CONTACT:
Chamber of Digital Commerce
(202) 302-6064
www.DigitalChamber.org

May 31, 2016

Office of the Comptroller of the Currency
U.S. Department of the Treasury
innovation@occ.treas.gov

Re: Comments in Response to the Publication entitled *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*

To Whom it May Concern:

After having reviewed and discussed the March 2016 publication *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective* with the full membership of the Chamber of Digital Commerce ("the Chamber"), I write on behalf of the Chamber to provide feedback on the publication from our viewpoint as an industry association for companies involved in digital assets and blockchain initiatives. Overall, we are very pleased to see that the Office of the Comptroller of the Currency (the "OCC") is encouraging responsible innovation among banks and in the banking system. We commend the OCC for supporting this responsible innovation initiative. We hope that the comments presented below reveal ways in which innovation can help the OCC fulfill its mission while also increasing efficiency and transparency in the banking system.

After first introducing the Chamber and its mission, the comments below offer the Chamber's perspective on (1) the significant challenges banks face with regard to innovating with the use of emerging technology in financial services; and (2) issues the OCC should consider when constructing its approach to responsible innovation. We look forward to further discussing the issues presented below with the OCC as time allows, and at your convenience.

A. Brief Introduction to the Chamber of Digital Commerce

The Chamber is the world's largest trade association representing the digital asset and blockchain industry. The Chamber represents a wide range of companies innovating with and investing in blockchain-based and distributed ledger technologies,[1] including financial institutions, exchanges, software companies and fintech start-ups. Our mission is to promote the acceptance and use of digital assets and blockchain-based technologies. Through education, advocacy, and working closely with policymakers, regulatory agencies, and industry, our goal is to develop a pro-growth legal environment that fosters innovation, jobs, and investment.

[1] For the purpose of this submission, the Chamber's expertise and comments apply to blockchain and distributed ledger technologies.

Our standing working groups and initiatives include:

- **Best Practices Working Group**, which is developing best practices and industry standards in areas, including consumer protection, BSA/AML compliance, data security and privacy, and others;
- **State Working Group**, advocates for both consistency and efficiency in the creation and application of new state and local laws and regulations;
- **Global Blockchain Forum**, an international initiative amongst the world's leading trade associations representing the digital asset and blockchain industries. Its mission is to develop industry best practices and to help shape global regulatory interoperability;
- **Blockchain Alliance**, a public-private platform between the industry and law enforcement in order to help combat criminal activity on the blockchain; and
- **Digital Assets Accounting Consortium**, which is developing accounting standards for digital assets.

Before we opened our door in July 2014, the digital asset and blockchain industry did not have formal representation in Washington, D.C. We recognize that it is critical for legislators, regulators, and the entire policy making community to have an authoritative, high-integrity source of information to guide them in the appropriate treatment of these new and innovative technologies. The Chamber of Digital Commerce and our members stand ready to be a dedicated resource to the OCC and look forward to our continued engagement.

B. Banks of all sizes face significant obstacles to innovating with emerging technology in financial services.[2]

The Chamber applauds the OCC's efforts to encourage responsible innovation in the banking system and in particular its emphasis on helping examiners see themselves on the frontline of promoting innovation. Notwithstanding best intentions, however, the current regulatory framework still tends to discourage innovation in two ways.

First, banks seeking to innovate still face significant difficulty determining how to obtain regulatory permission or approval. For example, some banks (of various sizes) have told the Chamber that they do not know whether the better approach is to speak with their examiner, a regional office that specializes in the subject matter in which they wish to innovate, or with OCC

[2] The Chamber intends for this section to respond to the OCC's second question, "How can the OCC facilitate responsible innovation by institutions of all sizes?" We separately note that the OCC also inquired as to the "challenges [that] community banks face with regard to emerging technology and financial innovation." Although the Chamber does not have any data regarding existing challenges specific to community banks that are not already captured in our other comments provided throughout this letter, the Chamber strongly encourages the OCC to take measures to reduce any such challenges that other commenters may identify. The Chamber recognizes the potential for emerging technology such as blockchain and other distributed ledgers to be deployed in many ways to help community banks compete on a more level playing field with their larger counterparts. For example, blockchain technology could increase the transparency and speed of the brokered deposits market. Blockchain technology could also give community banks direct access to the payments system, thus freeing them from relying on correspondent banking relationships. Finally, blockchains could also assist community banks to meet customers' foreign exchange needs by decreasing the extent to which community banks are captive to the cost and capacity of their larger counterparts. Such efficiency gains would go a long way to improving the health of the entire financial system, and the increased competition would likely improve access to financial services for many consumers.

headquarters. To remedy this, the Chamber urges the OCC to create a centralized point of contact for such inquiries, and to issue guidance regarding the appropriate form for such inquiries (a letter, an in person meeting, etc.).

Second, the approaches of federal regulators vary widely, which lends to a variety of challenges to responsible innovation. With respect to distributed ledger technologies and digital currency, the several federal regulators have taken varied approaches. For example the U.S. Commodity Futures Trading Commission ("CFTC") has deemed bitcoin to be a commodity. The Security Exchange Commission ("SEC"), meanwhile, is looking at bitcoin through the lens of a security, even without officially declaring it so. Further, multiple departments within the U.S. Department of the Treasury regulate bitcoin in different ways, including FinCEN, which regulates bitcoin as a currency, and the Internal Revenue Service, which regulates it as property. Even as banks may want to employ blockchain technology for purposes other than digital currency, the variety of regulatory approaches makes this complex, particularly as digital tokens are often exchanged in a blockchain system even where value itself is not. For example, tokens can be used to track the provenance of transactions. But if the tokens are also considered currency, securities, or commodities, this use could lead to unnecessary layers of additional regulation.

C. Establishing a central office of innovation would help alleviate the complexity of the existing patchwork federal approaches to emerging blockchain technology, and would provide banks a clear path for exploring responsible innovation.[3]

The Chamber supports the establishment of a central office of innovation because doing so would reduce the complexity of navigating the existing patchwork of federal approaches to emerging blockchain and other innovative technology. Doing so would provide banks a clear path for exploring responsible innovation with blockchain and other distributed ledger technologies, and a forum for discussing regulatory questions and concerns. Nevertheless, the Chamber cautions the OCC to exercise care in establishing such an office.

In the past, central offices have tended to become overly bureaucratic. It is important to ensure that applicants can innovate and are not stymied by institutional inertia, overly formal approval processes, or multiple gatekeepers. The Chamber encourages the OCC to staff a central office of innovation with experts from a variety of backgrounds and skill sets, and to charge them with a mandate to skillfully and timely evaluate proposals from the very broad spectrum of technology being integrated into financial services. Further, the Chamber encourages the OCC to build into the culture and cadence of any central office of innovation regular industry engagement and information sessions so that the central office of innovation, and the OCC more broadly, remain in tune with the needs of and developments in the industry. Finally, if the OCC creates a central office of innovation, the Chamber encourages the OCC to integrate the office into the full life of the OCC's organization, so that it does not become an institutional island.

---

[3] The Chamber intends for this section to address questions 2-4: (2) "How can the OCC facilitate responsible innovation by institutions of all sizes?"; (3) "How can the OCC enhance its process for monitoring and assessing innovation within the federal banking system?"; and (4) "How would establishing a centralized office of innovation within the OCC facilitate more open, timely and ongoing dialogue regarding opportunities for responsible innovation?"

We also encourage the OCC to ensure that examiners on the ground are tasked with the same mandate as the central office: to support and encourage responsible innovation. The Chamber has received feedback from banks that examiners can develop a reputation of stifling rather than encouraging innovation, which makes it difficult for any innovation to flourish.

D. Potential impact of the OCC's position on responsible innovation for non-bank actors: De-risking.[4]

The OCC's current approach to innovation, in concert with the policies of the other financial regulators, make it more likely that banks will follow a policy of "de-risking," which has led banks to simply refuse to provide accounts for nonbank institutions who are on the cutting edge of innovation, especially those in the blockchain and distributed ledger technology industries. In fact, many of our members have encountered, and continue to encounter, significant problems in obtaining and/or retaining banking services—regardless of whether they are money services businesses ("MSBs") or not. We would like to make clear for the OCCc that (1) not all companies associated with digital currencies and digital assets are MSBs, (2) the "MSB industry" actually includes a number of different "industries," only two of which involve companies in digital currency and digital asset related ventures, (3) companies involved with digital currencies and digital assets should not be considered or evaluated in the same way as check cashers, traditional currency exchange companies or even traditional money transmitters, (4) different types of digital currency-related companies present different issues and (5) the technology and the policies, procedures, and controls (including anti-money laundering) of many of these digital currency and digital asset related companies meet or exceed those of the traditional financial services companies.

The first point is critically important to the rapid evolution and deployment of the technology. Companies that are involved in developing and deploying digital currency or asset protocols, crypto currencies, or other digital assets, but who are not involved in the provision of money transmission or other MSB activities, are being denied access to banking services in the current system. The Chamber and its members view this as a tremendous diversion of time and resources that stems from lumping all companies that touch the digital asset industries into a common box of maximum risk. Companies are forced out of business without having the opportunity to recognize the full potential of the technology. With regard to the other points raised above, the digital currency and digital asset companies involved in MSB activities are similarly being denied access to banking services without appropriate initial due diligence aimed at understanding the actual business model of the companies, much less how they accomplish that model or what controls they have put in place around the conduct of their business. Moreover, individuals associated with these companies are arbitrarily finding their own banking relationships terminated. Finally, even where companies are involved in closed systems, if digital currency, digital assets, or decentralized ledgers underlying such currencies and assets are involved, such companies are being treated in the same way as entities in open systems, notwithstanding the fact that the legal issues and proper measurement of risk are very different.

[4] The Chamber intends for this section to address question 5, "How could the OCC provide guidance to nonbank innovator regarding its expectations for banks' interactions and partnerships with such companies?"

In sum, when the focus of the OCC and related financial services regulators centers on eliminating risk, it is tempting to simply prohibit wide swaths of the innovation industry that are less understood, rather than get under the hood of the innovators' technologies, learn about them, and assess their respective risks on a case-by-case basis. While quantifying and reducing risk is a vital part of proper self and government regulation and policy, the current focus is blunt and overly and simplistic—presenting a significant obstacle to innovation, both for the nonbank institutions, and the banks that might consider breaking rank and integrating blockchain services developed by the nonbank institutions into their financial services offerings. The Chamber encourages the OCC to devote meaningful focus and resources on cultivating a culture that emphasizes smart decision-making on an industry wide scale, including building and distributing tools to banks that empower them to undertake more nuanced and individual assessments of nonbank business models that incorporate digital currency, digital assets, or decentralized ledger technologies.

E. Potential impact of the OCC's position on responsible innovation for non-bank actors: Third-party service providers.[5]

It is very likely that much of the innovation in financial services will be a result of technology, services, and platforms designed, licensed, and/or provided by non-bank third party service providers to banks. To that end, the OCC might consider revising its memorandum on bank oversight of third party service providers to specifically address third party service providers that offer innovative technology products. This would help banks evaluate whether and how to integrate products offered by third party service providers into their financial services offerings.

F. Potential impact of the OCC's position on responsible innovation for non-bank actors: Opportunity to pursue a regulatory sandbox approach.[6]

As banks consider how to integrate innovative technology, whether through the use of services provided by nonbank institutions, or through proprietary technology applications, the Chamber strongly supports the OCC's comments recommendation that a sandbox approach to regulation be developed and offered to responsible innovators. The Chamber views the creation of a sandbox, where banks (and nonbank financial institutions) can test innovative products for the OCC and other regulators, and work through the regulatory implications of those products with regulators directly, as a development that would significantly foster and encourage responsible innovation. To the extent the OCC cooperates with other financial services regulators to offer a joint sandbox, such a regulatory development would go even further to encourage responsible innovation in the financial sector as a whole. It does less good to offer an OCC sandbox when the other regulatory agencies that have some angle of regulating a prospective innovation follow a stricter enforcement-based approach. Sandboxing works best when it is "all-in" amongst regulatory agencies.

---

[5] The Chamber intends for this section to address question 5, "How could the OCC provide guidance to nonbank innovator regarding its expectations for banks' interactions and partnerships with such companies?"

[6] The Chamber intends for this section to address question 5, "How could the OCC provide guidance to nonbank innovator regarding its expectations for banks' interactions and partnerships with such companies?"

Similarly, the Chamber would encourage the OCC to continue to examine the possibility of creating a "FinTech" or "bank-light" charter as a method for simplifying the regulatory compliance process for non-bank actors with business models that call for such compliance. One major challenge FinTech companies face in the United States is the burden of licensing, especially relative to other countries. Broadly engaging in certain activities can require a license in each of the 50 states and in certain U.S. territories. Even if these licenses are uniform in nature, the cost, complexity and burden of obtaining them is one of the primary factors limiting innovation for companies seeking to partner with banks. The Chamber encourages the OCC to continue to examine the potential for alleviating this challenge through OCC action and oversight, including through discussions and test in the context of a regulatory sandbox environment.

G. Innovation through emerging technology, such as the blockchain and other distributed ledger technologies, may provide new and effective regulatory tools for monitoring the safety and soundness of national banks.[7]

As the OCC considers its approach to responsible innovation, the Chamber encourages the OCC to consider the capacity-building elements that emerging technology can offer the financial system. In particular, the Chamber believes that the complexity of the financial system has outpaced the technology used to monitor certain activities of the national banks in real-time. This is especially true with regard to the derivatives trading exposure of the largest national banks. We believe blockchain technologies are capable of giving the OCC and other regulators new tools to fulfill its mission more effectively, and especially encourage the OCC to focus on and embrace innovation in blockchain technology.

According to the OCC's Quarterly Report on Bank Trading and Derivatives Activities, as of December 31, 2015, the Total Credit Exposure ("TCE") from all derivatives contracts was $1.03 trillion, and at four of the national banks, the TCE exceeded Total Risk-Based Capital. The OCC's role in regulating these trading and derivatives activities is crucial to fulfilling key aspects of its mission, including ensuring the "safety and soundness" of the financial system and "treating customers fairly." Since certain derivatives contracts are exempt from the automatic stay in bankruptcy, derivatives creditors could have a *de facto* preference over the depositors of a bank in the event of bankruptcy. Therefore, it is especially important that the OCC be able to monitor the derivatives exposures of the national banks in real-time. Such exposures can fluctuate substantially intra-quarter and intra-day; and until recently the tools to aggregate, audit, and analyze the banks' complex derivatives portfolios in real-time did not exist. Impending innovations in blockchain technology seek to provide robust transactional tracking and analysis capabilities that do not exist today, many of which could be tailored to fit the OCC's need to monitor the risks posed by complex derivatives portfolios.

Commodities Futures Trading Commission ("CFTC") Commissioner J. Christopher Giancarlo, who worked in the swaps field before joining the CFTC, recently detailed the "practical impossibility of a single national regulator collecting sufficient quality data…to recreate a real-time ledger of the highly complex, global swaps trading portfolios of all market

---

[7] The Chamber intends for this section to address question 9, "What should the OCC consider with respect to innovation?"

participants." He continued, "[a]t the heart of the financial crisis, perhaps the most critical element was the lack of visibility into the counterparts credit exposure of one major financial institution to another. Probably the most glaring omission that needed to be addressed was that lack of visibility, and here we are in 2016 and we still don't have it."

Additionally, the International Monetary Fund ("IMF") has published substantial research into the re-hypothecation and re-pledging of collateral used by banks in derivatives and other trading markets, which is not trackable by regulators currently. The IMF recommended that regulators' financial stability assessments be adjusted to back out "pledged collateral, or the associated reuse of such assets," which has not been standard practice. Today, the tools exist to enable regulators to back out such double-counted collateral—they are called blockchains. The Chamber believes blockchains can provide the OCC with real-time transparency into the solvency and exposures of the national banks it regulates, and we support OCC's efforts to encourage innovation by banks in this field. The Chamber and its members believe that these issues, and the potential for blockchain technology to build capacity in this area, should be chief among the OCC's considerations regarding its approach to responsible innovation.

H. Conclusion

We thank the OCC for the opportunity to highlight further potential benefits of innovation in the financial services sector. We understand that the OCC is charged with the difficult task of promoting innovation while also protecting consumers and protecting the system from undue risk. We thank the OCC for its diligent, thorough, and thoughtful approach to innovation in financial services. Should you have any further questions about these or other topics, please do not hesitate to contact me at Perianne@DigitalChamber.org.

Respectfully Submitted,

Perianne Boring
Founder and President
Chamber of Digital Commerce

131120271.2