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COMPETITIVENESS

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June 14, 2019

Beth Knickerbocker
Chief Innovation Officer
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Sent via email to pilotprogram@occ.treas.gov

Re: Office of the Comptroller of the Currency Innovation Pilot Program

Dear Ms. Knickerbocker:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness appreciates the opportunity to comment on the proposal of the Office of Comptroller of the Currency ("OCC") to create the OCC Innovation Pilot Program (the "Pilot Program"). We write to emphasize four points:

1. Encouraging innovation is central to the OCC's mission;
2. The OCC should closely coordinate with the other financial regulators;
3. The OCC should clarify how the Pilot Program will assist program participants; and
4. The OCC should continue to expand upon the Pilot Program going forward.

Innovation and OCC Background

Rapid and wide-ranging innovation is making the financial system stronger and benefiting consumers—and is critical to the U.S. maintaining its leadership in the global financial services market. From alternative data points for more inclusive lending to more effective methods for preventing money laundering to better disclosures and fraud prevention, new and innovative methods have a historical track record and future potential to improve consumers' experiences and our financial

services markets. Regulatory uncertainty and unclear rules can have the opposite effect, however, by thwarting innovation. It is thus vital that the OCC, as well as other financial regulators, use all available tools to encourage innovation while continuing to ensure the safety and soundness of the U.S. federal banking system.

We consequently applaud the OCC for recognizing the critical role that regulators can play in fostering innovation and being the first financial regulator to establish an Office of Innovation under former Comptroller Curry. We particularly appreciate the present proposal to create pilot programs, which can facilitate innovation by making the banking system stronger and benefiting consumers. The success of the Pilot Program will depend, however, upon its implementation in a manner that fosters its actual use. In particular, banks and third party partners must clearly understand the benefits of participating in the Pilot Program, since it imposes various administrative requirements, and, to make that possible, those requirements must be clearly articulated. Likewise, the long-term value of the Pilot Program will depend upon its continuous improvement over time based on lessons learned by Pilot Program participants and the OCC, and the OCC's coordination with other regulators to minimize regulatory burden.

Pilot Program Recommendations

I. Encouraging Innovation Is Central To The OCC's Mission

Innovation has improved the banking and financial systems and has the future potential to continue to greatly benefit consumers. Systemically, innovation can strengthen banking infrastructure, increase efficiency, and facilitate compliance. For consumers, innovation promotes financial inclusion, increases access to credit, and expands availability of information, which in turn supports informed decision-making and financial well-being. Unfortunately, regulatory uncertainty or lack of clarity can thwart innovation by discouraging banks from pursuing innovative tools, products, or approaches, including those offered by third-party service providers.

We thus applaud the OCC's commitment to encouraging innovation. As described in the proposal, the OCC has taken a range of recent actions intended to facilitate innovation, including the creation of a "dedicated Office of Innovation to serve as a central point of contact for OCC staff, banks, nonbanks, and other interested parties and as a clearinghouse for innovation-related matters."¹ We agree

¹ Proposal at 1.

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that, “[s]upporting a financial system that innovates responsibly is central to the mission” of the OCC.² We encourage the OCC to maintain its focus on fostering innovation and welcome its release of this proposal.

II. The OCC Should Coordinate Closely with Other Financial Regulators.

We appreciate the OCC’s recognition that interagency collaboration will likely be necessary to foster the innovation that the Pilot Program is intended to support. To that end, the proposal explains that the OCC will consider how to collaborate with other regulators on a case-by-case basis. We recognize that the individual features of a specific pilot will inform the particular collaboration that is appropriate in that case. We nonetheless would urge the OCC to take all reasonable steps to build the necessary infrastructure for effective collaboration between regulatory agencies in advance of receiving expressions of interest under the program. In particular, we would urge the OCC to enter into appropriate Memoranda of Understanding (MOU) and create a formal communication structure with the regulatory agencies with which it is most likely to collaborate under the Pilot Program.

We are pleased that multiple financial regulators are creating offices of innovation and seeking feedback from stakeholders on how best to structure a regulatory framework that fosters innovation. Specifically, the Consumer Financial Protection Bureau (CFPB) issued a proposed policy on Trial Disclosures, No Action Letters, and Sandbox process. We look forward to the release of the final policies and applaud the CFPB’s approach. The CFPB is also the only U.S. regulator that is a member of the Global Financial Innovation Network (GFIN), which is comprised of over a dozen regulators across the globe dedicated to innovation and assessing cross-border sandboxes. We responded to each of the requests for comments for these initiatives and have attached our letters.³

² *Id.*

³ See letter on Response to Global Financial Innovation Network August 2018 Consultation, U.S. Chamber of Commerce, October 12, 2018, available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/12/10.12.18_USCC_GFIN-Comments.pdf?#

See letter on Proposed Policy on No-Action Letters and Product Sandbox; Docket No. CFPB-2018-0042, U.S. Chamber of Commerce, February 11, 2019, available at

http://www.centerforcapitalmarkets.com/wp-content/uploads/2019/02/CL_NAL.ProductSandboxProposal_2.11.2019.pdf?#

See letter on Response to Policy to Encourage Trial Disclosure Program; Docket No. CFPB-2018-0023, U.S. Chamber of Commerce, American Bankers Association, Consumer Bankers Association,

Similarly, the Federal Deposit Insurance Corporation (FDIC) has created an office of innovation. We look forward to seeing the issues they will be focused on and how they will structure the office. The Commodity Futures Trading Commission and the Securities and Exchange Commission have also built out innovation offices in CFTC Lab and FinHub respectively.

It is critical for the OCC to coordinate with other regulators because multiple regulators often supervise the same institution. We urge the OCC to take a leadership role by instituting formal coordination, including MOUs and regular meetings or calls, to ensure that regulators are harmonizing their activities in a way that fosters innovation, including by coordinating their supervisory approach to innovative activities. The different mandates of the agencies make it difficult to completely avoid duplication and fragmentation, but we urge the OCC to establish a formal coordinating structure with the other agencies. In doing so, we would urge the OCC to work with a broad set of regulators at the state and federal levels, as well as coordinating bodies such as the National Association of Insurance Commissioners that will have valuable perspectives on a wide range of innovative activities.

III. The OCC Should Clarify How The Innovation Pilot Program Will Assist Program Participants

The proposal describes various tools that the OCC has at its disposal to address legal uncertainty—including the use of interpretive letters and the delivery of other forms of guidance to supervised entities. The OCC clearly intends for the Pilot Program to provide additional support for innovation than is currently provided through those mechanisms. We welcome this plan, but recommend that the OCC further clarify how the Pilot Program will achieve that goal. We are concerned that, absent further clarification, a bank may view the Pilot Program as imposing a range of new administrative requirements on prospective participants without clear countervailing benefits. To avoid that outcome, we recommend that the OCC take the following three steps.

First, we would urge the OCC to clarify that participants in the Pilot Program will receive prioritized and coordinated access to existing OCC tools. Otherwise, a bank may wonder what benefit it will receive from participating in the program as opposed to seeking guidance through existing OCC mechanisms. We understand that the Pilot Program may not be right for every product or service, and that other tools

might fit better. To that end, the OCC should clearly state that it will work closely with program participants to ensure that all appropriate tools are leveraged in a coordinated and timely manner. In doing so, the OCC will make clear that it will do whatever it can, consistent with the program's mission, to support program participants.

Second, we urge the OCC to clarify that the Pilot Program has a broad scope and to eliminate overly broad exceptions. We understand that the Pilot Program, as proposed, covers the full range of areas in which a bank may innovate. To make that clear, however, we would urge the OCC to include a clear statement of its scope and a non-exhaustive list of in-scope topics that may properly be considered by the Pilot Program. (For example, it would be helpful to clarify that the Pilot Program can address new products, processes, or compliance steps across the full range of bank activities—from anti-money laundering to consumer services, not merely “innovative” products and services). Conversely, we urge the OCC not to unduly limit the program by imposing impractical requirements or exceptions. Clearly, no bank would propose a pilot without confidence that it would comply with all relevant statutory and regulatory requirements. The purpose of any pilot program, however, is to try a new approach in a real-world context in order to confirm that it operates as expected once deployed. As a result, it is impractical to require a participating bank to resolve all uncertainty and risk associated with a proposed pilot. The better approach, consistent with other elements of the proposed policy, would be for the OCC to work closely with the bank to anticipate and mitigate any compliance or other risks, ensure that appropriate measures are in place to monitor for any challenges, and to appropriately address harm to consumers or third parties that may occur despite these efforts.

Third, the OCC should explain how activities conducted under the Pilot Program will be treated after the pilot period expires. Failing to do so risks subjecting even successful pilots to a cloud of legal uncertainty—a risk that may discourage banks from participating in the program in the first place. To mitigate against this risk, the OCC should explain the general approach (or approaches) it anticipates taking with pilots that successfully complete their intended term. For example, it would be helpful for potential participants to understand whether the OCC would anticipate expressing a view whether the program may be expanded beyond the scope of the pilot, with or without certain recommended steps to mitigate against potential risks perceived by the OCC.

IV. The OCC Should Continue To Expand Upon The Innovation Pilot Program Going Forward

The OCC discusses the range of regulatory “Sandboxes” that are being created by financial regulators. The OCC appears to stop short of itself creating such a “Sandbox,” however,⁴ and generally seems intent on launching a more limited program than those adopted by some other regulatory agencies. We recognize that a range of considerations may inform the OCC’s determination of the Pilot Program’s scope upon its launch. We strongly urge the OCC, however, to continue to evaluate the Pilot Program over time in order to ensure that it fosters innovation to the maximum extent possible while adequately accounting for potential risks. To that end, we ask the OCC to take three steps to continue to enhance the Pilot Program over time.

First, the OCC should establish a process for rulemaking changes if stakeholder feedback, including from Pilot Program participants, exhibits a need. As we stated in our comment to the CFPB, we believe that regulators should monitor the requests from companies to see if they are concentrated in certain areas and necessitate a broader rule change. Since rules may be longstanding and often reflect realities at the time of their enactment, but technology is rapidly expanding, inconsistencies are bound to arise between existing rules and innovate activities under the Pilot Program. In the event that there needs to be broader clarification, we hope the OCC’s Office of Innovation will coordinate with the rule-writing division and other regulators who have jurisdiction to fix issues gleaned from conversations in the Pilot Program.

Second, the OCC should continue to evaluate other potential program models and make appropriate updates to the Pilot Program. For example, the OCC should continue to review the full range of functions provided by the programs that qualify as “sandboxes” within its understanding of that term—and then consider whether it should build some of those functions into its own Pilot Program.

Third, the OCC should consider expanding the scope of the Pilot Program over time. For example, the proposal limits eligible pilots to “small-scale, short-term

⁴ The OCC notes that there is no accepted definition of a “sandbox,” but provides that “for purposes of this paper, sandbox programs define rules and requirements for eligibility and testing and may provide special authorizations, exemptions, or other relief to eligible businesses for a limited period.” Proposal at 1, n.1. The OCC separately explains, however, that the “program provides no statutory or regulatory waivers,” Proposal at 5—thus seemingly taking the OCC’s program outside its working definition of a “sandbox.”

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tests.”⁵ We understand this limitation to allow for the operation of a meaningful pilot program. Nonetheless, it is likely to exclude at least some innovative activities that would be strong candidates for participation in the Pilot Program. As a result, we would urge the OCC to reevaluate this limitation over time and ultimately remove or qualify it based on lessons learned. Likewise, the proposal explains that the OCC only will entertain submissions by entities supervised by the OCC—not third parties. However, in some cases, a third-party may be the most appropriate party to submit an expression of interest in the Pilot Program to the OCC. We consequently would urge the OCC to consider revising or eliminating this categorical restriction over time, again taking into account lessons learned during the operation of the program as currently contemplated.

Fourth, we would encourage the OCC to expand its regulatory collaboration internationally in order to maximize the practical benefit of the Pilot Program. As discussed above, we are pleased that the OCC intends to collaborate with regulatory agencies in the U.S. and we hope a formal process is adopted. Further collaboration with regulators outside the U.S. will help ensure that the risk of regulatory exposure in another country will not deter innovation here. Likewise, engagement with industry groups and foreign regulatory agencies may allow the OCC to identify opportunities to improve the OCC Pilot Program. For example, collaboration with the GFIN and its member agencies may yield valuable lessons for program design and operation, as well as useful models for effective collaboration with other domestic and international regulators.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,



Tom Quadman
Executive Vice President
Center for Capital Markets Competitiveness

⁵ Proposal at 2.