

## Oldest U.S. Bank to Custody Digital Assets

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On October 11, 2022, BNY Mellon, the oldest bank in the United States, launched its digital custody platform, allowing select clients to safeguard their ether and bitcoin holdings. BNY Mellon is the first large U.S. bank to custody digital assets alongside traditional investments on the same platform. The bank, which is supervised and regulated by the New York State Department of Financial Services (DFS) and the Board of Governors of the Federal Reserve System (the “Fed”), received the approval earlier this fall to begin receiving select customers’ bitcoin and ether this week.

The DFS approval has been surprising to some industry observers. New York was the first state to create a comprehensive regulatory and licensing framework for digital asset businesses, but the so-called BitLicense is regarded as onerous, creating a perception that New York is an unfriendly jurisdiction for digital asset businesses. By contrast, states such as Florida and Texas have released guidance indicating that their state-chartered banks may provide customers with virtual currency custody services, as long as the institution has adequate risk protocols in place.

State-charted banks that are members of the Federal Reserve System are also regulated by the Fed, which provided guidance in August 2022 indicating that any supervised banking organization should notify the agency prior to engaging in any “crypto-asset-related activities.” Following the Fed’s approval of BNY Mellon’s digital asset custody program, a digital asset bank—Custodia—filed a petition in federal court arguing that the Fed has shown “favoritism” to BNY Mellon, given that Custodia has been seeking approval for custodial services for nineteen months.

Despite the current market downturn for digital assets, BNY Mellon is apparently optimistic on digital assets. A recent survey sponsored by BNY Mellon highlighted significant institutional demand for a resilient, scalable financial infrastructure built to accommodate both traditional and digital assets. According to the survey, almost all institutional investors (91%) are interested in investing in tokenized products. Additionally, 41% of institutional investors hold cryptocurrency in their portfolio today, with an additional 15% planning to hold digital assets in their portfolios within the next two to five years. BNY Mellon’s platform will enable customers to use a single-custody platform for both their traditional and crypto assets.

We expect BNY Mellon’s decision to provide cryptocurrency asset custody services to nudge other money center banks and regional banks in the coming months to adopt similar custody services. This, in turn, should provide more

acceptance of cryptocurrency assets to the broader investor market.

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## Authors

[Carl Fornaris](#)

[Kimberly A. Prior](#)

[Daniel T. Stabile](#)

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Carl Fornaris



Kimberly A. Prior



Daniel T. Stabile

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