



May 31, 2016

By Electronic Submission

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

Re: *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*

Ladies and Gentleman:

BAFT (Bankers Association for Finance and Trade), a global association of organizations engaged in international transaction banking, appreciates the opportunity to comment on the March 2016 paper issued by The Office of the Comptroller of the Currency (“OCC”) entitled *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective* (the “White Paper”).¹

BAFT is an international financial services trade association whose membership includes banks headquartered in roughly 50 countries around the world, financial services providers, as well as a growing number of non-bank and financial technology companies. BAFT provides advocacy, thought leadership, education and training, and a global forum for its members in the areas of trade finance, cash management, and compliance. For nearly a century, BAFT has played a unique role in expanding markets, shaping legislative and regulatory policy, developing business solutions, and preserving the safety and soundness of the global financial system.

Early this year, BAFT established an Innovation Council which brought together financial institutions and financial technology companies to provide awareness, education, and guidance with regard to emerging technology impacting the transaction banking industry. The Council channels its expertise to: (1) promote innovation, (2) drive regulatory change commensurate with the evolution of the transaction banking business through the delivery of new technology, and (3) develop industry best practices and standards. The Council is currently focused on innovation involving distributed ledger technology (“DLT”), and has formed work groups on education, regulation, and use cases in the areas of trade finance and payments. BAFT members (both banks and non-banks) are actively working collaboratively and individually, to harness the power of distributed ledger technology to improve correspondent banking, international trade finance, and cross-border payments.² The comments included in this letter are reflective of both the bank and non-bank members of the BAFT community.

BAFT would like to thank the OCC for beginning this thoughtful dialogue regarding the important developments now occurring in financial services and we applaud its commitment to supporting responsible innovation. While the financial sector has always strived to develop innovative tools and products to better serve its customers, the rates of investment in new technologies and progress of innovation over the past several years is virtually unparalleled. We recognize that tackling a space as

¹ OCC. *Supporting Responsible Innovation*. March 2016. <http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-39.html>

² Our members are pursuing innovation in many of the ways that the OCC notes in the White Paper. Indeed, “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.” See OCC, page 4.

diverse, complex, and dynamic as financial technology is not easy. We are grateful for the OCC's leadership in supporting innovation and for its recognition of the important role technology will play in providing greater financial inclusion, more robust, efficient, and cost effective financial tools, and more secure transaction capability, while protecting the safety, soundness, and integrity of the global financial system.

Transformation of the financial services industry through evolution of technology

As the OCC correctly notes, the financial services industry is going through a profound time of technological change.³ The rapid evolution of technology is reshaping commerce. Businesses and consumers are quickly changing their long-held assumptions, expectations, and interactions with money and they expect the financial system to keep pace. In 2015 alone, over \$19 billion was invested in financial technology globally. That represents a nearly 63% increase over the prior year.⁴

In response to this evolution, BAFT has been focused on the advent and potential uses of DLT in transaction banking. Distributed ledgers, "are a type of database that is spread across multiple sites, countries or institutions, and [are] typically public."⁵ The term "Blockchain" is more ubiquitous and refers to

a type of database that takes a number of records and puts them in a block (rather like collating them on to a single sheet of paper). Each block is then "chained" to the next block, using a cryptographic signature. This allows block chains to be used like a ledger, which can be shared and corroborated by anyone with the appropriate permissions.⁶

The most common application of Blockchain technology is its use in powering the underlying protocol of the world's most well-known known cryptocurrency, Bitcoin. While the terms "Blockchain" and "DLT" are often used interchangeably, we will use DLT for the purposes of this comment letter. The promises of DLT have garnered an enormous amount of attention within the financial services industry. In 2015, over \$490M was invested in various DLT and cryptocurrency ventures.⁷

The global financial services industry's fascination with DLT lies in its potential to be radically disruptive. Among other things, this potential may be attributed to the processing capability (low cost, real time, immutability) and the underlying philosophy (distributed consensus, open source, transparency, community) of DLT.⁸ As the U.S. Commodities Futures Trading Commission Commissioner J. Christopher Giancarlo recently stated:

DLT has the potential to link networks of legal recordkeeping the same way the Internet connects networks of data and information. It will have profound implications for global financial markets by increasing settlement efficiency and speed, linking recordkeeping networks, reducing transaction costs and increasing market access. It will broadly impact financial markets in payments, banking, securities settlement, title recording, cyber security and trade reporting and analysis.⁹

³ See OCC, page 3.

⁴ <https://www.cbinsights.com/research-pulse-of-fintech-2015>

⁵ UK Government Chief Scientific Adviser. *Distributed ledger technology: beyond block chain*. 2016. Page 17. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492972/gs-16-1-distributed-ledger-technology.pdf

⁶ Ibid.

⁷ CoinDesk. *State of Bitcoin and Blockchain, 2016*. January 28, 2016. <http://www.coindesk.com/state-of-bitcoin-blockchain-2016/>

⁸ See UK Government Chief Scientific Adviser, page 53.

⁹ Commodity Futures Trading Commission. *Special Address of CFTC Commissioner J. Christopher Giancarlo before the Depository Trust & Clearing Corporation 2016 Blockchain Symposium*. March 29, 2016.

Framework should foster financial technology innovation, especially DLT

The Bank of England has called DLT the “first attempt at an ‘Internet of finance.’”¹⁰ Indeed, there are several parallels between DLT and the internet. As discussed above, DLT has the potential to be just as transformative to society as the internet. Both technologies have a decentralized nature and a populist governance. In addition, we believe DLT currently to be at a similar stage of development as the internet was in the early 1990’s.

BAFT believes that governments should continue to allow DLT to develop organically without imposing burdensome restrictions. We urge the U.S. government to craft and adopt a framework for DLT similar to the Framework for Global Electronic Commerce¹¹ (“the E-Commerce Framework”), which the Clinton administration and republican-led Congress introduced in 1996 to foster innovation around, and investment in, the internet. Under the E-Commerce Framework, the U.S. government and regulators agreed to do no harm to the internet’s continuing evolution. The European governments and regulators adopted a similar “do no harm” approach with respect to the internet in the Bonn Declaration of 1997.¹² Ultimately, this approach to the internet “created millions of jobs, transformed our economy forever and improved standards of living across the globe.”¹³

We believe the five principles underpinning the E-Commerce Framework, outlined below, are still relevant today as a guide for government support of the evolution of DLT.

(1) *The private sector should lead.* The open nature of the development community and the research and investment from the private sector should be nurtured and, as many of the applications and potential of DLT remains untested, self-regulated models of governance should be supported. As noted in the E-Commerce Framework, and equally applicable to DLT today, “Governments should encourage industry self-regulation wherever appropriate.”¹⁴ Government should allow the industry to develop consensus standards, best practices, and guidelines that enable financial services companies to benefit from a competitive market while supporting security, innovation, and optimal technology choice.

(2) *Governments should avoid undue restrictions.* In many cases, DLT is being viewed as a unique opportunity to use new tools to solve old problems more quickly and efficiently. Governments should strive to avoid rash, technology specific, regulations that would temper this expected value.

(3) *Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment.* Where government can play a meaningful role is by providing regulatory clarity and certainty for both businesses and policymakers alike, creating a nurturing environment for innovation and economic growth. The guardrails should be clear and predictable.

(4) *Governments should recognize the unique qualities of the technology.* DLT has unique features such as its real time nature and immutability that must be taken into account when tempted to stretch old paradigms over its application and use.

¹⁰ Robleh Ali et al, Bank of England. *Innovations in Payment Technologies and the Emergence of Digital Currencies*. Page 11. 2014. <http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2014/qb14q3digitalcurrenciesbitcoin1.pdf>

¹¹ See Clinton administration. *Framework for Global Electronic Commerce*. 1996. <http://clinton4.nara.gov/WH/New/Commerce/summary.html>

¹² See <http://www.echo.lu/bonn/final.html>

¹³ See Commodity Futures Trading Commission.

¹⁴ Ibid, page 3.

(5) *Innovation should be facilitated on a global basis.* Many of these tools are optimized only when they can be allowed to function in an open environment, across borders. It is critical that governments work together to create consistent frameworks and global norms surrounding DLT.

Several nations already have adopted a principle-based approach to regulation of emerging technology in the provision of financial services and their regulatory agencies have recognized explicitly the need for a regulatory deference and light-touch oversight. For instance, HM Treasury of the United Kingdom has an effort underway to transparently communicate its “ongoing and proposed work to foster a supportive regulatory framework for financial services that allows innovation to flourish.” As a result of these efforts, the United Kingdom has become a leading jurisdiction in Fintech.¹⁵ Similarly, Singapore has launched a number of initiatives, such as issuing grants to Fintech incubators, to establish itself as a “smart financial center.” Fintech companies provide economic opportunity, attract a highly educated and motivated work force, and can foster innovations that support social and economic policy goals. The U.S. government should consider its approach in relation to other jurisdictions to ensure U.S. banks and companies can remain competitive in the global marketplace.

U.S. framework requires modernization

BAFT applauds the OCC for being the first federal banking regulator in the U.S. to modernize its existing model of regulation to better meet the needs of the marketplace. We appreciate the OCC’s transparent announcement of the principles it will use to guide the development of its framework for addressing innovation within its jurisdiction and request for public comment. BAFT believes that the OCC’s principles are generally consistent with the aforementioned E-Commerce Framework that we encourage governments to adopt with respect to financial innovation, especially DLT.

Development of appropriate structure and culture

BAFT commends the OCC’s commitment to improve its internal structure and process for understanding and evaluating innovative financial products, services, and processes in response to the rapid clip of technological advancement. We believe the OCC’s proposal to create a centralized office on innovation is a good one. We encourage the office to be “customer focused” and designed as a window for stakeholders to learn how to be both innovative and compliant members of the financial services industry. An office on innovation should serve as a central hub for communication and a resource of information. The OCC should ensure that such an office operates efficiently and facilitates the introduction of new products and services to the market, rather than becoming a bureaucratic hurdle.

In designing its office on innovation, the OCC should consider incorporating certain aspects of the Innovation Hub established by the Financial Conduct Authority (“FCA”) of the United Kingdom.¹⁶ The Innovation Hub provides eligible businesses with: a dedicated team and contact within the agency; assistance in understanding the regulatory framework and its applicability to that business; assistance in preparing and submitting an application for authorization; and dedicated support for up to one year following authorization. FCA staff uses the experience of working with innovative firms to identify areas where the regulatory regime needs to adapt to facilitate innovation and to inform future policy development in a way that supports innovation.

¹⁵ <https://www.gov.uk/government/consultations/consultation-on-draft-innovation-plan-for-financial-services/consultation-paper-on-draft-innovation-for-financial-services>

¹⁶ <https://innovate.fca.org.uk/>

We also recommend that the OCC create a “regulatory sandbox” that would allow the entities subject to its jurisdiction to test new, innovative financial services without incurring all the normal regulatory consequences of engaging in those activities. The United Kingdom, Singapore, and Australia have all introduced regulatory sandboxes to foster innovation in the financial sector. The OCC could offer the regulatory sandbox to entities seeking clarity about applicable rules before testing an idea that does not easily fit into the existing regulatory framework. The OCC could support these entities through individual guidance, waivers or modifications of regulations, and no enforcement action letters issued during the test period. Technology businesses that wish to provide services to OCC-regulated banks through outsourcing agreements could also apply for the sandbox if they need clarity around applicable rules prior to testing.

BAFT fully supports the OCC’s principle 3 for leveraging existing expertise across the agency and encourage its designation of lead experts on innovation who could provide a better understanding of emerging technology approaches. It is crucial that government regulators stay informed about evolving technology trends, product offerings, and customer needs. We believe it is imperative for government agencies to gain greater knowledge of both the technical and market aspects of this burgeoning sector, by harnessing the resources and knowledge available to them both inside and outside of government. Accordingly, the OCC should consider a formal staff exchange program between agency personnel and relevant private sector stakeholders. A “financial technology fellowship” program could improve the relationships and knowledge base of both private and public sector players, alike.

We similarly support the OCC’s principle 7 of promoting ongoing dialogue through formal outreach. BAFT is particularly keen on fostering a collaborative dialogue between the public and private sector. It allows the public sector to keep their knowledge of industry developments current and encourages private sector leadership. We encourage the OCC to increase the volume and frequency of the dialogue with the private sector participants who are building new and innovative tools and products. In addition to the methods of formal outreach that the OCC mentions in its White Paper, collaborative dialogue could be accomplished through industry colloquiums, roundtables, and similar events.

Restrained and deliberate regulation

With respect to innovation in financial services, government should: (1) restrain from imposing new and unnecessary regulations; (2) intervene only to support and enforce a predictable and consistent legal environment for business; and (3) revise or eliminate laws and regulations that may hinder innovation. BAFT urges the OCC to wait to regulate financial innovation and introduce new regulations only when clearly necessary and after careful deliberation. In addition, we encourage the OCC to review the regulations and guidance within its remit and revise or eliminate those identified as barriers to innovation.

BAFT urges the OCC to continue its forward-thinking approach and avoid the unintentional discouragement or foreclosure of innovation by deferring regulation. A rush to judgment or action on the part of regulators, without cause or evidence of harm, would have a chilling effect on financial innovation from which the U.S. financial sector would likely have difficulty recovering. It is important to remember that these products and services are, in many cases, in their infancies. Like most innovation spurred by technology, these new financial services and applications are iterative and rapidly evolving. The U.S. government can play a crucial and positive role in fostering a nurturing environment for growth and investment in innovation that can improve the lives of its citizens and the economic strength of the country. Alternatively, uninformed or rash policy decisions can stifle and even suffocate solutions before they can be brought to market.

For these reasons, highly prescriptive rules and regulations are inappropriate. If and when intervention is necessary, regulation of innovative financial services should be driven by the risk of the activity rather than the technology utilized to deliver those services. Due consideration should be given to the type of entities conducting similar activities as well as their methods of transacting. We also caution

against the simple transposition of existing regulation to new products and services for which they may be a poor fit.

The rules by which members of the financial services industry must operate are both varied and complex. BAFT urges a comprehensive review of applicable laws and regulations at both the federal and state levels so that those impeding innovation can be modified or removed. With the quickly evolving landscape, legacy rules – if still necessary – should be modernized. We support efforts by which those rules can be simplified, coordinated, and communicated with greater clarity. As stated earlier, rules should be predictable, clear, and commensurate with the actual risks observed. With the evolution of technology, the providers of financial services have evolved and now include many non-bank entities, creating a more complex financial ecosystem. The simplification of rules should balance and reflect the myriad of entities now operating in the financial ecosystem.

Collaboration among government entities required for consistent and harmonized approach

Collaboration and consistency among regulators and policymakers are key components of a framework that supports innovation. However, the current legal and regulatory framework for the financial services industry is complex and fragmented. Depending on the type of services offered and corporate organization, an entity may have to obtain authorization to operate from and comply with the regulations and guidance issued by several federal regulators or multiple state regulators.

Therefore, BAFT calls on both federal and state governments to rationalize the regulatory framework for the financial industry. The patchwork of state-based licensing regimes that many innovators in payments and lending confront is expensive, daunting, and confusing. We strongly urge greater coordination between state governments, in collaboration with the federal government, to arrive at a national framework and set of rules that maintains consumer protections and the safety and soundness of the financial system, but is consistent and easier to navigate. We believe this is crucial to narrowing the competitiveness gap between the United States and other jurisdictions, such as the European Union, which makes available a passport-like “e-money” license for business offering money services.

The OCC should continue the leadership exhibited in principle 8 of the White Paper and advance a collective effort to harmonize a supportive approach to financial innovation, both nationally and globally. BAFT agrees with the recent Government Accountability Office report that notes, “Globalization of financial markets has required U.S. regulators to coordinate with each other and with their international counterparts to effectively adapt to industry changes.”¹⁷

The OCC should consider creating (in cooperation with other financial regulatory authorities) a “one stop shop” for regulatory guidance and questions. This would allow stakeholders to better navigate the rules and laws applied to them and increase consistency in approach across regulators. One suggestion might be the creation of a coordinated federal and state “financialtechnology.gov” web portal to serve that function.

Many of these emerging technologies, like the internet itself, are global in nature. Thus, they demand rules and frameworks that are consistent across jurisdictions. For banks and companies to thrive, and for customers to reap the greatest rewards, there must be greater consistency across jurisdictions as to the understanding, treatment, and interpretation of these technologies and their promises. Hence, BAFT fully supports the OCC’s initiative to coordinate with regulators at the international level. We agree with the White Paper’s statement that, “Exchanging ideas and discussing innovation with other regulators are important to promote a common understanding and consistent application of laws, regulations, and guidance,” and that, “such collaborative supervision can support responsible innovation in the financial services industry.”¹⁸

¹⁷ Government Accountability Office. *Financial Regulation: Regulatory Structure Complicates U.S. Coordination Internationally*. GAO-16-575. Page 57. <http://www.gao.gov/assets/680/675400.pdf>

¹⁸ See OCC, page 10.

Over the last several months, a few examples of such collaboration could be seen. Earlier this month, the FCA of the United Kingdom and the Monetary Authority of Singapore (“MAS”) signed a “Regulatory Cooperation Agreement” aimed at building what each has referred to as a “FinTech Bridge.”¹⁹ This “bridge” is intended to better enable each nation’s regulators to refer financial technology stakeholders to one another across the world. Further, “It also sets out how the regulators plan to share and use information on financial services innovation in their respective markets.”²⁰ In April it was reported that the MAS and the Australian Securities and Investments Commission (ASIC) were collaborating on Fintech regulations. In March, ASIC and the FCA agreed to collaborate on innovative businesses seeking to enter each other’s markets. Such cross-border collaboration is important to ensuring clarity, consistency, and a global approach to a rapidly moving challenge.

We would urge the OCC to consider creating its own “bridges” with partner regulatory authorities around the world, or even joining with the FCA and MAS to act as a force multiplier and create greater linkage across the global regulatory landscape.

Finally, we believe an international approach is necessary because benefits and risks extend across borders for many new technologies. The International Monetary Fund notes in its paper regarding virtual currencies and DTL, “[a]s experience is gained, international standards and best practices could be considered to provide guidance on the most appropriate regulatory responses in different fields, thereby promoting harmonization across jurisdictions. Such standards could also set out frameworks for cross-country cooperation and coordination in areas such as information sharing and the investigation and prosecution of cross-border offenses.”²¹

In closing, BAFT appreciates the opportunity to provide our thoughts on the OCC’s White Paper. If you have any questions or need further information please contact Samantha Pelosi, Senior Vice President, Payments and Innovation, at spelosi@baft.org or (202) 663-5537.

Very truly yours,

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Tod R. Burwell
President and Chief Executive Officer

¹⁹ Singapore MAS. *First ever FinTech Bridge established between Britain and Singapore*. May 11, 2016. <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2016/First-ever-FinTech-Bridge-established-between-Britain-and-Singapore.aspx>

²⁰ Ibid.

²¹ International Monetary Fund. *Virtual Currencies and Beyond: Initial Considerations*. January 20, 2016. Page 5. <http://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf>