 Q. So I just want to start with your
14 personal background. Where are you from?

15 A. I live in Kansas City. I'm from
16 St. Joseph, Missouri.

17 Q. Okay. And what is your educational
18 background?

19 A. I have a Bachelor's degree from
20 Northwest Missouri State University in finance
21 and accounting.

22 Q. Okay. Did you go to graduate school at
23 all?

24 A. I did not. I also have a CPA license,
25 too, but I did not go to graduate school.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 7

1 Q. Okay. And when did you graduate from
2 college?

3 A. 2006.

4 Q. And what has your work history been
5 since 2006?

6 A. I was hired at the Federal Reserve as a
7 bank examiner, assistant bank examiner straight
8 out of college, and I've worked here for 18 years
9 or close to 18 years.

10 Q. In Kansas City the entire time?

11 A. Yeah, in Kansas City.

12 Q. And how has your role changed over the
13 course of your time here at the Kansas City
14 Federal Reserve?

15 A. So I started as an assistant bank
16 examiner and then there's a commissioning process
17 to become a commissioned bank examiner, so over
18 the course of four years after I graduated from
19 college I went through this training and
20 commissioning process to become a commissioned
21 bank examiner. And in that role, both assistant
22 and as a commissioned examiner, I've reviewed
23 safety and safety and soundness of banks that we
24 supervise. I examine banks.

25 Q. So what is your current title?

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 8

1 A. Lead examiner.

2 Q. So does that mean that you're leading a
3 large team of more junior examiners?

4 A. So for a given exam, yeah, I may be -- I
5 most often am in a leadership role where I will
6 lead a team of examiners. They are not all
7 necessarily junior examiners, and a lot of them
8 are peers.

9 Q. And how would you describe what a bank
10 examiner does?

11 A. So we examine the safety and soundness
12 of banks and holding companies that we supervise,
13 so the financial condition, risk management
14 practices, that's generally.

15 Q. So are you examining things that are
16 applying to become members or for master accounts
17 or for banks that already have those things and
18 you examine them on an on-going basis?

19 A. So primarily we examine banks that we
20 supervise, so those would be State-member Federal
21 Reserve member banks that don't have an
22 application.

23 Now but we also, and I'm involved in
24 that, too, if a bank applies for Fed membership,
25 we do either a -- it can be called a risk review

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 9

1 or a pre-membership exam, but we also would
2 review the safety and soundness of the bank as a
3 pre-membership exam, and then that would -- that
4 information would ultimately inform or help the
5 applications examiners kind of make a decision on
6 a membership application.

7 Q. Do you also review banks that are
8 applying for master accounts?

9 A. Traditionally in examinations and
10 inspections, my role is not to review banks that
11 are applying for master accounts.

12 Q. And why is that? Does someone else do
13 that?

14 A. Yeah, there's a different department,
15 credit risk reserves management, or CRRM, I might
16 refer to them as that, they do the analysis for
17 making a determination for a master account
18 request.

19 Q. Okay.

20 A. And that's a separate process from a
21 membership application.

22 Q. Does that department also have bank
23 examiners?

24 A. They have -- yeah, they do have some
25 people that have gone through the commissioned --

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 39

1 A. Yes, Albert Forkner.

2 Q. And what was the scope of those
3 conversations that you had with him?

4 A. We had an initial conversation to just
5 clarify questions that we had about the SPDI
6 charter, and then we might have asked for some
7 updates on Avanti at the time, kind of where
8 things were there. We had an initial discussion
9 with the intention to have more, and we just had
10 the first discussion there in that initial 2020
11 review.

12 We met once with, I was involved in one
13 other meeting with Jeremiah in 2022. That would
14 have been prior to the pre-membership exam.

15 Q. So why were you meeting with Albert
16 Forkner? You said before you did the
17 pre-membership exam?

18 A. That was when he was still a
19 commissioner, and that was in the end of -- it
20 was at the very end of 2021 or early 2022.

21 Q. And what prompted that meeting? Was
22 it -- were you doing a pre-membership exam or
23 what prompted the meeting?

24 A. So at the end of 2021 we were doing a
25 risk review, and trying to get updates on, you

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 40

1 know, looking at materials that both Custodia
2 provided, additional materials -- or Avanti at
3 the time provided additional materials that we
4 requested to make a determination of kind of next
5 steps on how to examine the bank or Custodia.

6 Q. So what's the difference between a risk
7 review and a pre-membership review?

8 A. I'm probably using those words. So
9 there's a pre-membership exam. The nature of
10 those reviews that we did the end of 2021, and
11 the one we did in 2022 was different, but I'm
12 probably using those terms somewhat
13 interchangeably here.

14 Q. How were those reviews in 2021 different
15 in your view with regard to Custodia?

16 A. So in 2021 Custodia was -- you know, we
17 had a business plan, we had some policies and we
18 had some capital. They were very early in the
19 processing.

20 So that first review that Rob led and
21 that I -- Rob Triano led, and that I assisted
22 with, had, the output of that review probably had
23 a little more risk review, summary results that
24 were intended to help CRM with their analysis.

25 So there was consideration given to some

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1 of the draft principles. The 2022 review, at
2 that time we had with an examiner that was
3 assigned as kind of a liaison for CRM to help
4 interpret, her name is Andrea Mullins, to help
5 interpret the examination results for CRM's
6 analysis for the master account.

7 So that exam, the one that was connected
8 in 2022, the thinking was Custodia is more
9 mature, they asked for the pre-membership exam,
10 so we went in and conducted that with more of a
11 view of: "This is going to inform the membership
12 request, with the understanding that the results
13 would also be interpreted by Andrea and used for
14 CRM's analysis for the master account, so that's
15 how they do differ.

16 Q. So let's start with the 2021 risk review
17 that you did. Do you recall when you conducted
18 that?

19 A. It would have been primarily in
20 December, I think. It went into January.

21 Q. And you said that that was -- was that
22 primarily for CRM to assess Custodia's master
23 account application?

24 A. It was both, but it had more of that --
25 the output of that was intended to help CRM think

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1 through the master account, but it was also, the
2 membership -- there was a membership application
3 in place, and Examinations and Inspections is a
4 separate department. We were thinking through,
5 using that risk review to think through what are
6 the next things we need to look at in order to
7 make sure that we have an effective
8 pre-membership exam for purposes of kind of
9 informing the membership application.

10 Q. And had you ever done a risk review
11 where the primary purpose was for CRM to assess
12 the master account before this one --

13 MS. CARLETTA: Objection, form.

14 Q. (BY MS. WEINBERGER) -- you did for
15 Custodia?

16 A. So Rob Triano led this. It really
17 wasn't intended to inform both. The output for
18 a -- to help inform the master account was
19 somewhat unique because Custodia was unique in --
20 their risk profile was unique and this approach
21 was taken because Avanti at the time was
22 immature. It was a business plan. It was
23 capital, some draft policies, and, you know, not
24 near mature enough to open, which influenced how
25 the output would look.

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1 Q. So for this exam that you did in late
2 2021, early 2022, did you have any communication
3 with Board staff in regard to that exam?

4 A. No, I had none.

5 Q. Are you aware of anyone having
6 communication with Board staff?

7 A. I'm not aware.

8 Q. And do you recall your conclusions from
9 that exam as to whether you thought it was likely
10 Custodia might be granted a master account?

11 MS. CARLETTA: Objection, form.

12 A. So I don't conduct the master account
13 analysis, so the conclusions that we drew from
14 that exam were, "What do we need to do next from
15 an exam standpoint?"

16 There were no recommendations either for
17 or against a master account made or membership
18 made as a result of that review from either I or
19 other examiners.

20 Q. (BY MS. WEINBERGER) And as a result of
21 this risk review that you did in late 2021, early
22 2022 do you recall your assessment of whether the
23 risks you identified in Custodia could be
24 addressed by Custodia?

25 A. So this would be the risk review in

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1 2021?

2 Q. Right.

3 A. The focus of that review was pretty
4 narrow, because of what there was to review at
5 the time, so there weren't a lot of issues to
6 identify because there just wasn't a lot to
7 review, so I am not sure I can answer that either
8 way.

9 Q. Do you recall an impression or feeling
10 at that time that the risks that you were
11 identifying could be addressed by Custodia, if
12 you continued to work with Custodia?

13 MS. CARLETTA: Objection, form.

14 A. So again, the 2021/2022 review, there
15 just wasn't enough to review at that time to make
16 an assessment on what risks still needed to be --
17 there was so much that needed to be addressed
18 that it was -- it would have been premature to
19 have conclusions that could have gone either, you
20 know, been stuff that we would have known, and
21 that could have been addressed by Custodia, or
22 not, at that 2021/2022 period.

23 Q. (BY MS. WEINBERGER) Do you recall any
24 red flags during that early review that, you
25 know, made you pause or think that you weren't --

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1 you know, that the bank wasn't going to -- it was
2 going to either deny the master account
3 application, or this was just going to be too
4 risky to go forward?

5 MS. CARLETTA: Objection, form.

6 A. Based on my review, do I recall any red
7 flags?

8 Q. (BY MS. WEINBERGER) At that time in
9 December of 2021.

10 A. I don't recall either way.

11 Q. Okay. So you do not recall any red
12 flags that arose out of the December of 2021,
13 January 2022 review that you did?

14 MS. CARLETTA: Objection, misstates
15 testimony.

16 A. So any red flags related to --

17 Q. (BY MS. WEINBERGER) The risks posed by
18 Custodia.

19 A. I mean we had items that we communicated
20 to Custodia as feedback, as a result of their
21 review. Again, they weren't mature enough to do
22 a full assessment as to whether or not a
23 determination relative to what kind of
24 deficiencies might exist at that time that can or
25 cannot be corrected. It was too premature to

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1 know that.

2 Q. So it was too premature to identify any
3 red flags?

4 MS. CARLETTA: Objection, form.

5 A. Well, "any," I don't know if that's the
6 word choice that I would use, but to clearly
7 identify the types of red flags that we -- it was
8 too early.

9 Q. (BY MS. WEINBERGER) And in that time
10 you thought it was possible that the items you
11 identified for Custodia could be addressed by
12 Custodia?

13 MS. CARLETTA: Objection, form.

14 A. I can't recall what all feedback was
15 given as a result of that January review. I
16 don't know.

17 Q. (BY MS. WEINBERGER) So as you sit here
18 today you do not recall any feedback that you
19 gave in January of 2022, that was something that
20 was not addressable by Custodia?

21 MS. CARLETTA: Objection to form.

22 A. I mean the feedback we did provide was
23 later, was in April or May, so it was later.

24 Q. (BY MS. WEINBERGER) Okay.

25 A. But that feedback was heavy caveated

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1 with: This review is limited in scope, because
2 of where Custodia is.

3 So whether or not they can address the
4 feedback we provided isn't relevant, because
5 the -- it was too premature. The organization
6 wasn't developed enough at that time to
7 accurately identify all the risks it might pose.

8 Q. So regardless of whether you think it is
9 relevant or not, I just want to be clear on the
10 question. The feedback that you provided it
11 sounds like in May of 2022, you do not recall
12 providing anything that at that time you thought
13 was not addressable by Custodia?

14 MS. CARLETTA: Object to form.

15 A. Again, the feedback was heavily caveated
16 by the limitations and the scope of what we could
17 look at.

18 Q. (BY MS. WEINBERGER) But given the
19 limited scope, you today do not recall anything
20 that you provided feedback on that you, at that
21 time you recall feeling like this is not
22 addressable by Custodia?

23 MS. CARLETTA: Objection, asked and
24 answered. You can answer.

25 Q. (BY MS. WEINBERGER) You can answer.

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1 A. All right. Sorry, again, that was
2 heavily caveated feedback. I don't know if
3 that's a word. The feedback was qualified.

4 I would be uncomfortable answering that
5 question or responding affirmatively to that,
6 because the limitations in what was available to
7 review at that time.

8 Q. Okay.

9 A. So the organization at that time was a
10 business plan with some draft policies and
11 capital and part of a management team, but there
12 wasn't a lot to examine.

13 Q. So with the caveat that you identified,
14 which was that it was a limited exam, you do not
15 recall, though, at that time, given the
16 information that you knew, that there was any
17 particular thing that stood out in your mind that
18 you felt was not addressable by Custodia?

19 MS. CARLETTA: Objection, form.

20 A. Given the limitations of the available
21 materials to examine and where they were, there
22 was limited things to review. Because there were
23 limited things to review, there wasn't a lot of
24 meaningful feedback that could be provided at
25 that time --

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1 Q. (BY MS. WEINBERGER) Okay.

2 A. -- whether or not it's addressable or
3 not.

4 Q. Okay. But in the limited feedback that
5 you were able to provide, given the limited
6 information that you had, at that time you did
7 not have a feeling that something specific was
8 not addressable by Custodia?

9 MS. CARLETTA: Objection to form.

10 A. Again, the review was limited based on
11 the materials that were provided that were
12 limited. One of the feedback items we did
13 provide was that Custodia didn't have a lot of
14 depth and expertise in banking, so that's across
15 the board, across senior management, and
16 management, and that feedback was provided.

17 So I guess depending on how I interpret
18 that question, that's an unknown on how that
19 could be addressed with the staff and the Board
20 at the bank.

21 Q. (BY MS. WEINBERGER) So in your view
22 that issue could have been addressed, if they
23 addressed their staffing?

24 MS. CARLETTA: Objection, form.

25 A. No. I'm saying, I guess it's with the

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1 Again, that was something that I believe Rob
2 Triano shared with me.

3 Q. Okay. And can you help me a little more
4 with what date you think that might have been?

5 A. That would have been about the time of
6 the first reviews. I probably saw that towards
7 the end of 2021.

8 Q. And do you remember seeing in those
9 materials anything about when the Federal Reserve
10 Board should be consulted in the consideration of
11 a master account membership application?

12 A. We don't consult the Board for master
13 account requests, so I did not see that anywhere.

14 Q. So does that mean when there's a master
15 account request there should be, under normal
16 procedure, no communication with the Board?

17 MS. CARLETTA: Objection to form.

18 A. I guess "no communication with the
19 Board" I'm confused by.

20 Q. (BY MS. WEINBERGER) In the ordinary
21 course, your understanding is there would be no
22 communication between the Kansas City Fed staff
23 and Board staff about a master account
24 application review?

25 MS. CARLETTA: Objection, form.

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1 A. I'm not involved in the master account
2 request process. I don't know to what extent
3 there would even need to be communication. I
4 know the decision is made locally.

5 (Exhibit 118 was marked by the
6 reporter for identification.)

7 Q. (BY MS. WEINBERGER) I'm going to show
8 you what I'm marking as Exhibit 118, which for
9 the record is FRBKC-0004916.

10 MS. CARLETTA: I'm sorry, what
11 Exhibit Number are we on?

12 MS. WEINBERGER: 118?

13 MS. CARLETTA: Thanks.

14 Q. (BY MS. WEINBERGER) So this looks like
15 a conversation between yourself and Rob Triano
16 dated December 8th, 2021; is that correct?

17 A. Yes.

18 Q. So the first sentence, the first message
19 you said, "Hey, Rob, I'm drafting a response to
20 Allan from the Board." Who is Allan from the
21 Board?

22 A. His name is Allan -- it's Purod -- he's
23 in Board accounting policy, so he's not involved
24 in Board M&A. Any time I would talk to him, he
25 understood crypto accounting, so I would -- he'd

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1 be someone I could contact for accounting
2 questions.

3 Q. What did you say his last name was?

4 A. I'm going to butcher it, it starts with
5 a P. It's Purod or -- he's left the Board. He
6 was a Board Accounting Fellow from one of the Big
7 4 accounting firms.

8 Q. Is there any chance you could spell it
9 for the record?

10 A. No, I would butcher it.

11 Q. And when you say Board Accounting
12 Fellow, does that mean the Federal Reserve Board?

13 A. Yes. The Federal Reserve Board has an
14 Accounting Policy Department that they just
15 essentially answer accounting questions, and they
16 deal more with FASBI.

17 I think this is about the time that SAB
18 121 came out, which was an accounting
19 pronouncement related to crypto custody.

20 Q. So how often would you reach out to the
21 Board accounting policy with questions?

22 A. With questions? Oh, I'm an accounting
23 contact for Kansas City, and I'm a system expert
24 for certain accounting issues, so I work
25 hand-in-hand with Board accounting policy all the

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1 A. Yeah, they should have.

2 Q. And then that would have included a
3 discussion of conversations with -- a
4 communication with the Board?

5 MS. CARLETTA: Objection to form.

6 A. For membership requests, the Board
7 should be looped in.

8 Q. (BY MS. WEINBERGER) So they didn't
9 contemplate any conversations or communication
10 with the Board as to a master account?

11 MS. CARLETTA: Objection, form.

12 A. It shouldn't, it shouldn't have.

13 Q. (BY MS. WEINBERGER) It shouldn't have
14 because the Board is not supposed to be involved
15 in master account decisions?

16 MS. CARLETTA: Objection, form.

17 A. Yeah, that's my understanding.

18 Q. (BY MS. WEINBERGER) Your understanding
19 is the Board is supposed to have no involvement
20 in a master account decision?

21 MS. CARLETTA: Objection, form.

22 A. I am not an expert in this area, but
23 that's, again, my understanding.

24 Q. (BY MS. WEINBERGER) Okay, and then the
25 last thing on this document, if we move on, it's

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1 right above where Lacey Peters says, "It's a
2 special case," you say, "I think that is
3 especially important to consider for firms that
4 have just now applied for MA --" is that a master
5 account?

6 A. Yes.

7 Q. "-- and have been waiting 2-plus years."
8 So what is your understanding of how long it
9 usually takes to process a master account
10 application?

11 A. I think the routine requests are pretty
12 quick. I don't know what the timing is supposed
13 to be, but it's not two years.

14 Q. A matter of weeks or a matter of months?

15 A. That, I don't know.

16 Q. So was it unusual that Custodia's master
17 account request was pending 4 years?

18 A. It's an unusual case, because again, I
19 am not a -- I do not work in CRM, but banks
20 typically request a master account, from what
21 I've observed, when they are ready to open.

22 So those requests a lot of times are the
23 last thing that they do and get processed before
24 they open.

25 Custodia, or Avanti at the time,

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1 requested the master account well in advance of
2 when they were ready to open, from my
3 perspective. It was premature when they
4 requested it.

5 Q. I'm going to show you what was
6 previously marked as Exhibit 19. Let me see if I
7 can find it, and for the record this is a
8 document Bates-stamped FRBKC-11941.

9 MR. LAX: Lauren, you said this
10 was previously an Exhibit --

11 MS. WEINBERGER: 19.

12 Q. (BY MS. WEINBERGER) So I want to point
13 your attention to the bottom e-mail on the first
14 page. Do you see that that's an e-mail from
15 Judith Hazen on October 27th, 2022 to a group of
16 people that included yourself?

17 A. Yes.

18 Q. And the subject line was Custodia/VC
19 Barr; is that correct?

20 A. Yes.

21 Q. And then I'm going to read the first two
22 sentences there, "Jeff and I are attending the
23 MAMG meeting in DC this week." Do you know what
24 MAMG is?

25 A. I have no idea.

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1 Q. And then it says, "In passing we learned
2 that Board staff will be briefing V.C. Barr this
3 afternoon, and that Custodia is expected to
4 figure prominently into the discussion." Did I
5 read that correctly?

6 A. Yes.

7 Q. Who is V.C. Barr?

8 A. Vice Chair Barr at the Board.

9 Q. At the Board of Governors?

10 A. Yeah.

11 Q. And did you learn any information about
12 this briefing of V.C. Barr?

13 A. From this e-mail, I don't know.

14 Q. Do you have any personal recollection
15 about anything that happened from that e-mail?

16 A. I don't, looking at this e-mail. I
17 don't know what this relates to.

18 Q. So let's back up. I assume that you
19 have a personal recollection of certain events
20 regarding Custodia, beyond the documents that I
21 show you during this deposition; is that correct?

22 MS. CARLETTA: Objection, form.

23 A. Yeah.

24 Q. (BY MS. WEINBERGER) So in your personal
25 recollection do you recall any conversation or

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1 "info" or "into gap." I'm guessing that's
2 "information gap, each phase learn, feel like we
3 need to know to assess risks, not too
4 definitive."

5 Q. Okay. So does that mean you had just
6 finished your initial risk review and your
7 conclusions were you still had some more to learn
8 but you didn't have any definitive conclusions
9 yet?

10 MS. CARLETTA: Objection, form.

11 A. I don't know.

12 Q. (BY MS. WEINBERGER) Then how would you
13 frame it if you disagree with what my phrasing
14 was?

15 A. I don't know that I disagree. I just
16 don't know. I think it's just, again, I don't
17 know that those are my words. I might be writing
18 what other people are saying.

19 Q. Do you know who might have told you
20 that?

21 A. No.

22 Q. Let's go to the next page 16040. Do you
23 see where it says, "De Novo process:

24 A. Yes.

25 Q. Can you read to me what the three

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1 bullets are under "De Novo Process"?

2 A. "Believe more 11th hour, things in place
3 before granted, cost to expectations projection,
4 work with regulators," it says, "competent,
5 involvement in other institutions."

6 Q. So what does that mean?

7 A. So the 11th -- I know what this means.
8 This is related to the conversation that we had
9 with CRM analysts on when a master account is
10 typically requested and granted, and that would
11 be at the 11th hour.

12 That's kind of the last thing that is
13 granted before a traditional bank would get
14 access to the master account, and that's the
15 conversation we had.

16 Q. So what does that mean for a master
17 account to only be granted to a de novo
18 institution at the 11th hour?

19 A. That means that the bank has all the
20 systems in place, the controls in place. They
21 have gotten approval oftentimes from a Federal
22 regulator, but they have got an approval to
23 operate with all the risks and controls in place,
24 and then they request a master account when they
25 are ripe, when they are mature and ready to go,

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1 and it's granted at that time. That's my
2 understanding of the conversation that I had with
3 the CRM analyst.

4 Q. Do you remember who you spoke with?

5 A. That would have been Chris Gaul-Pearson,
6 and another -- I can't remember her name offhand,
7 another experienced CRM analyst.

8 Q. Okay. Let's go to Page 16042.

9 A. I'm sorry, which one, 16042? Okay.

10 Q. Is that the meeting with Christi on
11 February 2 of 2022?

12 A. Yes.

13 Q. So what was that meeting about?

14 A. This would have been -- hold on, let me
15 read this. I assume that this related to, I
16 don't know what the date was of that memo.

17 Q. Oh, the --

18 A. The conclusions, the summary memo that
19 we vetted internally, I assume we were preparing
20 for a meeting with Tara Humston on that summary,
21 but I don't, without seeing the dates, I think I
22 had that earlier.

23 Q. Okay. And then looking at the bullet I
24 know the memo you're referring to.

25 A. Yeah, I just don't know for sure. I'm

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1 just assuming based on the date and how this
2 reads.

3 Q. So that memo was ultimately provided to
4 Tara and you had a meeting about it?

5 A. Yes.

6 Q. That summarized the results of the risk
7 review that you conducted in late 2021 and early
8 2022?

9 A. Yes.

10 Q. So I'm looking at the bullet that says,
11 "Judith MA lens and application lens and
12 supervisory lens." Is that what that says?

13 A. Yes.

14 Q. So what does that mean? It says master
15 account lens, applications lens and supervisory
16 lens?

17 A. Yeah.

18 Q. So how is a supervisory lens different
19 than a masters lens?

20 A. So I'm supervisory staff.

21 Q. Okay.

22 A. So that's just kind of how we do.
23 There's a membership request, so if they were
24 granted membership, how would we supervise the
25 organization? What is the supervisory staff's

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1 questioning. That concludes my questioning for
2 you today. Do you have any follow-up
3 questioning?

4 MS. CARLETTA: Yeah.

5 MS. WEINBERGER: I just want to for
6 the record reiterate what was stated earlier
7 about the reasons why we made the request to
8 continue this deposition based on how the
9 deliberative process issue was resolved, if
10 that's a dispute for the Court, as you were
11 instructed not to answer a couple of questions
12 today, in addition to the late production of
13 documents.

14 MS. CARLETTA: And to the extent I
15 lodge objections, same objections apply. I'm
16 going to have a few redirect questions, but I'm
17 going to need a couple of minutes to prepare my
18 thoughts. We can go off the record until then.

19 (Recess)

20 EXAMINATION

21 BY MS. CARLETTA:

22 Q. Okay. Ross, I just have a few questions
23 for you on Redirect. To the best of your
24 knowledge, do you know who decided the master
25 account request?

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1 A. That would have been the Federal Reserve
2 Bank in Kansas City. That would be the CRM
3 Department and Esther George.

4 Q. And to the best of your knowledge, do
5 you know who denied the membership application?

6 A. Yeah, that would have been the Board
7 applications group.

8 Q. So I believe you testified earlier today
9 that you were in regular communications with the
10 Board about the membership application; is that
11 correct?

12 A. Yes.

13 Q. How often were you in communication with
14 them?

15 A. That would have been after I took that
16 role in June. That was probably every other
17 week.

18 Q. During those meetings, did the Board
19 ever try to intervene about the decision on the
20 master account request?

21 MS. WEINBERGER: Object to form.

22 A. No.

23 Q. (BY MS. CARLETTA) To your knowledge did
24 the Board ever mandate denial of the master
25 account request?

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1 MS. WEINBERGER: Object to form.

2 A. No.

3 Q. (BY MS. CARLETTA) So based on your
4 review of Custodia, do you disagree with FRBKC's
5 decision to deny the master account request?

6 MS. WEINBERGER: Object to form.

7 A. No.

8 Q. (BY MS. CARLETTA) Based on your review
9 of Custodia do you disagree with the Board's
10 decision to deny membership?

11 MS. WEINBERGER: Object to form.

12 A. No.

13 Q. (BY MS. CARLETTA) Who's Jenifer Haake?

14 A. She's an examiner that worked with me on
15 the pre-membership exam work that was conducted
16 in September of '22.

17 Q. Okay, and at a certain point her title
18 was co-EIC; is that correct?

19 A. Yes.

20 Q. But you were in charge of any exams or
21 risk assessments conducted that you conducted
22 together; is that right?

23 MS. WEINBERGER: Object to form.

24 A. I was the primary lead for the
25 pre-membership exam that was conducted.

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1 Q. (BY MS. CARLETTA) Okay, great. I'm
2 going to direct you to Exhibit 135, previously
3 marked as Exhibit 135, and these are some of
4 Ross' handwritten notes.

5 I'm going to bring you to -- I didn't
6 write the Page Number. Let's find it. Oh, I
7 might have the wrong one. I think I have the
8 wrong -- oh.

9 A. That's where I've got questions.

10 Q. I see, okay, okay. Okay, yep, this is
11 the right document. Okay, so I'm going to bring
12 you back to, I'm looking at Bates Number, it's
13 17804. You were previously asked about this
14 quote and if I'm reading this correctly it says
15 Ross and Rob think everything is fine. Can you
16 provide me context for this quote?

17 A. Again, my understanding is that that
18 was -- that sentiment was assumed -- our officer
19 group assumed that Custodia's sentiment was that
20 Rob and I had a positive view of Custodia's, you
21 know, business model and chances to get either a
22 master account or a membership.

23 Q. I see, so Custodia was saying this to
24 other FRBKC employees?

25 A. I don't know for sure.

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1 draft?

2 MS. WEINBERGER: Object to form.

3 A. No, I don't. I don't know.

4 Q. (BY MS. CARLETTA) Do you know whether
5 counsel provided edits on this Custodia master
6 account request memo to Esther?

7 A. I believe I saw edits from Nick in
8 there, but I don't know for certain.

9 Q. And do you know when counsel provided
10 edits?

11 A. No.

12 Q. And do you know who directed the
13 creation of the memo referenced in this chat?

14 MS. WEINBERGER: Object to form.

15 A. No.

16 Q. (BY MS. CARLETTA) And I'm directing you
17 to Exhibit 36. Is this the memo to Esther
18 George --

19 A. This is --

20 Q. -- on the master account request?

21 A. This is a memo to Esther George on the
22 master account. I mentioned earlier that there
23 were multiple memos. I don't know if this ended
24 up being the one memo that was prepared, or if
25 there was multiple. This was a memo related to

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1 the master account that went there.

2 Q. Do you know who directed the creation of
3 this document?

4 A. No.

5 Q. Did Custodia need a master account to
6 begin operations?

7 MS. WEINBERGER: Object to form.

8 A. No. They could have opened with
9 their -- with Cross River Bank, partner bank.

[REDACTED]

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[REDACTED]

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[REDACTED]

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1 MS. CARLETTA: Okay, great. No
2 further questions.

3 MS. WEINBERGER: I have no
4 questions.

5 (Deposition ended at 5:50 p.m.)

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