

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

**CUSTOMER BANCORP, INC.,
d/b/a Customers Bank**

Plaintiff,

v.

CHRISTOPHER SMALLEY,

Defendant.

Civil Action No.

COMPLAINT

Plaintiff, Customers Bancorp, Inc. d/b/a Customers Bank (“CUBI”), hereby files the above-captioned action against Defendant, Christopher Smalley (“Smalley”), and states:

PARTIES

1. Customers Bancorp, Inc. is a Pennsylvania corporation with a principal place of business at 701 Reading Avenue, West Reading, Pennsylvania 18611.
2. Christopher Smalley is an individual who resides at 50 Murray Street, #1006, New York, New York 10007.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this District because there is complete diversity between the parties and the amount-in-controversy requirement is satisfied. 28 U.S.C. § 1332.
4. Complete diversity exists because CUBI is a resident of Pennsylvania and Mr. Smalley is a resident of New York. CUBI is duly incorporated in, and has its principal place of business in, Pennsylvania. Mr. Smalley is an individual who resides in New York.
5. The amount-in-controversy exceeds \$75,000.00. As further discussed below, CUBI seeks, among other injunctive relief, disgorgement of gross cash payments to Mr. Smalley in

excess of \$75,000 and disgorgement of restricted stock units, and also seeks its reasonable attorneys' fees, costs, expenses, and incidental and consequential damages.

6. Venue is proper in this District because Mr. Smalley consented to exclusive personal jurisdiction and venue in the Commonwealth of Pennsylvania, CUBI is located within this District, and the Confidential Separation Agreement and Release at issue was prepared in this District. A true and accurate copy of the Confidential Separation Agreement and Release between the parties, reflecting Mr. Smalley's consent to personal jurisdiction and venue, is attached as Exhibit A (the "Agreement"). *See* Ex. A, Section 20 ("Employee consents to personal and exclusive jurisdiction and venue in the Commonwealth of Pennsylvania.").

FACTS

7. CUBI is a full-service, member-FDIC bank offering a range of financial services, such as personal, small business, and commercial banking solutions.

8. Among other lines of business, CUBI offers an instant payment platform to CUBI's commercial customers. Customers using CUBI's instant payments platform are primarily concentrated in the digital asset industry, which is sometimes referred to as the "crypto" industry.

9. Mr. Smalley is a former executive officer of CUBI. At the time of his separation from employment with CUBI, he served as its Chief Digital Officer. In this role, Mr. Smalley was responsible for overseeing the building and managing of CUBI's instant payments platform and its related digital asset deposit franchise.

10. Mr. Smalley's employment with CUBI ended on April 3, 2023. Mr. Smalley and CUBI negotiated the terms of Mr. Smalley's separation from employment. The terms of his separation are detailed in the Confidential Separation Agreement and Release, which was effective April 13, 2023.

11. Per the Agreement, Mr. Smalley acknowledged that because of his “position with [CUBI, he] may have had access to [CUBI’s] confidential information[.]” *See* Ex. A, Section 6. “Confidential Information” includes, but is not limited to, CUBI’s “financial and other plans[.]” “strategic plans[.]” and “other business information[.]” *Id.*

12. Accordingly, Mr. Smalley agreed “not to use or disclose [CUBI’s] Confidential Information to any third parties for so long as it remains confidential to the public.” *Id.*

13. Mr. Smalley acknowledged that CUBI “has a legitimate interest in preventing use of and disclosure of its confidential and proprietary information” and “in fostering, developing, and preserving its relationship with its current and prospective vendors and customers and in preserving its customer and vendor good will.” *Id.* at Section 6.

14. Additionally, Mr. Smalley agreed to “refrain from any disparagement, defamation, [or] libel” of CUBI. *Id.* at Section 8.

15. On or around June 18, 2024, Mr. Smalley was interviewed by a representative of Tegus, Inc. (the “Interview”). Attached as Exhibit B is a redacted copy of the Interview transcript.

16. Upon information and belief, Tegus is in the business of collecting and selling non-public information about publicly traded entities to third parties, including transcripts of interviews of former employees of those entities.

17. Upon information and belief, Mr. Smalley was financially compensated for disclosing Confidential Supervisory Information (“CSI”) and Confidential Information of CUBI at a rate of \$1,000 per hour.

18. Although the transcript of the Interview does not name the interviewee, it describes them as a former “EVP, Chief Digital Officer” for CUBI who departed from CUBI in June 2023. Given the interviewee’s title and the nature of the information disclosed in the Interview, CUBI

reasonably understands that the anonymous interviewee could be none other than Defendant Christopher Smalley. Further supporting the interviewee's identity as Mr. Smalley, the interviewee identifies his current title and employer and former title and employer exactly as Mr. Smalley does in his LinkedIn profile.

19. In the Interview, Mr. Smalley divulged CUBI's Confidential Information, in violation of the Agreement and CUBI's policies. Among other things, Mr. Smalley divulged such confidential information as details of CUBI's development of its instant payments platform, its implementation and fit into CUBI's broader business structure, its risk mitigation strategies, and details of CUBI's confidential business negotiations with customers.

20. Also included in the Confidential Information divulged by Mr. Smalley is CSI. CSI refers to information arising from the relationship between a regulated institution, such as CUBI, and applicable regulators, such as the Federal Reserve System. It includes, for example, investigations, assessments, enforcement, and other information arising in the course of a regulator's supervision of the institution, including related communications. Per applicable federal regulations, CSI at all times remains the property of regulatory bodies. *See* 12 C.F.R. § 261.20(a); 71 P.S. § 733-404.B. Regulators entrust CSI to CUBI and CUBI is required to keep it strictly confidential. *Id.*

21. Consistent with applicable regulations, CUBI strictly limits the individual employees to whom CSI is entrusted and maintains policies prohibiting disclosure of CSI. As an employee with access to CSI, CUBI provided Mr. Smalley with a copy of those policies, which he acknowledged receiving. CUBI also trained Mr. Smalley on these policies. Finally, Mr. Smalley agreed not to disclose confidential information. *See* Ex. A, Section 6.

22. In the Interview, Mr. Smalley also made numerous false, disparaging, and defamatory statements about CUBI in violation of the Agreement and applicable law. Among other things, Mr. Smalley made false, disparaging, and defamatory statements about CUBI's business objectives, personnel decisions, ethics, and leadership.

COUNT I—DISCLOSURE OF CONFIDENTIAL SUPERVISORY INFORMATION

23. CUBI restates and realleges Paragraphs 1 through 22 as though fully set forth herein.

24. In the Interview, Mr. Smalley disclosed CSI.

25. CUBI is obligated to protect the confidentiality of CSI.

26. Federal regulations prohibit CUBI from disclosing the CSI at issue without written permission from the Federal Reserve System and Pennsylvania Department of Banking and Securities, to whom the CSI belongs. Consistent with applicable regulations, CUBI will seek permission from the General Counsel to the Board of Governors of the Federal Reserve System and the Pennsylvania Department of Banking and Securities to disclose the information to this Court under seal. 12 C.F.R. § 261.23(b)(2)(vi); 71 P.S. § 733-404.B. If such permission is granted, CUBI will submit the CSI under seal pursuant to the process set forth in 12 C.F.R. § 261.23 and 71 P.S. § 733-404.B.

COUNT II—BREACH OF CONTRACT
(Confidential Information)

27. CUBI restates and realleges Paragraphs 1 through 26 as though fully set forth herein.

28. The Agreement is a binding and enforceable contract between CUBI and Mr. Smalley.

29. As described in Paragraphs 19–20, Mr. Smalley intentionally disclosed Confidential Information as defined in the Agreement. *See* Ex. A. at Section 6.

30. By disclosing this Confidential Information, Mr. Smalley materially breached the Agreement, which prohibits him from “disclos[ing] such Confidential Information to any third parties[.]” *Id.*

31. As a result of Mr. Smalley’s intentional breach, CUBI has, and will continue to, suffer damages, including, but not limited to, reputational harm, loss of goodwill, loss of the benefits bargained for by CUBI in the Agreement, and attorneys’ fees and costs in enforcing the Agreement.

32. Per the Agreement, CUBI is entitled to disgorgement of the consideration provided to Mr. Smalley because of his breach, including more than \$75,000 in gross cash payments and restricted stock units. CUBI is also entitled to recover reasonable attorneys’ fees, costs, expenses, and incidental and consequential damages. This relief is authorized by the Agreement:

[Smalley] acknowledges and agrees that any material breach of [the] Agreement shall entitle [CUBI] to immediately recover and/or cease providing the Consideration provided to [Smalley] under [the] Agreement and to obtain damages, except as provided by law, provided, however, that [CUBI] shall not recover [\$100] already paid pursuant to [the] Agreement and such amount shall serve as full and complete consideration for the promises and obligations assumed by [Smalley] under [the] Agreement.

See id. at Section 10 (emphasis in original).

In the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, and reasonable attorneys’ fees incurred in connection with such an action.

See id. at Section 17.

COUNT III—BREACH OF CONTRACT
(Non-Disparagement)

33. CUBI restates and realleges Paragraphs 1 through 32 as though fully set forth herein.

34. The Agreement is a binding and enforceable contract between CUBI and Mr. Smalley.

35. As described in Paragraphs 22 and 40, Mr. Smalley intentionally made disparaging statements about CUBI in the Interview.

36. By making these disparaging statements, Mr. Smalley materially breached the Agreement, which prohibits him from engaging in “any disparagement, defamation, libel, or slander” of CUBI. *Id.* at Section 8.

37. As a result of Mr. Smalley’s intentional breach, CUBI has, and will continue to, suffer damages, including, but not limited to, reputational harm, loss of goodwill, loss of the benefits bargained for by CUBI in the Agreement, and attorneys’ fees and costs in enforcing the Agreement.

38. Per the Agreement, CUBI is entitled to disgorgement of the consideration provided to Smalley because of his breach, including gross cash payments in excess of \$75,000 and restricted stock units, as well as reasonable attorneys’ fees, costs, expenses, and incidental and consequential damages. This relief is authorized by the Agreement:

[Smalley] acknowledges and agrees that any material breach of [the] Agreement shall entitle [CUBI] to immediately recover and/or cease providing the Consideration provided to [Smalley] under [the] Agreement and to obtain damages, except as provided by law, provided, however, that [CUBI] shall not recover [\$100] already paid pursuant to [the] Agreement and such amount shall serve as full and complete consideration for the promises and obligations assumed by [Smalley] under [the] Agreement.

See id. at Section 10 (emphasis in original).

In the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, and reasonable attorneys' fees incurred in connection with such an action.

See id. at Section 17.

COUNT IV—DEFAMATION PER SE

39. CUBI restates and realleges Paragraphs 1 through 38 as though fully set forth herein.

40. In the Interview, Mr. Smalley published numerous false and defamatory, per se, statements of fact about CUBI to Tegus, Inc. which he knew would be subsequently published to Tegus' customer base comprised of banking and investment professionals. The following are examples of the false, defamatory statements he made: (a) CUBI "basically bust[s] [executives] out of the bank largely to avoid paying. It's an incredible pattern. That's very strange. And I think most typified by just last quarter firing the long tenured CFO for cause to avoid paying her severance[;]" (b) "The familial ties are shocking and not good governance[.] . . . they keep it all in the family. It's just not good governance. Anyone who's taken their first class in business ethics would just be these [sic] are just gross violations of basic processes[;]" (c) "There's massive conflict of interest with how [a certain business endeavor] was handled, or I suppose is being handled; and (d) "But they're hiring all of these people who are theoretically going to build and maintain these deposit franchises that they've built elsewhere. I think they're basically going to see who does it and then just fire everyone else." *See* Exhibit B.

41. The defendant's false and defamatory statements were made with actual malice, that is with knowledge of the falsity of the statements or with reckless disregard for the truth.

42. Mr. Smalley's false statements of fact were and are undoubtedly understood by Tegus and any subsequent recipients of the statements to be defamatory in nature as they tend to harm the reputation of CUBI, lower it in the estimation of the community, denigrate CUBI's fitness for the proper conduct of its business and profession, and deter third-parties, such as CUBI's current and prospective employees, and other third-parties with which CUBI does or may engage in business, from engaging with it.

43. Mr. Smalley had no conditionally privileged occasion on which he was permitted to make such defamatory statements.

44. As a result of Mr. Smalley's false and defamatory statements of fact made with actual malice, CUBI has, and will continue to, suffer damages, including, but not limited to, reputational harm and loss of goodwill, in addition to attorneys' fees and costs. Indeed, Tegus, Inc., upon information and belief, has sold transcripts of its interview with Mr. Smalley to other investment and banking professionals, whose perceptions of CUBI will be negatively impacted. For example, a likely consequence is that, in a competitive labor market, CUBI may be erroneously viewed as an employer that treats employees unfairly and dishonestly.

PRAYER FOR RELIEF

Wherefore, CUBI respectfully seeks damages and equitable relief in connection with Mr. Smalley's conduct, and specifically prays that the Court grant the following relief to CUBI:

- A. The entry of a judgment in favor of CUBI on all counts;
- B. The entry of a permanent injunction against Mr. Smalley enjoining him from further disclosure of CSI;
- C. The entry of a permanent injunction against Mr. Smalley enjoining him from further disclosure of CUBI's Confidential Information;

- D. The entry of a permanent injunction against Mr. Smalley enjoining him from making further defamatory statements against CUBI;
- E. The entry of an award in favor of CUBI disgorging Mr. Smalley of the gross, cash payments he received pursuant to the Agreement, subject to the terms of the Agreement;
- F. The entry of an award in favor of CUBI disgorging Mr. Smalley of the restricted stock units he received pursuant to the Agreement;
- G. The entry of an award in favor of CUBI awarding it all incidental and consequential damages arising from Mr. Smalley's disclosure of CSI and his breaches of the Agreement;¹
- H. The entry of an award to CUBI awarding it its reasonable attorneys' fees, costs, and expenses incurred in bringing and prosecuting this action;
- I. The granting of such other and further relief as this Court may deem just, proper, or equitable, including other equitable and injunctive relief.

Dated: July 17, 2024

/s/ Richard G. Rosenblatt _____
Richard G. Rosenblatt
richard.rosenblatt@morganlewis.com
Pennsylvania Bar No. 59096
MORGAN, LEWIS & BOCKIUS LLP
2222 Market Street
Philadelphia, Pennsylvania 19103
Telephone: (215)-963-5000

Attorneys for Customers Bank

¹ For avoidance of doubt, CUBI does not seek monetary relief for Mr. Smalley's disclosure of CSI, as it does not have a property interest in CSI, but does seek an award of reasonable attorneys' fees and costs incurred in obtaining injunctive relief, making regulatory disclosures due to Mr. Smalley's conduct, and enforcing its policies.

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2024, I caused a copy of the foregoing document to be served upon the following:

Christopher Smalley
50 Murray Street, #1006, New York, New York 10007

EXHIBIT A

CONFIDENTIAL SEPARATION AGREEMENT AND RELEASE

This Confidential Separation Agreement and Release (“Agreement”) is made by and between Christopher Smalley (“Employee”) and Customers Bancorp, Inc. d/b/a Customers Bank (the “Company”). Employee and the Company jointly are referred to herein as the “Parties” or individually referred to as a “Party.”

Employee’s employment with Customers Bank will terminate on April 3, 2023 (“Separation Date”), whereupon all benefits and privileges related thereto will cease, except as set forth herein. Regardless if Employee executes this Agreement, the Company will pay all compensation due and owing to Employee as of the Separation Date, and any accrued but unused paid time off Employee has remaining (“Remaining Leave and Compensation”) in accordance with the Employer’s usual compensation and payroll practices and applicable law.

COVENANTS

1. Consideration. In consideration of Employee’s execution of this Agreement and Employee’s fulfillment of all of its terms and conditions, and any other promises and covenants contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

a. Severance Payment. Subject to the terms of this Agreement, the Company agrees to pay Employee a gross sum of \$██████████, less all applicable taxes, deductions, and withholdings, to be paid to Employee in bi-weekly installments starting on the first regularly scheduled Company payroll date that occurs at least 15 days following the Effective Date of this Agreement (as defined in Paragraph 22 below), in accordance with the Company’s regular payroll practice and through the Employee’s regular pay process. If Employee executes this Agreement, Employee will also receive a lump sum payment in the gross amount of \$██████████ less all applicable taxes, deductions, and withholdings. This will be paid in the first regularly scheduled Company payroll date that occurs at least 15 days following the Effective Date of this Agreement, in accordance with the Company’s regular payroll practice and through the Employee’s regular pay process. In addition, upon the Effective Date of this Agreement, the Company will accelerate the vesting of the ████████ unvested restricted stock units, with a grant date of February 23, 2021, May 3, 2021, and March 22, 2022, respectively.

b. Benefits. Employee’s health insurance benefits shall cease on the last day of the month in which the Separation Date occurs (i.e., April 30, 2023). Whether Employee signs this Agreement or not, under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), Employee may be entitled to continue certain insurance benefits after Employee’s Separation Date. If Employee signs this Agreement timely and is eligible for and properly elects COBRA continuation coverage, the Company shall pay the employer portion of the benefits plan for Employee’s coverage for 8 weeks (“Subsidy Period”). The Subsidy Period will expire on June 30, 2023. If the employee becomes eligible for other coverage, the Subsidy Period will end as of the effective date of the other coverage. Employee shall notify Company in writing within seven days should Employee become eligible for coverage under a different employer-provided plan. At the end of this Subsidy Period, the Employee may be eligible to continue coverage pursuant to COBRA, and Employee shall be responsible for the entire COBRA premium for the remainder of

the applicable COBRA continuation period. If Employee fails to complete the appropriate COBRA enrollment and Employee's insurance coverage lapses as a result, Employee agrees that Employee will not hold Company liable for any benefit coverage or benefits lost, or for any other damages that may result.

c. Career Support and Services. The Company agrees to provide Employee with Career Support and Services through its third-party vendor, Challenger, Gray and Christmas, for a period of three months.

d. Consideration. The benefits available under Paragraphs 1(a) – (c) are collectively referred to as the "Consideration." Employee acknowledges that without this Agreement, Employee is otherwise not entitled to the Consideration and also acknowledges that such Consideration is good and valid consideration in exchange for the promises herein.

2. Payment of Salary and Receipt of All Benefits. Employee acknowledges and represents that, other than the Remaining Leave and Compensation and the Consideration set forth in Paragraph 1 above, the Company has paid or provided all salary, wages, earned bonuses, accrued vacation/paid time off, notice periods, premiums, leaves, housing allowances, relocation costs, interest, fees, reimbursable expenses, commissions, and any and all other benefits and compensation due to Employee. Employee's participation in all other benefits and incidents of employment will cease on the Separation Date. Employee's eligibility for or entitlement to any amounts under any Company plans, programs, or arrangements is governed by the terms of those plans, programs, or arrangements, and as required by applicable law.

3. Release of Claims. Employee agrees that the foregoing Consideration represents settlement in full of all outstanding obligations owed to Employee by the Company, its related entities, and their current and former officers, directors, employees, agents, investors, attorneys, shareholders, administrators, affiliates, benefit plans, plan administrators, professional employer organization or co-employer, insurers, trustees, divisions, subsidiaries, predecessor and successor corporations, and assigns (collectively, the "Releasees"). Employee, on Employee's own behalf and on behalf of Employee's respective heirs, family members, executors, agents, and assigns, hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, duty, obligation, demand, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Employee may possess against any of the Releasees arising from any omissions, acts, facts, or damages that have occurred up until Employee signs this Agreement, including, without limitation:

a. any and all claims relating to or arising from Employee's employment relationship with the Company and the termination of that relationship;

b. any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; hostile working environment; retaliation; breach of contract, both express and implied; breach of covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; fraud; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel;

slander; negligence; gross negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; constructive discharge; conversion; and disability benefits;

c. any and all claims for violation of any federal, state, or municipal statute, rule, regulations, ordinance, or law, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Equal Pay Act; the Fair Labor Standards Act; the Fair Credit Reporting Act; the Employee Retirement Income Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act; the Uniformed Services Employment and Reemployment Rights Act; the Consolidated Omnibus Budget Reconciliation Act of 1986; the Rehabilitation Act of 1973; the False Claims Act; the New York Constitution; the New York Criminal and Consumer Background Laws; the New York Human Rights Law; the New York Labor Law; the New York Marriage Equality Act; the New York Persons with Genetic Disorders Law; the New York Whistleblower Law; the New York City Human Rights Act; the New York City Administrative Code; the New York City Human Rights Law; all regulations of the New York State Division of Human Rights; the New York Public Health Law § 3369; the New York State WARN Act; the New York Paid Family Leave law; regulations and wage orders of New York State Department of Labor; and regulations of New York State Division of Human Rights; however, the identification of specific statutes is for purposes of example only, and the omission of any specific statute or shall not limit the scope of this general release in any manner;

d. any and all claims for violation of the federal or any state constitution;

e. any and all claims arising out of any other laws and regulations relating to employment or employment discrimination;

f. any claim for any loss, cost, damage, or expense arising out of any dispute over the non-withholding or other tax treatment of any of the proceeds received by Employee as a result of this Agreement;

g. any claim asserted by any other employee of the Company in which Employee has claimed or could claim any interest; and

h. any and all claims for attorneys' fees and costs.

Employee agrees that the release set forth in this Paragraph shall be and remain in effect in all respects as a complete general release as to the matters released. This release does not extend to any obligations incurred under this Agreement. This release does not release claims that cannot be released as a matter of law, including any Protected Activity (as defined below). This release does not extend to any right Employee may have to unemployment compensation benefits or workers' compensation benefits. Employee represents that Employee has made no assignment or transfer of any right, claim, complaint, charge, duty, obligation, demand, cause of action, or other matter waived or released by this Paragraph.

4. No Pending or Future Lawsuits/Employment Termination Acknowledgment. Employee represents that Employee has no lawsuits, claims, or actions pending in Employee's name, or on behalf of any other person or entity, against the Company or any of the other Releasees. Employee also represents that Employee does not intend to bring any claims on

Employee's own behalf or on behalf of any other person or entity against the Company or any of the other Releasees. Employee agrees that Employee does not possess any claim or allegation, either asserted or otherwise, that may be subject to or covered under the New York General Obligations Section 5-336.

Employee understands and agrees that Employee's employment with the Company is terminated as of the Separation Date, and that the Company does not have any obligation to hire, re-hire, or re-employ Employee in the future.

5. Confidentiality. Employee agrees to maintain in complete confidence the existence of this Agreement, the contents and terms of this Agreement, and the Consideration for this Agreement (hereinafter collectively referred to as "Separation Information"). Except as required by law, Employee may disclose Separation Information only to Employee's immediate family members, the Court in any proceedings to enforce the terms of this Agreement, Employee's legal counsel, and Employee's accountant and any professional tax advisor to the extent that they need to know the Separation Information in order to provide advice on tax treatment or to prepare tax returns, and must prevent disclosure of any Separation Information to all other third parties. Employee agrees that Employee will not publicize, directly or indirectly, any Separation Information. Employee further agrees that the consideration in Paragraph 1 above is bargained for and specifically includes consideration for the confidentiality obligations in Paragraph 5.

6. Confidential Information/Company Property. Employee acknowledges that, in Employee's position with Company, Employee may have had access to Company's confidential information, including, but not limited to, confidential financial records; financial and other plans; marketing methods and systems; advertising strategies and methods; strategic plans; manufacturing and distribution methods and systems; databases; payroll information; customer/client lists or customer/client contact information, including information on customer/client needs, preferences, use of Company's products and services, and pricing; warranty information; reports prepared by consultants; training materials; management and administrative systems; and other business information (collectively and separately, "Confidential Information"). Employee acknowledges that Company has a legitimate business interest in preventing use of and disclosure of its confidential and proprietary information, customer and vendor lists, customer contact information, training materials, and techniques, and in fostering, developing, and preserving its relationship with its current and prospective vendors and customers and in preserving its customer and vendor good will. Employee agrees not to use or disclose such Confidential Information to any third parties for so long as it remains confidential to the public. To the extent any of the Confidential Information is a trade secret under any applicable trade secret law, including state trade secret laws, the statutory or common law on trade secrets will be applicable to and control the protection (including the length of protection) afforded the trade secret. Within five days of the Separation Date, Employee must return to Company all Company property in Employee's possession or control, including, but not limited to, credit/calling cards, cell phone, laptop computer, information technology equipment, pager, pda/Blackberry, mobile phone, parking tag, documents, and records. Employee further agrees that Employee will not keep, transfer, or use any copies or excerpts of the above items.

7. No Cooperation. Employee agrees that Employee will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes,

differences, grievances, claims, charges, or complaints by any third party against any of the Releasees, unless under a subpoena or other court order to do so. Employee agrees both to immediately notify the Company upon receipt of any such subpoena or court order, and to furnish, within three business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Releasees, Employee shall state no more than that Employee cannot provide counsel or assistance. Nothing in this Paragraph shall be construed to prevent Employee from engaging in Protected Activity, as defined below.

8. Non-Disparagement. Employee agrees to refrain from any disparagement, defamation, libel, or slander of any of the Releasees, and agrees to refrain from any tortious interference with the contracts and relationships of any of the Releasees, including, but not limited to, anonymous or named reviews, tweets, posts, or other comments published on the Internet. Employee affirms that Employee has not disparaged the Company from the Separation Date through the date Employee signs this Agreement. Employee further agrees that, by no later than the Effective Date, Employee shall delete or otherwise remove any and all disparaging public comments or statements that Employee made prior to the Effective Date about or relating to the Company, including, but not limited to, comments in online forums or on websites (including, but not limited to, Facebook, Glassdoor, Yelp, and LinkedIn). Upon inquiry, the Company will provide only the Employee's last position and dates of employment. Employee agrees to direct any future employers to the Equifax Work Number database employer code 102771 for purposes of employment verification. Employee's violation of this provision shall be a material breach of this Agreement. Nothing in this Paragraph shall be construed to prevent Employee from engaging in Protected Activity, as defined below.

9. Non-Solicitation. For a period of 24 months after the Effective Date of this Agreement, Employee shall not directly or indirectly solicit business from, attempt to sell, or provide the same or similar products or services as are now provided to, any customer or client of the Company, nor shall Employee use the Company's Confidential Information (defined above) to solicit and provide quotes and/or transfer business to any competing entity. Further, for a period of 24 months after the Effective Date of this Agreement, Employee will not directly or indirectly recruit, solicit, induce, or attempt to induce any employee of the Company to terminate his or her employment with the Company. Employee acknowledges and agrees that the territorial, time, and scope limitations set forth in this provision are reasonable and necessary for the protection of the Company.

10. Breach. In addition to the rights provided in the "Attorneys' Fees" paragraph below, Employee acknowledges and agrees that any material breach of this Agreement shall entitle the Company immediately to recover and/or cease providing the Consideration provided to Employee under this Agreement and to obtain damages, except as provided by law, provided, however, that the Company shall not recover One Hundred Dollars and Zero Cents (\$100.00) of the consideration already paid pursuant to this Agreement and such amount shall serve as full and complete consideration for the promises and obligations assumed by Employee under this Agreement.

11. No Admission of Liability. Employee understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by Employee. No action taken by the Company hereto, either previously or in connection with this Agreement, shall be deemed or construed to be: (a) an admission of the truth or falsity of any actual or potential claims; or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Employee or to any third party.

12. Costs. The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with the preparation of this Agreement.

13. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. Employee represents and warrants that Employee has the capacity to act on Employee's own behalf and on behalf of all who might claim through Employee to bind them to the terms and conditions of this Agreement. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

14. Protected Activity. Employee understands that nothing in this Agreement shall in any way limit or prohibit Employee from engaging for a lawful purpose in any Protected Activity, provided, however, that Employee agrees not to seek or accept any monetary award from such a proceeding (except with respect to Section 21F of the Securities Exchange Act of 1934). For purposes of this Agreement, "Protected Activity" shall mean filing a charge, complaint, or report with, or otherwise communicating with, cooperating with, or participating in any investigation or proceeding that may be conducted by, any federal, state, or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the National Labor Relations Board, and the New York State Division of Human Rights ("Government Agencies"). Employee understands that in connection with such Protected Activity, Employee is permitted to disclose documents or other information as permitted by law, and without giving notice to, or receiving authorization from, the Company. Notwithstanding the foregoing, Employee agrees to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Confidential Information under this Agreement to any parties other than the relevant Government Agencies. Employee further understands that "Protected Activity" does not include the disclosure of any Company attorney-client privileged communications, and that any such disclosure without the Company's written consent shall constitute a material breach of this Agreement. In addition, pursuant to the Defend Trade Secrets Act of 2016, Employee is notified that an individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (i) is made in confidence to a federal, state, or local government official (directly or indirectly) or to an attorney *solely* for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if (and only if) such filing is made under seal. In addition, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the individual's attorney and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

Further, the Parties agree that nothing in this Agreement restricts or impedes Employee from (i) testifying truthfully in any legal proceeding, including, but not limited to, responding accurately to any inquiries or request for information made by the EEOC or any federal, state, or other regulatory authority or government agency; (ii) disclosing factual information related to an administrative claim or civil action concerning sexual assault, sexual harassment, workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, or an act of retaliation against a person for reporting or opposing harassment or discrimination; (iv) discussing or disclosing information about unlawful acts in the workplace, such as sexual assault, harassment, or discrimination or any other conduct that Employee has reason to believe is unlawful; or (v) testifying before an administrative, legislative, or judicial proceeding pursuant to a court order, subpoena, or written request from an administrative agency concerning alleged criminal conduct or alleged sexual harassment on the part of any party to this Agreement, or their agents or employees. Employee is not required to contact the Company regarding the subject matter of any such communications within this Paragraph before Employee engage in such communications.

15. No Representations. Employee represents that Employee has had an opportunity to consult with an attorney, and Employee has carefully read and understands the scope and effect of the provisions of this Agreement. Employee has not relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

16. Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision or portion of provision. Nothing in this Agreement is intended to waive any claim or right that cannot be waived, nor is intended to bind Employee to any provision to which they cannot be bound.

17. Attorneys' Fees. In the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, and reasonable attorneys' fees incurred in connection with such an action.

18. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Employee concerning the subject matter of this Agreement and Employee's employment with and separation from the Company and the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement and Employee's relationship with the Company.

19. No Oral Modification. This Agreement may only be amended in a writing signed by Employee and the Company's Lead of People Experience Team (PXT).

20. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard for choice-of-law provisions. Employee consents to personal and exclusive jurisdiction and venue in the Commonwealth of Pennsylvania.

21. Consultation with Attorney and Acceptance Period. Employee acknowledges that Company has advised Employee to consult with independent legal counsel of Employee's choice before signing this Agreement, and that Employee has had the opportunity to consult such counsel and consider the terms of this Agreement for a period of 21 days. Employee acknowledges and agrees that any modification to this Agreement or Employer's offer of this Agreement will not restart the running of the 21-day consideration period, regardless of the materiality of that modification. Employee may elect to sign and return this Agreement in less than 21 days, provided that Employee does so freely, voluntarily, and with full knowledge of Employee's right to use the full 21-day consideration period. Employee acknowledges that Employee understands all of the terms of this Agreement and their significance, that Employee knowingly and voluntarily assents to all of the terms and conditions contained herein, and that Employee is signing this Agreement voluntarily and of Employee's own free will.

22. Effective Date. Employee understands that this Agreement shall be null and void if not executed by Employee, and returned to the Company, within 21 days from the date on which it was originally presented. This Agreement will not become effective until signed by both Parties (the "Effective Date").

23. Counterparts. This Agreement may be executed in counterparts and each counterpart shall be deemed an original and all of which counterparts taken together shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned. The counterparts of this Agreement may be executed and delivered by facsimile, photo, email PDF, DocuSign or a similarly accredited secure signature service, or other electronic transmission or signature. This Agreement may be executed in one or more counterparts, and counterparts may be exchanged by electronic transmission (including by email), each of which will be deemed an original, but all of which together constitute one and the same instrument.

24. Code Section 409A. The benefits and payments provided under this Agreement are intended to be exempt from, or comply with, the applicable requirements of Section 409A of the Internal Revenue Code and shall be limited, construed, and interpreted in accordance with such intent. To the extent that a payment or benefit hereunder is subject to Section 409A, it is intended that it be paid in a manner that will comply with Section 409A, including final regulations or any other guidance issued by the Secretary of the Treasury and the Internal Revenue Service with respect thereto. Notwithstanding anything herein to the contrary, any provision of this Agreement that is inconsistent with Section 409A shall be deemed to be amended to comply with Section 409A.

25. Voluntary Execution of Agreement. Employee understands and agrees that Employee executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of releasing all of Employee's claims against the Company and any of the other Releasees. Employee acknowledges that:

- (a) Employee has read this Agreement;

- (b) Employee has elected not to retain legal counsel or has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of Employee's own choice;
- (c) Employee understands the terms and consequences of this Agreement and of the releases it contains; and
- (d) Employee is fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

Christopher Smalley



Dated: April 12, 2023

Customers Bancorp, Inc. d/b/a Customers Bank

Sachs, Andrew Digitally signed by Sachs, Andrew
Date: 2023.04.13 08:37:44 -04'00'

Andrew Sachs, General Counsel

Dated: April 13, 2023

EXHIBIT B



Customers Bancorp Inc - Former Chief Digital Officer at Customers Bancorp Inc

Interview conducted on June 18, 2024

Topics

Banking, Digital Assets, Fintech, Regulatory challenges, Growth Strategies, Deposit Franchise, Interest Rates, Governance

Summary

The Former Chief Digital Officer at Customers Bancorp Inc shared with the TEGUS Client insights into the bank's digital asset business, including regulatory concerns leading to his departure. The conversation also covered the bank's offerings for digital asset customers, challenges with growing deposits, concerns about governance and conflicts of interest, and issues with executive turnover and questionable practices. Additionally, the discussion focused on significant fluctuations in broker deposits, potential impacts on the deposit franchise, and the complexity and risks associated with broker deposits.

Expert Details

Former EVP, Chief Digital Officer at Customers Bancorp Inc, leaving June 2023. The expert is familiar with the composition of their deposits and was the creator and founder of the product and technology for CUBI's crypto deposit franchise.

Senior Director, Head of Partnerships at Bank Of New York Mellon Corp. The expert is responsible for growing the business, particularly the payments business, through third parties like venture capitalist firms.

Prior to the Bank Of New York Mellon Corp, the expert was the EVP, Chief Digital Officer at Customers Bancorp Inc, leaving June 2023. The expert was responsible for building and managing the digital asset and crypto business.

The expert has 13 years of experience across financial services strategy, sales, and technology.

Q: Can you speak to roughly what % of CUBI's deposit base comes from crypto or digital currency?

A: Yes

Q: Can you speak to how CUBI invests crypto deposits?

A: Yes.

Q: Is there any regulatory color or detail on how CUBI built its crypto deposit franchise?

A: Yes, I was the one who developed that product and built the technology for it. I was the founder of that technology.

Tegus Client

I appreciate you taking the time to chat. To give you context, I am trying to understand better the digital assets part of the business at Customers Bancorp, how it works and all that stuff. I would like to just get started with your background, how you wound up there, your experience there and what led you to leave.

Former Chief Digital Officer at Customers Bancorp Inc

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Yes. My first introduction with Customers Bank was through an old colleague at American Express who went to business school with the CEO. At the time, I was dipping my toes in the water, looking for a new job. I was in consulting and ready to move on. And this gentleman connected me to Sam Sidhu who's the now CEO of Customers Bank and at the time was looking for someone to be the head of strategy at Customers Bank.

I'd never really envisioned myself being a commercial banker. Nevertheless, Sam was able to sell me on this being a really good opportunity to come and actually build a real strategy and have an opportunity to implement things that other banks probably wouldn't that Customers Bank wanted to move fast, be digital first and push the envelope on what Commercial Bank could do particularly in the fintech space.

I started my job as the head of strategy at Customers Bank in 2020, right at the beginning of 2020. And I spent a lot of time just combing through earnings reports of other banks and figuring out who was getting the outsized multiple relative to Customers Bank, I think at the time was getting a four to one or something like that. It was just really undervalued relative to the way we thought about the bank's structure.

And I came across a handful of banks. It's ironic now in hindsight but SVB, Signature, Silvergate, First Republic all these guys were getting these outsized multiples associated with really strong franchises that got them great sticky deposits and, double clicking a couple of them, had really big exposure to crypto and digital assets. A little bit more digging and it's pretty clear that the digital asset industry is this multi trillion dollar capitalized business that has very substantial fiat payments and treasury needs that are wildly underserved, not at all served by the large banks and codified within these handful of otherwise competitor banks to ours.

And after it was proposed to Sam and then eventually to the board of directors, we launched a digital asset business, managed to compete with those handful of businesses or banks that were in the industry. And somewhere in, let's call it, mid to late 2020, I got buy in to do that. I, at this point, was also now managing all of the consumer and tech businesses at Customers.

An end to end digital asset vertical, launched Q1 of 2021 and built over the next, let's call it, two years plus, two and a half years from literally just me to a fairly large team. It's pretty substantial deposit business.

Tegus Client

Great. What prompted you to leave?

Former Chief Digital Officer at Customers Bancorp Inc

It was a multi fold process. But the long story short is they let me go believing that they needed to calm the regulators down related to digital assets. I was seen as the crypto guy, and they wanted to fold digital assets into the broader commercial bank as a way to insulate it, make it less salient certainly from the regulators' perspective but also from investors' perspectives.

I was also really well compensated; I should say highly compensated relative to the rest of Customers Bank. It just made sense for them in their estimation to part ways with me and to move the digital asset business in a different direction, most notably keep it smaller than I was interested in. And I quickly left Customers Bank and then joined BNY Mellon where I now lead digital asset sales.

Tegus Client

That's super helpful. Since you mentioned it, I do want to explore the comment that you made about the regulator. You used the words calm down the regulator. What were the issues with the regulator or what were the tenor of conversations? And did they have any parameters around how much digital asset client deposits the bank could have exposure to or whether they could lend those deposits out or anything like that?

Former Chief Digital Officer at Customers Bancorp Inc

I'll start this by just taking you on a little bit of a journey here with the regulators. But I'll get to those specific things because the answer to all of those is yes there were specifics. But we kept the regulators, not just informed, but as an active participant, at every stage of development of this vertical. We built out an

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incredibly robust risk document that captured all of the inherent risks associated with the ecosystem that we were going to bank but also the products that we were going to offer to those customers.

We built out extensive processes and risk mitigants all prior to launch by regulators. I'm specifically saying the Fed. **CSI**

First when FTX blew up. It concerned a number of different regulators not just ours. Signature then, in a bizarre moment at a Goldman Sachs investor conference, Joe DePaolo, the CEO of Signature, talked about how they were going to run some billions in digital assets deposits from Signature Bank off their balance sheet.

It was a really watershed moment for regulators to be, are you telling me that Signature Bank has that much? That is a really high deposit concentration from this incredibly nascent business. And all the regulators started to pay a lot more attention to the percentage of deposits associated with this ecosystem.

Then the second catalyst for the change in tenor was when Signature, SVB, and Silvergate all went down within a month of one another. And ironically these things really had nothing to do with digital assets, at least in the case of Signature and SVB. Silvergate it did but didn't. **CSI**

However, we have always said that we would not lend against it. Instead we just used that to pay down wholesale funding and to mitigate our wholesale funding needs.

Tegus Client

That was the question. So yes, the rest of the deposit franchise is not good. And why is that?

Former Chief Digital Officer at Customers Bancorp Inc

Extremely high deposit interest beta as rates rose through 2021. Basically, it was just there was no franchise value to pretty much any other deposit business at the bank. Some very small valuable franchises in consumer at the branch, but that was tiny. You're talking about less than \$2 billion. Everything else had an extremely high beta. All of the commercial customers were basically either demanding market rate interest or leaving.

Tegus Client

Interesting. Let's talk about this deposit franchise question because that's something that's interesting to me. We can circle back on the digital assets thing in a second because I understand where you are with that. But they've taken over some teams, I think, from some other banks. They said they've hired 20 or 30 people. They're like, well, we want to lower our cost of deposit so we hired all these people to bring in deposits. It's not for increasing lending. It's to remix the deposit base into lower cost deposits and their business accounts.

Former Chief Digital Officer at Customers Bancorp Inc

Yes. I don't know what I can add to this other than say, yes, that's my thought too. I think what's even more perverse about the entire thing is that if you look at who they've hired, they've hired basically tech and

venture bankers from Signature who were recently acquired by Signature from Square one.

Square one, if you're not familiar, I'm sure you are, is a West Coast tech and venture-centric bank. Think a micro version of SVB circa 2019. Signature is trying to enter the tech and venture banking space to compete with SVB. They buy Square one. And this team had some degree of success with Signature. What you have to remember is that all of the relationships to my knowledge that these guys were managing, all of those relationships were lending relationships. Maybe they came with some deposits, but they surely were not fully funding their businesses, let alone generating deposits without lending.

We're talking about guys who were doing on the fund side capital call and nav lines and then growth debt lines and asset-based lending and receivables lending and things like that for startups that were VC-backed. And yes, they were getting some payments volume, some corporate treasury cash there for sure. Maybe I'm wrong, but I don't see how these are going to become just self-sustaining deposit franchise owners at Customers Bank. It's very hard to believe particularly in this interest environment that it would be incredulous.

I'll give you the two pieces of inside baseball here that I suppose is what you want to get out of it. The first is there is a very strong treasury management platform at Customers Bank. Before I left, I built a handful of pretty cool tech products that all of these tech Inventure type customers loved. An example would be we had an API suite that basically allowed any treasury at a corporate to connect their ERP to Customers Bank in a handful of clicks assuming they're at a standard ERP like a NetSuite or Xero, Intuit et cetera.

So they love that. They also love things like we had a very fast document collection process and onboarding experience. You get these guys up and running in 72 hours. There were things like integration with Kyriba and a bunch of other things that do make life pretty easy and shockingly few banks actually have say nothing of an actually bespoke API library that a really thoughtful enterprising treasurer and tech team could actually make a great deal of use.

But I don't think that it appreciably changes the underlying point that in a 5% interest environment at most banks that these people are suddenly going to bring in much noninterest bearing deposits. It just doesn't check in. So that brings me to inside baseball point number two. And I'm entering hypothesis territory here, but it's fairly well grounded.

The bank is there for the generation of their wealth and glorification. All this to say, my hypothesis, and for what it's worth this is shared by a number of people who are still at the bank today is they're hiring these 70 people or whatever it is. I think it is now over a hundred. But they're hiring all of these people who are theoretically going to build and maintain these deposit franchises that they've built elsewhere. I think they're basically going to see who does it and then just fire everyone else. Well, look at the executive turnover at the bank. The whole management board basically turned over in the last year.

Tegus Client

So you said 18% is the cap. So part of it is in CBIT and part of it is just cash or what's the mix? Do you have a sense?

Former Chief Digital Officer at Customers Bancorp Inc

Basically the bank does three things for digital asset customers. One, it allows them to use CBIT. This was the flagship product created four years ago. That's CBIT. That's by far and away the most valuable thing at Customers Bank. I would venture to argue that CBIT itself is worth more as its own entity than the entire bank is worth. That's the first thing they offer. The second is just standard corporate treasury services. Random corporate treasury services like payroll and things like this. But those digital asset customers have a decent amount of venture cash and their own revenue and things like this. A lot of that's there. The last thing is for a handful of select customers, they will do ACH and wires between consumers and the exchange.

Tegus Client

That makes sense. They have their deposits there. They could use CBIT. Say one of them has \$1 billion of deposits, maybe 800 million is CBIT that's moving around.

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Former Chief Digital Officer at Customers Bancorp Inc

I see what you're saying. No, hang on. No one leaves money on chain. Almost all of them burn the money off the chain at the end of the day or whatever it is. They rarely leave their fiat-denominated and CBIT. They generally speak in denominated cash. Doesn't really matter. But just for whatever.

Tegus Client

Now let's talk about Circle. I've heard that's the biggest one. Is that right?

Former Chief Digital Officer at Customers Bancorp Inc

No. I would rather not say but it's a large digital asset exchange. But it's not Circle. So Circle was for a very long time the largest depositor. It is no longer for the singular reason that they want or need because of their revenue model interest on Circle. Circle was the largest depositor there. They're not anymore. The reason being Circle has to get interest on their deposits. Customers Bank won't give any digital asset customers interest on their deposits which they shouldn't. Good for them. But Circle, because of the nature of their revenue model, has to get interest on their deposits. Ironically, they keep the overwhelming majority of their cash here at BNY.

Tegus Client

That's been the thing that I'm trying to really understand is they can't lend those deposits. In order for them to really grow and drive more earnings growth, they have to find other deposits. It's not readily apparent to me that that's feasible.

Former Chief Digital Officer at Customers Bancorp Inc

No, they can do what BNY does. What I do here at BNY is I don't lend against the deposits that we're getting but we lend them at the Fed window. Basically we just lend them overnight. And we get the overnight rate, which at this moment is delightful. But the other thing that they can do with the digital assets is they could immediately start banging the hell out of these guys with fees. And I guarantee you, it will be. Sam's very smart. This should be a \$25 million a year fee option. They could tell Coinbase and Circle and Kraken and Paxos and 10 other customers, your platform fee for using CBIT is \$1 million a year and they would all pay.

Tegus Client

Yes. Nobody else is. They need to have a variety of banking partners. This is one of the major ones that they have to deal with.

Former Chief Digital Officer at Customers Bancorp Inc

Yes. And what people don't realize, and this isn't just people related to Customers Bank. This is a global thing. CBIT is a single point of failure for the entire digital asset ecosystem. CBIT went down for a sustained period of time greater the price of all digital assets. It would make digital markets illiquid for as long as it was down or until wire volume and wire payments could catch up. But even then, market makers would not be able to operate with the exchanges in real time.

Tegus Client

Interesting. On this point about not lending it out, the issue in my mind is, they're basically earning the overnight rate which is great. But they can't grow those deposits anymore. They're earning the overnight rate so that area of the income statement is capped. Then it's also likely to decline as rates go down because you're earning Fed funds or whatever.

Former Chief Digital Officer at Customers Bancorp Inc

Yes.

Tegus Client

Yes. I agree with that. Then you have to go and still raise more deposits in order to drive up lending in the other parts of the business.

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Former Chief Digital Officer at Customers Bancorp Inc

It sounds like the bank has failed to develop any other deposit-generating businesses so I don't really know why they think suddenly they will.

Tegus Client

It's really interesting. You said something about Jay and Sam being amoral, and there's definitely some news flow around Jay's former employees and investors being upset about what happened with Sovereign Bank. Are there other things that you've seen or other examples that you can give? That's a pretty strong view. I would love to hear more about that.

Former Chief Digital Officer at Customers Bancorp Inc

I said amoral not immoral for whatever that's worth. That's pretty semantic. I want to be very thoughtful about how I navigate this section but here's what I would say. The bank operates as a family business, full stop. I've never seen Jay want something that he did not get from any relevant group, whether it's risk or compliance or anything else.

The familial ties are shocking and not good governance. Jay is the executive chairman. Sam is the CEO. His daughter, Luvleen, is the CEO of Bank Mobile, BMTX that eventually got spun off but has been a money pit for the bank. The only people who it's not been a money pit for is Luvleen Sidhu.

There's massive conflict of interest with how BMTX was handled, or I suppose is being handled. There's a string of very good executives that have been basically bust out of the bank largely to avoid paying. It's an incredible pattern. That's very strange. And I think most typified by just last quarter firing the long tenured CFO for cause to avoid paying her severance only to backtrack two days later and pay her entire severance and retract their firing her for cause after she sued them and was very clearly going to win.

They did the same thing to other people. It's just I've never seen a place of so much senior executive turnover and in only a few cases was it because those people were unqualified for their jobs or not doing a good job.

Tegus Client

Interesting. Were you familiar with the board member that they had for 12 years? It was Sam's buddy. This guy Bhanu. Do you know why he got off the board? Is there any story around that?

Former Chief Digital Officer at Customers Bancorp Inc

Not that I'm aware. The board's a whole another matter. You're talking about the lead director is 84 years old and frankly not especially sophisticated, never mind his age. The entire board though mostly is people from the West Redding community who are just Jay's buddies for the last 30 years. You got a guy who is the publisher of the West Redding Eagle another guy who I forget what it was but he's a small business owner, the chairwoman of the local chamber of commerce. These people have no business being on the board of a bank that at this point is as dynamic and frankly in many ways sophisticated as Customers Bank is.

Then on top of that you've got Raj Date is an outstanding board member. He's a shared board member between Customers Bank and Circle. He's also a former chairman of CFPB. He is intensely qualified. But then you've also got Dick Ehst, the former CEO. Dick Ehst was the CEO of the bank prior to Sam and after Jay. He was CEO for one year. His son in law is on board. And Dick is on the board himself. And they keep it all in the family. It's just not good governance. Anyone who's taken their first class in business ethics would just be these are just gross violations of basic processes.

And the worst that I've experienced was the deposit services agreement between BMTX and Customers Bank. It's now run its course. But when Customers Bank spun BMTX off Customers Bank became BMTX's sole customer. This entity that Jay's daughter was the CEO and the Sidhu's had huge personal stake in. I've never seen something that was so flagrant. They ran it into the ground. They spent it all on tech and things like that. You can look. I don't know if it's even trading anymore. It's very small.

Tegus Client

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Here's a question for you. Just going back to something on deposit since you brought this up with regards to BMTX. I was looking around the call reports and I looked at the amount of brokered deposits that they have. I asked the IR guy about it. But when I asked about brokered deposits, he's like well we have a different definition of brokered deposits than the Fed does. I was like I always felt there's really only one definition of brokered deposits. I'm curious if you have any knowledge around that.

Former Chief Digital Officer at Customers Bancorp Inc

No idea that's a new talking point since I was there.

Tegus Client

Well. On that front though, what are those brokered deposits? Are those deposits coming from the digital asset community?

Former Chief Digital Officer at Customers Bancorp Inc

No that's coming from other. I think it's other banks. Definitely not from digital assets. Anything digital assets is core only. Digital assets are all core.

Tegus Client

Their explanation to me was that they have clients who are in the financial space. Then their deposits are considered brokered deposits. I will tell you the explanation and maybe you have some insight and can help me figure it out. Here's what I said because I was looking at the call report and the call reports showed a big jump in brokered deposits in the fourth quarter of '22.

Former Chief Digital Officer at Customers Bancorp Inc

Yes, it was because there was just a large amount of runoff from other funding sources. I forget where they got them from. But it was basically to avoid wholesale funding.

Tegus Client

Interesting. They said it's probably all interest bearing. The classification of brokered is based on who you ask based on the regulator. The deposits are directly with the clients. The regulator believes that some components of those deposits are brokered, not wholesale time deposits and to customers that are financials who have deposits that come in from other places is what he said.

Former Chief Digital Officer at Customers Bancorp Inc

Sounds like they're just saying FBOs, some of the SEM clients or something like that. But that doesn't make sense because all of that was considered core when I was there.

Tegus Client

Interesting. That's something that's tough to figure out because I look at the call report.

Former Chief Digital Officer at Customers Bancorp Inc

Yes. I wish I could give you more color there. But something doesn't add up.

Tegus Client

Yes. That number was tracking broker deposits were tracking at two billion through '22, other than first quarter, they went down to one. They jumped to five billion at the end of the fourth quarter of '22. Now they're closer to seven.

Former Chief Digital Officer at Customers Bancorp Inc

No, it's not digital assets. It's definitely not. If that's the case, that means that the rest of the deposit franchise has been absolutely just devastated.

Tegus Client

Yes. That's weird. And if you look at the peers, I think the peer average is, as a percent of the balance sheet. For them, their broker deposits as a percent are 37%. I think the industry average is maybe seven.

Former Chief Digital Officer at Customers Bancorp Inc

That's strange. I wish I could give you more of an accounting for that, but that's very bizarre. To me, if you abstract out the broker deposits, abstract out the wholesale funding, abstract out digital assets, what are you left with from deposit franchise? Almost nothing.

Tegus Client

They also closed half of their branches. Now it's a seven branch from 16. Maybe I'll just ask this last question. But on this broker deposit question, who are those customers typically? Where are those deposits coming from? Do you have a sense of that?

Former Chief Digital Officer at Customers Bancorp Inc

I think there are other banks that are lending that just basically would qualify as wholesale funds. So I don't know. Seven million or seven billion doesn't make sense to me. That's outrageous.

Is that reciprocal stuff IntraFi? IntraFi is a deposit. It's meant to maximize FDIC coverage. If a customer has let's say \$100 million at Customers Bank, IntraFi will help us to place on overnight basis reciprocal, basically trading customer funds between a million different banks to maximize FDIC coverage for all the clients. But if that need them brokered, that would undermine the value proposition altogether to the bank.

Tegus Client

Right. I didn't really understand the definition of broker depends on who you are. You can do that if you're not regulated by the regulator. You don't have a regulator. You can do adjusted numbers and all that stuff. But it doesn't make sense to the regulator. Regulator is the final arbiter of how they're going to treat your balance sheet.

Former Chief Digital Officer at Customers Bancorp Inc

Yes. Totally.

Tegus Client

Awesome. Thanks for your time. Bye.

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
CUSTOMER BANCORP, INC.,
d/b/a Customers Bank
(b) County of Residence of First Listed Plaintiff Berks County, PA
(c) Attorneys (Firm Name, Address, and Telephone Number)
Richard G. Rosenblatt, Morgan, Lewis & Bockius LLP
2222 Market Street, Philadelphia, PA 19103
215-963-5000

DEFENDANTS
Smalley, Christopher
County of Residence of First Listed Defendant New York County, NY
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [X] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 440 Other Civil Rights, 625 Drug Related Seizure, etc.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 Transferred from Another District (specify)
[] 6 Multidistrict Litigation - Transfer
[] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. s. 1332: Diversity
Brief description of cause:
Claims for unlawful disclosure of federally regulated information; breach of contract; defamation.

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Permanent injunction
CHECK YES only if demanded in complaint:
JURY DEMAND: [] Yes [X] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE _____ DOCKET NUMBER _____

DATE July 17, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Richard G. Rosenblatt

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 701 Reading Avenue, West Reading, PA 18611

Address of Defendant: 50 Murray Street, #1006, New York, NY 10007

Place of Accident, Incident or Transaction: Berks County, PA

RELATED CASE IF ANY:

Case Number: Judge: Date Terminated

Civil cases are deemed related when Yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit Pending or within one year previously terminated action in this court? Yes No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier Numbered case pending or within one year previously terminated action of this court? Yes No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se case filed by the same individual? Yes No [X]

I certify that, to my knowledge, the within case is / [X] is not related to any now pending or within one year previously terminated action in this court except as note above.

DATE: 7/16/2024 /s/ Richard G. Rosenblatt 59096
Attorney-at-Law (Must sign above) Attorney I.D. # (if applicable)

Civil (Place a checkmark in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Wage and Hour Class Action/Collective Action
6. Patent
7. Copyright/Trademark
8. Employment
9. Labor-Management Relations
10. Civil Rights
11. Habeas Corpus
12. Securities Cases
13. Social Security Review Cases
14. Qui Tam Cases
15. All Other Federal Question Cases. (Please specify):

B. Diversity Jurisdiction Cases:

- [X] 1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify):
7. Products Liability
8. All Other Diversity Cases: (Please specify):

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration)

I, Richard G. Rosenblatt, counsel of record or pro se plaintiff, do hereby certify:

[X] Pursuant to Local Civil Rule 53.2 § 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

[X] Relief other than monetary damages is sought.

DATE: 7/16/2024 /s/ Richard G. Rosenblatt 59096
Attorney-at-Law (Sign here if applicable) Attorney ID # (if applicable)

NOTE: A trial de novo will be a jury only if there has been compliance with F.R.C.P. 38.