



May 31, 2016

Via Electronic Submission to innovation@occ.treas.gov

Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: Supporting Responsible Innovation in the Federal Banking System

Mr. Comptroller:

The Financial Services Roundtable/BITS (“FSR/BITS”)¹ appreciates the opportunity to provide comment to the Office of the Comptroller of the Currency (“OCC”) regarding the recently released “Supporting Responsible Innovation in the Federal Banking System,” (the “White Paper”) and the OCC’s proposed approach to supporting financial technology innovation discussed therein. The OCC’s White Paper could not be timelier: Not only is the pace of technological change in the broader economy quickening, but so is the velocity inside financial services. The availability of financial services and products on-demand and with the convenience of a few finger swipes reflects how consumers’ expectations for product experiences are not shaped by financial providers alone, but by the incredible experiences they discover in their daily lives online.

¹ About FSR and BITS: As advocates for a strong financial future™, FSR represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs. BITS is the technology policy division of FSR and addresses newly emerging threats and opportunities, particularly those related to cybersecurity, fraud reduction and critical infrastructure protection. Working with CEOs, CIOs, heads of IT Risk and other senior members of member companies, BITS identifies key issues at the intersection of financial services, technology and commerce and facilitates collaboration to improve the ecommerce environment for member companies and their customers through the development of policies and practices.

To meet these expectations and remain competitive, financial firms will move to adopt new techniques and technologies to serve their customers. Whether internally built or procured through vendor or direct partnership, financial service providers who consistently invest and focus their efforts on customer needs will be well-positioned to thrive as the entire sector becomes increasingly digital over the next decade.

The potential benefits of this convergence between financial services, enabling technologies and the firms that produce them are immense. Aside from providing enhanced consumer access and experiences, financial services technology (or “FinTech”) has the potential to address some of the industry’s most pressing challenges, such as financial inclusion and literacy, availability of more economically accessible and risk-tailored products and services, while maintaining and genuinely improving robust consumer protection and data security. Such advances are dependent on experimentation and “trial and error” within the marketplace; as the OCC notes, innovation is not without risk.² Nevertheless, in today’s dynamic, global economy, the OCC should consider the risk to the U.S. financial system due to a failure to embrace and evolve through innovation. With this in mind, FSR/BITS submits the following responses to the OCC’s more particularized questions outlined in the White Paper for consideration.

OCC Questions and FSR/BITS Responses

1. What challenges do community banks face with regard to emerging technology and financial innovation?

In a fiscally competitive environment, many small and mid-sized banks may not have the scale or resources to be an edge innovator or have the access to partner directly with nonbank innovators. Administrative hurdles imposed by regulatory agencies only compound this resource problem. Accordingly, to foster and help facilitate technology and financial innovation within these firms, the OCC and other federal oversight agencies should consider efforts to improve inter-agency efficiencies that avoids or eliminates silo-based viewpoints. For example, the White Paper notes that if a bank is today interested in developing an innovative process to speed payments, it could approach an examiner with a proposal, request a legal opinion from the OCC, contact other OCC subject matter experts, etc.

² Office of the Comptroller of the Currency, Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective (Washington, DC: March 2016) Preface, p.2. Web. <<http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf>>.

While each of these modes of inquiry may have their benefits, these means of interaction evidence the lack of a clear, consistent process for review. The absence of a streamlined review process, with a fixed response time, acts as a strong disincentive for requesting firms to expend requisite time and resources.

In terms of increasing benefits for innovation, FSR/BITS strongly agrees with the OCC suggestion for updated and clear guidance on how the OCC would view certain technologies, such as mobile banking, in relation to Community Reinvestment Act requirements. More specifically, FSR/BITS supports the OCC's plan described within the OCC "Principle 4: Encourage responsible innovation that provides fair access to financial services and fair treatment of consumers" section:

"To encourage responsible innovations that provide fair access to financial services and fair treatment, the OCC plans to share success stories describing how national banks and federal savings associations have innovated to increase access to unbanked and underbanked populations; to increase the speed, efficiency, effectiveness, and transparency of financial transactions; and to lend and invest in ways designed to address the credit needs of low- and moderate-income individuals and communities.

"The OCC may also issue guidance on its expectations related to products and services designed to address the needs of low- to moderate-income individuals and communities and may encourage innovative approaches to financial inclusion by promoting awareness of other activities that could qualify for Community Reinvestment Act consideration."³

2. How can the OCC facilitate responsible innovation by institutions of all sizes?

Central to the process of innovation for firms of all sizes is clarity in rules and consistency in their application. While these tenets are clear pillars to successful innovation, such benefits must be balanced against the need to ensure a safe and sound banking system.

Clarity and consistency make it possible for financial firms to engage in targeted experimentation, which is vital to fostering "responsible innovation." We recognize any concept of experimentation might be somewhat incongruous with the OCC's current view, which is most acutely captured in the following statement: "A bank's decision to offer innovative products and services should

³ ibid. Principle 4, p.8.

be consistent with the bank's long-term business plan rather than following the latest fad or industry trend."⁴

We suggest, however, that true innovation in any industry has the ability to create a need customers previously did not know they had. Apple's iPhone is the quintessential example. Creating and experimenting with financial products in good-faith may, at that moment, not appear to fit in with a bank's long-term strategy, but could very well be "the next iPhone" product or service. As such, we would encourage the OCC to consider innovation and experimentation along those lines, rather than through a lens solely focused on immediate and obvious bank strategies.

Furthermore, as the OCC notes throughout its paper, many of the changes taking place both within the financial industry, and the OCC itself, represent cultural shifts that understandably require adaptation and adjustment. Innovation through experimentation is, by definition, an uncertain process, and "uncertainty" is not a traditional concept for a prudential regulator. Thus, for the OCC to achieve its own goal of "fostering an internal culture receptive to responsible innovation, it would be helpful for OCC's own staff to adopt the notion that innovation and experimentation are to be supported."⁵

3. How can the OCC enhance its process for monitoring and assessing innovation within the federal banking system?

Aside from an evaluative mechanism, the OCC and other federal financial services agencies should consider establishing advisory committees to not only monitor for and assess innovations, but engage in ongoing and iterative dialogues concerning authentication, privacy, cybersecurity, and other technology related matters. Examples in other sectors include the information technology and telecommunications industries' President's National Security Telecommunications Advisory Committee (NSTAC) chartered by the U.S. Department of Homeland Security⁶, the multi-sector Information Security and Privacy Advisory Board (ISPAB) chartered by the National Institute of Standards and Technology⁷, and the agriculture sector's Advisory Committee on Biotechnology & 21st Century Agriculture chartered

⁴ *Ibid.* Principle 6, p.9.

⁵ *Ibid.* Principle 2, pp.5-7.

⁶ U.S. Department of Homeland Security, About NSTAC (Washington, DC). Web. <<https://www.dhs.gov/about-nstac#>>.

⁷ National Institute of Standards and Technology, Information Security and Privacy Advisory Board (ISPAB) (Washington, DC). Web. <<http://csrc.nist.gov/groups/SMA/ispab/index.html>>.

by the U.S. Department of Agriculture.⁸ Each of these committees advises agencies on issues related to emerging technologies within their respective sectors and the policy issues that use of these technologies may raise. A financial services technology advisory committee could provide the OCC with similar regularized insights and knowledge sharing regarding a whole suite of technology related items, helping the agency to stay abreast of the latest innovations and sector thought and helping to better inform subsequent policy initiatives.

Additionally, FSR/BITS suggests the OCC consider establishing a similarly technology- and innovation-focused interagency working group with other banking and financial services agencies. This group could encourage communication between all stakeholders (regulators, supervisors, financial institutions, nonbank companies) traversing the evolving FinTech space and meet to discuss initiatives such as the OCC's Innovation Initiative, CFPB's Project Catalyst, and the Federal Reserve's multi-disciplinary working group focused on FinTech innovation⁹, as well as lessons learned in how such initiatives shape innovation. Moreover, such a group could interact with the private sector stakeholders through formal mechanisms, such as the above-recommended advisory committee, and through informal meetings and innovation fairs as suggested in the OCC White Paper. From these interactions, such a group could learn about recent innovations and emerging technologies to shape a more informed and unified federal regulatory approach to innovation, as well as identify inconsistent or duplicative application of laws, regulations, guidance and supervisory decisions for reconsideration and amendment as appropriate.

4. How would establishing a centralized office of innovation within the OCC facilitate more open, timely, and ongoing dialogue regarding opportunities for responsible innovation?

There are many benefits to a centralized office of innovation and centralization, generally. A centralized office would better facilitate the OCC's efforts to standardize and streamline interactions with interested private sector entities. Indeed, interactions could be quicker and more efficient. Additionally, with centralization, the OCC's application of policy would be more uniform and pronouncements regarding innovation and innovation-related issues would be more consistent.

⁸ U.S. Department of Agriculture, [Advisory Committee on Biotechnology & 21st Century Agriculture \(AC21\)](http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=AC21Main.xml) (Washington, DC). Web.

<http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=AC21Main.xml>.

⁹ Lael Brainard, "The Use of Distributed Ledger Technologies in Payment, Clearing, and Settlement," Institute of International Finance Blockchain Roundtable (Washington, DC: April 14, 2016). Web.

<https://www.federalreserve.gov/newsevents/speech/brainard20160414a.htm>.

For a centralized office of innovation to be successful, however, the OCC would have to appropriately fund it. It would also have to be appropriately resourced both in the number and type of personnel. There would have to be an adequate number of coordinators and private sector liaisons as well as subject matter experts from within the various divisions of the OCC. Such staff would have to develop and maintain their expertise through continuous training and iterative engagement with the private sector. Moreover, the centralized office should have a clear line-of-sight into -- and be fully coordinated with -- any parallel efforts within other federal financial services agencies. Lastly, the purpose of the office should be to facilitate existing licensing and supervisory processes and should not add a bureaucratic layer. The office should also not add new formalized review or approval processes to permitted activities and investments, instead acting as a mechanism for facilitating interactions between the OCC, banks and nonbank innovators.

5. How could the OCC provide guidance to nonbank innovators regarding its expectations for banks' interactions and partnerships with such companies?

FSR/BITS recommends that as an initial matter, the OCC develop a website dedicated to its Innovation Initiative. This website could serve as a "one-stop-shop" for those interested in the OCC's approach to innovation, with descriptions of the initiative itself, as well as the OCC's expectations for all stakeholders. It could link to OCC third-party guidance and other OCC and Federal Financial Institution Examination Council (FFIEC) rules and guidance. It could also describe and link to other innovation initiatives such as those described above. It could list points of contact within its centralized office of innovation, should the OCC establish one, and it could provide an updated calendar for prospective and past stakeholder engagements and policy pronouncements. The OCC should have a link to this dedicated website prominently located on its own homepage as well, and the website should be optimized for internet searches (e.g., terms and phrases might include "FinTech Innovation and government," among others).

Aside from a website, the OCC should encourage increased interactions between banks, the financial services sector, and nonbanks, including collaborations and partnerships. The OCC should also encourage this among and between bank innovators as well. Through these interactions and potential partnerships, in addition to established vendor management and third-party oversight obligations, banks will be able to familiarize their nonbank colleagues with banking and financial services rules and practices. Additionally, the OCC could partner with other agencies, such as the Federal Trade Commission, Securities and Exchange Commission, and CFPB, to coordinate the communication of the

applicability of the safeguard requirements of the Gramm-Leach-Bliley Act (see 15 U.S.C. § 6801) and other applicable consumer protection statutes and regulations (e.g., unfair or deceptive acts or practices statutes, the Electronic Fund Transfer Act [15 U.S.C. 1693 et seq.], and Regulation E [12 CFR 1005 et seq.]). to innovators of FinTech products and services. The OCC and these agencies could hold information sessions on these topics and expectations at jointly held innovation fairs and forums.

6. What additional tools and resources would help community bankers incorporate innovation into their strategic planning processes?

As discussed above, for the OCC to create an environment conducive to “responsible innovation” it should work to ensure a principles-based approach, with clear rules and certainty in their application. This not only benefits the entirety of the firms directly under the OCC’s purview, but also the nonbank innovators with whom financial firms continue to partner and collaborate.

7. What additional guidance could support responsible innovation? How could the OCC revise existing guidance to promote responsible innovation?

Responsible innovation must necessarily be pursued in concert with safety and soundness standards, while upholding essential consumer protection principles. Small, medium and large financial institutions can benefit from the OCC taking the lead to coordinate and collaborate with other regulators, including regulators that have oversight over nonbank innovators. By working together with other regulators, the OCC can help promote consistent interpretation and application of current laws and regulations so that institutions of all sizes can innovate with assurance that regulators are on the same page with respect to safety and soundness and consumer protection, and that financial institutions remain competitive relative to other firms.

Furthermore, FSR/BITS recommends the OCC approach new guidance or rules conservatively, focusing its attention on filling overt regulatory gaps. As possible reference, FSR/BITS recommends the OCC review the joint FSR/BITS and Financial Services Sector Coordinating Council’s early 2015 memorandum, regarding “Sector Recommendations as the FFIEC Considers Updates to Its Guidance,” which describes some of those gaps in existing guidance (e.g., mobile banking). Additionally, if the OCC determines additional guidance is required, FSR/BITS requests that it confer with stakeholders (perhaps through the proposed Advisory Committee discussed in response to question (3) to discuss its objectives and ascertain the benefits and costs to the private sector for any proposed course of action. Such

engagement should be iterative throughout the OCC's process. For any resulting issuance, FSR/BITS strongly encourages that the end result be principle-based, language consistent, and technology-neutral.

8. What forms of outreach and information sharing venues are the most effective?

While the previously discussed innovation website might be one of the more effective means of initial communication and outreach, the OCC should also consider other well-attended sector and innovator conferences and forums. Each year, FSR/BITS hosts a "Forum" that brings together senior executives, innovators, and technologists to discuss the intersection of technology, policy, and innovation. In 2015, BITS hosted the "Emerging Payments Forum." Speakers included, among others, the founder of Samsung Pay, the CRO from Ripple Labs, your Honor, and the New York Department of Financial Services who announced NYDFS's BitLicense program.¹⁰ Future BITS "Forums" would be an ideal venue for OCC outreach and information sharing.

To encourage CRA-related innovations, FSR/BITS also recommends partnering with its Corporate Social Responsibility (CSR) division to cohost a series of events. FSR's CSR division provides a platform to promote the positive impact FSR member companies make in their local communities, the United States, and around the globe, as well as engage in a variety of public-private partnerships to assist the underserved and support various social causes. In particular, CSR focuses attention on activities that include investing in social business opportunities and supporting the work of non-profit and other organizations, with a focus on financial education and community development. Examples of CSR programs, partnerships, and events can be found at: <http://fsroundtable.org/csr-mission/>

For a broader, sector-wide information sharing, FSR/BITS suggests the OCC ask both the Financial Services Information Sharing and Analysis Center (FS-ISAC) and American Bar Association to serve as distribution channels. With respect to the FS-ISAC, it has over 7,000 financial service corporate members. Regarding the American Bar Association, it is a voluntary membership association for attorneys. Many of the attorneys that advise innovators belong to this association. Indeed, according to the American Bar Association, it is one of the largest voluntary professional membership organizations in the world with over 400,000 attorney members.¹¹

¹⁰ Financial Services Roundtable, [Events: BITS Emerging Payments Forum](http://fsroundtable.org/event/bits-emerging-payments-forum/) (Washington, DC). Web. <<http://fsroundtable.org/event/bits-emerging-payments-forum/>>.

¹¹ American Bar Association, [ABA](http://www.americanbar.org/aba.html) (Washington, DC). Web. <<http://www.americanbar.org/aba.html>>.

Finally, to further connect with those innovators outside the traditional financial services sector, FSR/BITS recommends that the OCC also engage in outreach to engineering universities and at conferences and events, such as Money 20/20¹², TechCrunch’s Disrupt forums¹³, and other venture capital events.

While these examples of events and industry collaboration can assist in information sharing, FSR/BITS also notes the opportunity for the OCC to leverage this outreach for its own benefit and talent acquisition needs.

9. What should the OCC consider with respect to innovation?

The OCC has an important role to play to ensure the transformation of financial services through collaboration with technology innovators continues successfully, and in the best interest of consumers and the institutions it oversees. We appreciate the general aversion to undue risk that has historically underpinned the OCC’s role in maintaining a safe and sound banking system. That said, as the OCC’s White Paper notes throughout, cultural and operational preconceptions must be adjusted to keep pace with the accelerating change taking place through FinTech.

When considering innovation, FSR/BITS again suggests the OCC support targeted experimentation. As discussed, experimentation is essential to innovation, and because not every institution is of the same scale and does not have the same lines of business, each will approach innovation differently. Accordingly, the OCC and its staff should be cognizant and amenable to those different approaches so long as those approaches do not result in some manifest harm to the economy or consumers.

Additionally, FSR/BITS would like to reiterate its recommendation that if and when the OCC determines new rules or guidance is needed, that those rules or guidance principle-based, designed to fill overt regulatory gaps, and remain technology neutral. Furthermore, to diminish legal uncertainty -- which can discourage innovation -- FSR/BITS requests the OCC coordinate with peer agencies in issuing new rules and guidance, especially with respect to language, application and enforcement.

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¹² Money 20/20, Money 20/20 (New York). Web. <<http://www.money2020.com/>>.

¹³ TechCrunch, Disrupt: Upcoming Events (New York). Web. <<http://techcrunch.com/event-type/disrupt/>>.

To conclude, FSR/BITS notes that the infrastructure and regulation that define the financial system were crafted before some of the most prolific technologies of the modern age (e.g., Internet, mobile, APIs, etc.) existed. Recognizing that incorporating new technology is critical to both the vitality and durability of our system, we must work collectively to create space for innovation while preserving safety and soundness. Broadly, FSR/BITS makes the following suggestions:

- The OCC should remain measured in its enforcement of statutes and regulation, addressing obvious violations but providing a degree of latitude to allow for innovation through targeted experimentation.
- Refrain from holistic, comprehensive rulemaking as a first order, and instead look to formulate an environment with clear rules and expectations in which innovation can occur.
- Approach new guidance or rulemaking, in collaboration with industry stakeholders, and with an eye toward filling overt regulatory gaps that could expose consumers or the broader economy to manifest harm.
- Coordinate and synchronize all efforts designed to support innovation with peer agencies in a way that is principle-based and technology agnostic.
- Develop a consistent, common language and approach to improve efficiencies, reducing regulatory arbitrage and providing legal clarity in many circumstances.

Thank you for considering our views. If you have any questions or would like to discuss further, please contact us, or our colleagues, Josh Magri (Josh.Magri@FSRoundtable.org) and Jason Kratovil (Jason.Kratovil@FSRoundtable.org).

Sincerely,

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