



May 31, 2016

*Via Electronic Mail*

Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, S.W.  
Washington, D.C. 20219

Re: Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective (NR 2016-39)

Ladies and Gentlemen:

The Clearing House Association L.L.C.<sup>1</sup> appreciates the opportunity to comment on the white paper published by the Office of the Comptroller of the Currency (the “OCC”) entitled *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective* (the “White Paper”). The White Paper discusses innovation in the financial services industry and identifies the principles that the OCC plans to use to guide the development of its framework for understanding and evaluating innovative products, services and processes.

The Clearing House appreciates the OCC’s focus on this important and rapidly evolving area and strongly supports the OCC’s development of a coherent, tailored and transparent framework to address innovation in the financial services industry and to support banks’ efforts to develop and use new or improved products, services and processes. Recent advances in financial technology (“FinTech”), and the growth of nonbanks deploying this technology, have created an increasingly competitive environment for banks seeking to meet the evolving needs of

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<sup>1</sup> The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Association L.L.C. is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system. Its affiliate, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume.

the consumers, businesses and communities they serve, and the ability of banks to participate in and benefit from innovation is critical to successful operation in today's market. Banks have long been involved in leveraging technology to better serve customers by delivering banking products and services more effectively and efficiently,<sup>2</sup> and it is critical that they continue to be able to do so. The breadth of the financial services affected by recent developments in FinTech — lending platforms, remote capture, cloud computing, digital wallets, blockchain ledgers, just to name a few — underscores the need for a flexible, responsive and informed regulatory structure. Just as there is no single way that banks and nonbanks engage in FinTech innovation, there is no appropriate single or static approach to the regulation, supervision or oversight of these diverse activities.

We therefore commend the OCC's willingness to evaluate and develop its own infrastructure and policies in order to foster well-informed engagement with banks and nonbanks as FinTech innovation continues to advance. In particular, we support the OCC's objective of evaluating its existing guidance and procedures in order to expedite decision-making and otherwise facilitate innovation and the participation of banks in FinTech innovation. We also support the OCC's proposal to cultivate an ongoing dialogue among FinTech innovators — both banks and nonbanks — and OCC experts by creating a centralized office of innovation. In our view, this office should facilitate communication about innovation and coordinate the early identification and analysis of FinTech issues among OCC officials and staff. We appreciate the OCC's undertaking to foster an internal culture that is receptive to responsible innovation while balancing safety and soundness principles and believe that such a cultural focus would further enable open and productive communication between banks and their supervisors.

We caution, however, that FinTech innovation is rapidly evolving and that flexibility and timeliness of execution are critical components of the needed regulatory framework. In particular, while we support the idea of a centralized office of innovation to support innovation and communication, we believe that such a central office should facilitate and expedite existing licensing and supervisory processes within the OCC and should not result in new de facto or de jure licensing, notice or approval requirements. We believe that the OCC's framework must be established thoughtfully, and be monitored on an ongoing basis, to ensure that the central office smooths existing processes and timelines and is not an obstacle to banks' appropriate innovative activities. Increased bureaucracy in the area of financial services innovation could, by creating additional hurdles in the regulatory process, have the unintended consequence of stifling, rather than promoting, innovation, in part by putting banks at a further competitive disadvantage compared to nonbank FinTech companies.<sup>3</sup> We believe that it is very important that activities

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<sup>2</sup> Some past examples of technologies banks have leveraged to better serve their customers include ATMs, electronic payments technologies, information exchanges and Internet banking.

<sup>3</sup> As the OCC points out in the White Paper, one of the competitive advantages that nonbank innovators enjoy over banks is their ability to move quickly to capitalize on new opportunities. *See OCC, Supporting Responsible Innovation*, at 4 (“Start-ups with few investors and one or two big ideas often can sometimes move faster than larger and more established organizations. They can focus their energy and resources on a single opportunity.”). We believe, however, that this ability also reflects the general absence of a comprehensive regulatory structure governing the activities of nonbank innovators, as well as the related absence of formalized corporate governance frameworks, particularly in the area of risk management.

and investments that are permitted under existing authority and guidance and that are not currently subject to formal review and approval — including, for example, activities authorized for a national bank under Part 7, Subpart E of the OCC's rules and equity investments in third-party FinTech companies that qualify for after-the-fact notice — should not be vetted by the OCC's proposed office, because this is unnecessary and could significantly slow the innovation process and delay the introduction of new products, services and processes to the market. In order to best facilitate responsible innovation, the OCC should strive to ensure that its innovation-oriented staff provide prompt responses to inquiries in a coordinating forum that provides expertise and facilitates rapid feedback on proposals or requests for interpretation or clarity, rather than serving a more formal approval function.

The OCC's stated goal of engaging the FinTech sector and other stakeholders in an ongoing dialogue would also facilitate a constructive, collaborative approach to future regulatory initiatives. Because new FinTech products, services and processes are being rapidly developed, it would be beneficial to approach any additional regulation thoughtfully and with input from all interested parties. To that end, we believe it would be beneficial for the OCC to actively consult with the industry before setting prescriptive — or effectively prescriptive — requirements by regulation, guidance, supervisory manuals, examination practices or other means.

The Clearing House also strongly supports the OCC's emphasis on collaboration with other regulators. We encourage open communication both among regulators and between regulators and the entities they supervise as all stakeholders navigate the evolving FinTech industry. By minimizing inconsistent or duplicative application of laws, regulations, guidance and supervisory decisions and by encouraging an open and ongoing dialogue, regulators can better facilitate innovation by industry participants and stay abreast of emerging technologies in this space. A collaborative regulatory environment will foster a higher degree of legal and regulatory certainty and enable all parties to understand and anticipate regulators' views, which will in turn encourage development of and investment in technologies that are consistent with banks' safety and soundness principles. This collaborative environment should also help the OCC and other regulators identify and monitor emerging risks related to innovative transactions or structures, including those that occur outside their traditional supervisory purview, which can help foster a robust dialogue with industry participants to ensure that consumers continue to enjoy empowered customer choice and fair outcomes when taking advantage of these innovations.

Although we are in general agreement with the OCC's positions and objectives set forth in the White Paper, we are concerned with the practical implications of the OCC's view that a guiding principle of responsible innovation is integration of innovation into a bank's long-term strategic planning. Banks do have strategies to both leverage the opportunities offered and face the challenges posed by innovation, and their short-, medium- and long-term plans take into account the need for and the effects of innovation. Nevertheless, innovation necessarily involves some degree of experimentation, inherent in which is the risk of failure. It is often difficult to know which ideas will result in successful innovative products, services and processes. However, it is frequently impossible to take advantage of a new development if the organization is not involved early in the life cycle of a new technology. Consequently, we agree that a bank's decisions regarding which innovations to pursue should align generally with its long-term plan,

but we do not think that a discrete decision to invest in or test a particular product, service or process need always be integrated into the bank's strategic plan, provided that the particular product, service or process is within the institution's risk tolerance parameters and the innovation decision-making process is subject to appropriate governance and risk management. Banks need the flexibility to invest time and funding in innovations that are not guaranteed to succeed in order to be competitive with nonbank FinTech companies. Indeed, one other major competitive advantage of nonbank FinTech companies is the flexibility to fail in the introduction of new products and services.

While the OCC cautions that offerings of innovative products and services should not follow "the latest fad or industry trend" and emphasizes that sound strategic decisions should successfully meet customer needs,<sup>4</sup> we would stress that successful innovative products often create needs that customers did not previously have or attract new categories of customers. In addition, the OCC should recognize that there are innovative products and solutions that are not directly tied to customer needs but instead can strengthen banks' internal fraud prevention capabilities, enhance risk management processes and create operational efficiencies.

Finally, The Clearing House would like to emphasize that, as the OCC itself recognizes in the White Paper,<sup>5</sup> there are many ways to pursue innovation in the FinTech sector, including the internal development of new products, services and processes, partnerships with and investments in third-party FinTech companies and combinations of these and other avenues. The regulatory environment best suited to promote responsible innovation must be similarly flexible and must continue to evolve in order to properly facilitate investment, education, experimentation and the development of new products, services and processes. We believe that the OCC's support of FinTech innovation — be it undertaken by banks independently or through partnerships with third parties — will significantly benefit both businesses and consumers, especially when that support is channeled through the regulatory structure of the federal banking system. The OCC's White Paper takes an important step in achieving these purposes and, with the support of financial services industry stakeholders, we believe that we can achieve our shared goal of better serving consumers, businesses and communities through responsible innovation.

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<sup>4</sup> See OCC, *Supporting Responsible Innovation*, at 9.

<sup>5</sup> See OCC, *Supporting Responsible Innovation*, at 4 ("National banks and federal savings associations are seizing the opportunities and meeting these challenges in different ways. Some are working in their own laboratories and technology incubators to develop innovative ways to improve services and make their operations more efficient. Others are combining forces through consortiums and other collaborative arrangements to share the cost of developing and acquiring new technologies. Some banks are investing in fintech firms or new financial technology, and a growing number of banks are partnering with leading fintech companies and start-ups to develop the applications of tomorrow—applications that could eventually be revolutionary in their own ways.").

The Clearing House appreciates the opportunity to provide comments on the OCC's White Paper. If you have any questions or need further information, please contact John Court of The Clearing House (e-mail: [john.court@theclearinghouse.org](mailto:john.court@theclearinghouse.org); 202-649-4628).

Respectfully submitted,

**/s/**

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