



August 3, 2020

Submitted via e-mail to regs.comments@OCC.treas.gov

Chief Counsel's Office
Attn: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, suite 3E-218
Washington, DC 20219

Re: National Bank and Federal Savings Association Digital Activities (Docket ID OCC-2019-0028)

To Whom It May Concern:

The Chamber of Digital Commerce (the “**Chamber**”) welcomes the opportunity to comment on the Office of the Comptroller of the Currency (the “**OCC**”) advance notice of proposed rulemaking regarding national bank and federal savings association (“**banks**”) digital activities (the “**ANPR**”).¹ The Chamber strongly supports the OCC’s goals as stated in the ANPR; the bank regulatory environment should promote economic growth, foster the development of new technology and financial services innovation, and reflect technological advances in the industry while also ensuring that financial services are provided broadly, fairly, and in a safe and sound manner. The ANPR provides a welcome forum for the Chamber and its members to provide input to the OCC as it explores how best to empower innovation in banking services while appropriately addressing risks that may arise from this innovation.²

¹ OCC, National Bank and Federal Savings Association Digital Activities, 85 Fed. Reg. 40,827 (July 7, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-07-07/pdf/2020-13083.pdf>.

² The Chamber has commented on previous OCC initiatives regarding innovation, including the OCC’s March 2016 publication entitled *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*, see Chamber of Digital Commerce, Comments in Response to the Publication Entitled Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective (May 31, 2016), <https://www.occ.treas.gov/topics/supervision-and-examination/responsible-innovation/comments/comments-digital-chamber-commerce.pdf>, and continues to support the OCC as it focuses on these important topics relating to innovation and technology in banking services.

The Chamber is the world’s leading blockchain and distributed ledger technology (“DLT”)³ trade association. Our mission, supported by a diverse and global membership, is to promote the acceptance and use of digital assets and DLT. We represent the world’s leading companies in the DLT ecosystem, including financial institutions, as well as leading edge software companies, global IT consultancies, insurance companies, law firms, and investment firms. Our membership includes banks that would be directly affected by OCC rulemaking on digital activities, as well as banks with other prudential regulators and technology companies that provide services to banking organizations, which may be indirectly affected by such rulemaking.

We support the OCC’s efforts to clarify and confirm banks’ ability to engage in activities involving DLT. We believe that banks currently have authority to engage in a wide range of activities involving DLT. To help account for evolving technology not contemplated by existing regulations, however, additional confirmation and clarity in some areas may facilitate appropriate adoption of DLT and other technologies by banks, directly or through partnerships with FinTech and technology companies.

The OCC’s recent interpretive letter (“**Interpretive Letter No. 1170**”),⁴ which confirms the authority of banks to provide cryptocurrency⁵ safekeeping and custody services on behalf of customers, exemplifies this approach. As recognized by the OCC, banks are permitted to provide safekeeping and custody services for a range of customer assets and have been doing so for centuries. We agree that cryptocurrency safekeeping and custody are modern versions of these same activities. The Chamber supports the OCC’s technology-neutral analysis in Interpretive Letter No. 1170 and welcomes additional confirmation that banks may use DLT to engage in the full scope of activities they are otherwise authorized to perform with respect to physical assets and legacy technologies.

The Chamber supports the OCC issuing confirmation or clarification through guidance or additional interpretive letters as soon as possible to continue to foster DLT

³ DLT, including blockchain technology, is a database technology. “**Distributed ledgers**” are ledgers that are shared across locations or among participants, and DLT is used to validate or authenticate data on a distributed ledger. A distributed ledger allows multiple participants to trust the data stored on it without the presence of a single, centralized ledger that could be a single point of operational failure. A “**blockchain**” is one type of distributed ledger with entries that must be validated or authenticated in a certain manner such that each new piece or collection of data (a “**block**”) must be added to a chain of prior blocks and each block bears a relationship to the entire chain of blocks. This letter uses the terms “distributed ledger” and “DLT” unless specifically referring to blockchain technology.

⁴ OCC, Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers, Interpretive Letter No. 1170 (July 22, 2020), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf>.

⁵ Interpretive Letter No. 1170 uses the term “cryptocurrency” but explains that the term “as used in this letter also encompasses digital assets that are not broadly used as currencies.” *Id.* at 1 n.3.

innovation. Guidance or interpretive letters should supplement a clear regulatory framework on permissible activities. In addition, the adoption and clarification of technology-neutral regulations will help provide greater certainty to market participants that are engaged in various bank digital activities involving DLT.

This comment letter first provides our views on the three principles for regulation set out in the ANPR to guide the OCC's approach to regulation of bank digital activities. It then focuses on five of the questions posed by the ANPR that are of particular relevance to the Chamber and its mission. These include the questions relating to existing regulatory authority for banks to engage in digital banking activities (question 3(c)); activities of banks involving cryptocurrencies and other crypto-assets⁶ (question 4); the use of DLT (question 5); new payments technology (question 7); and innovative RegTech tools (question 8).⁷

1. The Chamber Supports the Three Principles that Guide OCC Regulation of Digital Asset Activities

As recognized by the OCC, it is crucial to get it right when it comes to the regulation of bank digital activities, including those involving DLT. While the United States is home to substantial technological innovation, it does not automatically follow that the United States will establish or maintain preeminence in the DLT sector. Other major industrialized nations are making significant advances in promoting and adopting this technology, including with government support. Without clear guidance and support, banks may be reluctant to offer innovative products and services that leverage these

⁶ The ANPR uses the terms “cryptocurrency” and “crypto-asset” somewhat interchangeably and without specifically defining the terms. For purposes of this letter, we use the term “crypto-asset” for consistency with the ANPR. In our view, the term “crypto-asset” could refer to digital assets that rely on cryptography, as described below.

The Chamber considers a “**crypto-asset**” to mean any digital asset that relies on aspects of cryptography and DLT for its issuance, storage, exchange, or transaction validation. This includes but is not limited to cryptocurrencies, securities tokens, and utility tokens. “**Digital currencies**,” which are sometimes but not always crypto-assets, are digital assets used as a medium of exchange, unit of account, or store of value. “**Cryptocurrencies**” are a form of digital currency that do not have legal tender status and are intended to be used as a medium of exchange. Consistent with our view that regulation should be based on types of activities and their risks and not on the particular technology underlying an activity, we believe that crypto-assets should be regulated not based on any one definition of a crypto-asset or type of crypto-asset, but instead based on their use and function. For instance, if a bank engages in activities involving a “**securities token**” (*i.e.*, a representation of a security on a distributed ledger), these activities should be treated similarly to other securities activities, whereas activities involving a digital asset that is used as a token in a payment system should be treated as payment activities. Of course, the substantive regulations applicable to each activity (regardless of the technology used) should also be tailored to promote innovation. Finally, the Chamber strongly supports a universal and consistent taxonomy of crypto-assets and other digital assets to provide additional precision and clarity in both regulatory and commercial contexts.

⁷ ANPR at 40,830.

important technological developments. A framework that promotes responsible innovation for this technology will help the United States maintain its lead both for this technology and in the financial services sector more broadly.

The ANPR sets out three principles that “guide the OCC’s approach to its regulatory framework in the context of technology and innovation.”⁸ The Chamber supports the OCC in following these principles and believes that they form an important framework that will help promote the ability of U.S. firms, including banks, to innovate and continue to compete in the DLT sector. We discuss these principles and our views regarding each. Furthermore, the Chamber has identified additional principles that the OCC should follow in clarifying and furthering the regulatory framework for bank digital activities generally, and DLT-related activities specifically.

The OCC’s first principle: Any regulation adopted should be technology-neutral so that products, services, and processes can evolve regardless of the changes in technology that enables them.

The Chamber believes that any proposed rule issued by the OCC with respect to bank digital activities should embrace the principle of *same activity, same risk, same regulation*. As the OCC suggests, distinguishing between technologies that enable similar activities and carry similar risks is inappropriate.⁹ Of course, it is important to understand new or different risks posed by a new technology, though such risks should be addressed through the OCC’s existing supervisory risk management framework. But if innovative technology involves the same risks as or fewer risks than legacy systems, regulation should not be a disincentive to adopting the new technology.

DLT has the ability to improve the delivery of existing banking products and services in a number of ways, such as through increased efficiency, cost-reduction, and information security. Where DLT reduces the risks to a bank when engaging in an activity, these reduced risks should be recognized in the regulatory standards that apply to the activity. For example, smart contracts operating on a distributed ledger can be used to link and execute automated commands in a manner that increases the efficiency of transactions. The OCC should start from the premise that this use of smart contracts is permitted or even encouraged due to the risk-reducing benefits of technology.¹⁰

⁸ *Id.*

⁹ The technology-neutral approach is also consistent with “the longstanding ‘transparency doctrine,’ under which the OCC looks through the means by which a product is delivered and focuses instead on the authority of [a bank] to offer the underlying product or service.” Interpretive Letter No. 1170 at 8 n.36.

¹⁰ See Chamber of Digital Commerce, Basel Committee Discussion Paper: Designing a Prudential Treatment for Crypto-Assets (March 13, 2020), <https://digitalchamber.org/wp->

DLT can also be used to collect, store, and maintain records that banks are required to keep under applicable rules. Because banks are subject to various recordkeeping requirements and standards, and these requirements are not uniform, the efficiencies and cost reductions of DLT are particularly helpful for recordkeeping purposes, and other regulators have begun to modernize their recordkeeping rules to reflect changing technology.¹¹

Any OCC rule or interpretation relating to bank permissible activities should be based on whether the activity itself is part of or incidental to the business of banking, not merely on the technology used. With respect to the ANPR, the Chamber requests that the OCC confirm that any technology can be used to accomplish (1) any activity that is part of or incidental to the business of banking, as permitted under the National Bank Act,¹² and (2) any activity permitted for a bank to engage in under the OCC's rules. Although the Chamber believes that many applications of DLT can be analogized to existing activities—e.g., facilitating payments, custody, or wallet services for digital assets, or the use of digital assets as collateral—if DLT (or other technology) enables a bank to engage in a new activity, the permissibility of the activity should be evaluated without the underlying technology being determinative.

The OCC's second principle: Any regulation should facilitate appropriate levels of consumer protection and privacy, including features that ensure transparency and informed content.

The Chamber strongly supports an approach to consumer protection and privacy that balances protecting consumers while supporting growth, jobs, and innovation. If a new or existing technology gives rise to consumer protection risks, these risks should be appropriately addressed in a technology-neutral manner with clear and objective consumer protection principles adaptable to digital activities as appropriate. For example, different consumer protection principles may apply if a bank sells a crypto-asset to a retail client versus if a bank provides traditional banking services, such as extending a dollar-denominated loan, to an institutional client that is engaged in crypto-asset business.

Consumer protection rules should also empower and encourage banks to develop and use new technologies to serve customers' needs and enhance consumer protection. Banks should have the ability to explore new interfaces, customer engagement methods

[content/uploads/2020/03/Chamber-of-Digital-Commerce-BCBS-Comments.pdf](https://www.digitalchamber.org/content/uploads/2020/03/Chamber-of-Digital-Commerce-BCBS-Comments.pdf) (“**Chamber Basel Crypto-Asset Comment Letter**”).

¹¹ See, e.g., Commodity Futures Trading Commission, Recordkeeping, 82 Fed. Reg. 24,479 (May 30, 2017) (codified at 17 C.F.R § 1.31).

¹² 12 U.S.C. § 24(Seventh).

and models, and other approaches to provide transparent disclosure, achieve informed consent, and protect customers' information and privacy.

Other federal financial regulators have recognized the potential benefits of DLT to advance consumer protection in the context of digital activities by financial service providers. For example, a distributed ledger may be used to provide to a client a tamper-resistant record of a transaction or other activity. The Bureau of Consumer Financial Protection (the “CFPB”) recognized that the adoption of innovative technology could positively benefit consumers, stating the CFPB “also believes that expanded adoption of SWIFT’s gpi product or Ripple’s suite of products could . . . allow banks and credit unions to know the exact final amount that recipients of remittance transfers will receive before they send the transfer.”¹³ The Chamber encourages the OCC to confirm that banks may use DLT to advance consumer protection in the provision for banking and other financial services.

The OCC’s third principle: Regulations on digital activities should be principle-based, rather than prescriptive, to enable effective management of evolving risks and to reduce the potential that regulations quickly become outdated.

The Chamber supports the OCC’s approach to regulating the digital activities of banks through principle-based, rather than prescriptive, regulation. Recognizing the need for an agile regulatory approach to changes in the market, the OCC correctly observes that prescriptive regulations are quickly outdated. They apply both too *broadly*, restricting the use of new risk-reducing technologies, and too *narrowly*, exempting by default other technologies or processes from regulation proportionate to the risks they address or raise.¹⁴ This is particularly true in areas experiencing rapid innovation, such as digital banking. We agree that a principle-based approach, in turn, better serves banks, their service providers, and their customers.

Additional Principles for the Regulation of Digital Bank Activities

The Chamber believes that the OCC should consider two additional principles as guiding its approach to the regulation of digital bank activities. First, any confirmations or clarifications on bank digital activities provided by the OCC should be accompanied by enhancements to its supervisory and examination approach. These enhancements should be designed to ensure that supervisory and examination staff have the information and skills they need to appropriately assess DLT and other digital activities of banks. For regulatory determinations to be effective, regulatory developments must

¹³ CFPB, Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E), 85 Fed Reg. 34,870, 34,880 (June 6, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-06-05/pdf/2020-10278.pdf>.

¹⁴ See Heath P. Tarbert, Rules for Principles and Principles for Rules: Tools for Crafting Sound Financial Regulation, at 8, Harv. Bus. L. Rev. (June 15, 2020), https://www.hblr.org/wp-content/uploads/sites/18/2020/05/Tarbert_Final_Draft_vFINAL-1.pdf.

be integrated into supervisory approaches, manuals, and systems. Supervisory tools, such as checklists and software, should permit supervisory personnel to categorize and confirm compliance of DLT and other digital activities on a basis that appropriately reflects the functions and risks of the specific technology. Given the rapid pace of development in the digital banking market, OCC personnel at all levels may benefit from education and training regarding not only the potential risks of new technologies but also how those technologies operate—*e.g.*, the technical processes by which DLT validates and authenticates data stored on the ledger.

Second, regulation should be consistent and coordinated across U.S. regulators and jurisdictions globally, including to avoid U.S. institutions being placed at a competitive disadvantage. A key promise of technology, including DLT, is the ability for entities to interact more quickly and efficiently across the world in a manner that supports trust among them. The OCC should work with other U.S. and global regulators to support this collaboration, empower U.S. banks to provide digital banking services across the globe, and provide regulatory certainty, where possible, with respect to DLT and other digital activities.¹⁵ As an initial step, the Chamber supports U.S. and global regulators developing a universal taxonomy to describe DLT and other digital activities, which should help lay the foundation for further consensus around the treatment of various crypto-assets.

2. The Chamber’s Responses to Digital Asset, DLT, and RegTech Questions Posed in the ANPR

The Chamber is providing its views on five specific questions posed in the ANPR, based upon those most relevant to its focus on DLT. The Chamber believes, as a general matter, that banks and bank affiliates currently have authority to engage in a broad range of digital activities involving DLT. However, some confirmation and clarification regarding existing regulations, with accompanying updates to supervisory approaches, may further promote the appropriate adoption of DLT and other technologies. This, in turn, will facilitate banks and their partners providing banking services more efficiently and to a wider range of customers.

OCC question 3(c): Does the term “software,” as used in 12 CFR 7.5006, exclude a similar product or service that should be included in this section? If so, what is the similar product or service, and why should it be included?

OCC Rule 7.5006(c) permits a national bank to “produce, market, or sell software that performs services or functions that the bank could perform directly, as part of the

¹⁵ For instance, the Chamber strongly encourages the OCC to work with other U.S. federal regulators, as well as U.S. state lawmakers and regulators and non-U.S. authorities, to develop a clear regulatory framework regarding payment and settlement for DLT systems.

business of banking.”¹⁶ The Chamber believes the OCC should confirm that a national bank may use (in addition to producing, marketing, and selling) any software that would help it perform any permissible service or function. The rule should be understood to permit technology to perform not only services or functions that are part of the business of banking but also to perform all activities that are part of or incidental to the business of banking—*i.e.*, the full scope of activities permitted under the National Bank Act¹⁷—and all other activities permitted under any OCC rule. These clarifications are consistent with the principle of technology neutrality, as they support banks developing and using any type of technology to engage in permissible activity.

OCC question 4: What types of activities related to cryptocurrencies or crypto-assets are financial services companies or bank customers engaged in? To what extent does customer engagement in crypto-related activities impact banks and the banking industry? What are the barriers or obstacles, if any, to further adoption of crypto-related activities in the banking industry? Are there specific activities that should be addressed in regulatory guidance, including regulations?

OCC question 5: How is distributed ledger technology used, or potentially used, in banking activities (e.g., identity verification, credit underwriting or monitoring, payments processing, trade finance, and records management)? Are there specific matters on this topic that should be clarified in regulatory guidance, including regulations?

Bank Activities Involving DLT and Crypto-Assets. Financial services firms, including banks, currently engage in a variety of activities involving DLT and crypto-assets and are doing so consistent with existing law. The Basel Committee on Banking Supervision (“**BCBS**”) released a discussion paper¹⁸ in December 2019 listing crypto-asset-related activities in which banking organizations may engage currently or in the future. We reproduce this list below as an illustrative list of potential bank activities, omitting activities outside the scope of permissible activities for banks (as opposed to those permissible for bank affiliates).¹⁹

Potential Bank Activities Relating to DLT and Crypto-Assets

Providing custody / wallet services for crypto-assets

¹⁶ 12 C.F.R. § 7.5006(c).

¹⁷ 12 U.S.C. § 24(Seventh).

¹⁸ BCBS, Discussion Paper, Designing a Prudential Treatment for Crypto-Assets (Dec. 2019), <https://www.bis.org/bcbs/publ/d490.pdf>.

¹⁹ The Chamber has also submitted a similar chart of potential crypto-asset and DLT-related activities in response to the BCBS discussion paper. See Chamber Basel Crypto-Asset Comment Letter.

Using crypto-assets for internal or inter-bank operational processes

Fiat currency lending to, or providing deposit or other banking services to, entities dealing directly with crypto-assets

Fiat currency lending and taking crypto-asset collateral

Fiat currency lending to individuals, corporates, or financial institutions to allow them to invest in crypto-assets

Taking deposits of crypto-assets or extending loans denominated in crypto-assets

Acting as a custodian or taking deposits from a reserve of non-crypto-assets that back crypto-assets

Issuing crypto-assets directly

Market-making in crypto-assets

Exchanging crypto-assets for fiat currency, and vice versa—either as a core business or as an incident to other permitted activities (including activities otherwise unrelated to crypto-assets)

Validating crypto-asset transactions, including blocks of transactions with respect to blockchain technologies—e.g., “mining” transactions through proof of stake or proof of work—and other crypto-asset transactions²⁰

Owning crypto-assets directly, including to hedge other exposures to crypto-assets

Owning products with underlying crypto-assets—e.g., entering into a derivative transaction or taking a long position on an exchange-traded fund that has invested in digital assets

Benefits of DLT for These Activities. Where banks use DLT to provide services, the technology provides clear benefits as compared to legacy technologies. These benefits may translate into applications that banks could provide as products or services more broadly.

- **Programmable:** Many DLT applications are programmable, allowing banks and their clients to develop software “rules” that can automatically execute instructions to change the state of a distributed ledger at specified times or if specified conditions occur.

²⁰ This could involve a bank operating a “node” or server on a DLT network.

- 24x7: DLT software can operate 24 hours a day, seven days a week—even outside of bank branch hours when legacy technology that requires greater human support is unavailable.
- Straight-through processing: Because participants can each maintain their own addresses or accounts on a distributed ledger, transactions (e.g., payments) and data can be processed straight-through between participants' accounts and networks, rather than through intermediaries, improving settlement certainty and decreasing processing times.
- Increased resiliency: Because distributed ledgers involve redundant copies being hosted across multiple systems, DLT may be more resilient to cyberattacks and system failures, and may experience less system downtime, than legacy systems operated by a centralized entity.
- Enhanced transparency: Blockchains (and, depending on their configuration, other distributed ledgers) provide tamper-resistant records of activities on the network, enhancing the transparency and auditability of those records and providing more reliable proof of regulatory compliance than legacy technology.
- Reducing settlement risk: DLT systems can be programmed to execute one leg of a transaction only if, and at the same time as, the other leg of the transaction settles. This feature can be used to provide real-time processing and settlement of crypto-asset transactions, including securities token transactions, reducing settlement risk.

Given these benefits and potential applications, banks should be permitted, and even encouraged where appropriate, to use DLT in connection with their permissible activities.

Key Areas for Confirmation and Clarification. While the Chamber believes that the OCC's existing regulations permit banks to engage in a wide range of DLT-related activities, the Chamber welcomes the guidance provided by the OCC's recent Interpretive Letter No. 1170 and asks for further support regarding the permissibility of banks to engage in crypto-asset- and DLT-related activities, subject to appropriate risk management. A statement of support from the OCC would go a long way toward promoting further innovation.

Specifically, the Chamber supports the OCC confirming and clarifying banks' authorities and obligations with respect to activities involving DLT as follows:

- Use of DLT to provide evidence to regulators: Distributed ledgers can provide valid bases for reaching certain conclusions that are relevant to regulators, such as the identity of an entity or that a regulated entity has completed a required task, even though (or indeed *because*) one entity cannot control the entire

system or dictate the ledger's contents. The OCC should clarify how (and the conditions under which) OCC supervisors can use information stored on a distributed ledger as evidence under existing regulations, giving banks the freedom to develop appropriate DLT-based compliance, recordkeeping, and other systems.

- Permissibility of accepting deposits in and dealing crypto-assets: While the Chamber believes that the OCC's existing rules permit these activities, the OCC should confirm that the following crypto-asset activities are part of or incidental to the business of banking and, therefore, permissible bank activities:
 - Deposit activities involving crypto-assets, including stablecoins;²¹ and
 - Dealing in crypto-assets, including stablecoins, to the extent a crypto-asset is functionally similar to a fiat asset.

Each of these activities is similar to existing activities that are commonly understood as core to the business of banking for fiat assets—accepting fiat deposits, holding fiat assets in custody on behalf of clients, and dealing in fiat currencies.

- Blockchain as a system of record: Part 12 of the OCC's rules²² require national banks to maintain records of securities transactions executed on behalf of clients and provide notifications or confirmation of those transactions to clients, subject to certain exceptions. OCC Rule 12.3(b) prescribes the manner in which a national bank must maintain the required records, including that they be in an auditable form that is easily retrievable and can be made readily available for inspection. The OCC should clarify that, with respect to transactions in crypto-assets that are securities, (1) the record of a transaction on a distributed ledger satisfies the record maintenance requirements of OCC Rule 12.3(b), and (2) providing clients with access to the records on the distributed ledger satisfies the notification or confirmation requirements of part 12.
- Effective KYC, AML/CFT, and sanctions compliance: Because certain permissioned blockchains preserve historical records of financial transaction and, when implemented with appropriate governance, do not suffer from data integrity

²¹ A “**stablecoin**” is a digital asset intended to be used as a store of value, a means of exchange, or both, and designed to manage and limit price volatility either by being pegged to or backed by an external asset such as a fiat currency, cryptocurrency, commodity or other asset, or a combination of the foregoing, or by applying additionally, or in lieu thereof, an algorithmic mechanism to address price volatility. Chamber of Digital Commerce, *Understanding Digital Tokens: Market Overviews and Guidelines for Policy Makers and Practitioners*, at 22 (2d ed. 2019), <https://digitalchamber.org/wp-content/uploads/2020/02/Understanding-Digital-Tokens.pdf>.

²² See 12 C.F.R. pt. 12.

issues, they provide unprecedented ability for banks and government agencies to track and trace transactions by token and wallet or account. Depending on the design of other non-blockchain distributed ledgers, DLT may also provide historical records. This ability to trace transactions back through time has helped law enforcement efforts to detect and prosecute criminals. Distributed ledgers can also strengthen (real time) auditability of financial transactions between counterparties and facilitate practical, technology-enabled know-your-customer (“**KYC**”) and customer due diligence (“**CDD**”) efforts and transaction monitoring and tracking.

Other regulators have clarified the application of KYC, anti-money laundering and combatting the financing of terrorism (“**AML/CFT**”), and sanctions requirements to crypto-asset activities,²³ and the OCC should do the same with respect to its expectations for banks.

Need for Supervisory Consistency. As described above, we believe the OCC should ensure that regulatory clarifications are accompanied by measures to ensure appropriate implementation in the supervisory and examination process. For a clarification to be truly effective, it must be not only reflected in regulations and guidance but also integrated into the activities and systems of supervisory personnel, supported by appropriate training and education.

Banks have robust and conservative governance regarding new activities (e.g., “new product review” processes). The mere sense that a supervisor is likely to be skeptical of an innovative product or service involving new technology may lead a bank to forego developing or using the product or service. OCC tools, such as checklists and software with “drop-down lists,” to categorize and evaluate bank activities should be revised to explicitly apply, where relevant, to digital activities so that supervisors can easily classify digital activities and document that new technologies comply with applicable rules.

OCC supervisors should also update their supervisory processes to recognize that distributed ledgers, including blockchains, can provide tamper-resistant records of certain required activities. If a rule requires a bank to perform an activity and a distributed ledger records that the activity occurred at the time and in the manner required, supervisory staff should not seek further proof of the same activity when evaluating a bank’s compliance with the rule.

²³ See, e.g., Financial Action Task Force, Virtual Assets and Virtual Asset Service Providers, Guidance for a Risk-Based Approach (June 2019), <http://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf>; Financial Crimes Enforcement Network, Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN_Guidance_CVC_FINAL_508.pdf.

OCC question 7: What new payments technologies and processes should the OCC be aware of and what are the potential implications of these technologies and processes for the banking industry? How are new payments technologies and processes facilitated or hindered by existing regulatory frameworks?

The Chamber understands that banks are among a wide variety of entities developing DLT payment solutions. Most notably, governments and some central banks are launching or considering developing central bank digital currencies (“**CBDCs**”), some of which may be DLT-based.²⁴ A core function of banks is to provide payment services to clients, and the OCC’s rules should be designed to permit banks to participate in new payment technology, including CBDCs, as they develop, as well as to develop and enhance their own payment systems through new technology such as DLT.

DLT-based payment systems may also provide a number of benefits to banks’ clients, including retail customers. Crypto-asset transfers can settle in real time (within a few seconds) on a distributed ledger, resulting in lower costs and faster payments. Uncertainty about whether banks may engage in these activities may cause them to refrain from doing so, despite potential benefits for clients.

Now more than ever, the financial services industry and its clients are in need of more efficient digital services, including payment services. Consumers need access to low-cost and efficient payment and other digital banking services without entering a physical branch office. The COVID-19 pandemic has highlighted inefficiencies in the use, processing, and delivery of physical checks for payments, such as dividends or income distributions. We therefore support efforts by the OCC and other U.S. and global regulators to reduce barriers to the deployment of digital payment services across the financial services industry.

²⁴ See, e.g., Bank of England, Discussion Paper, Central Bank Digital Currency: Opportunities, Challenges and Design (Mar. 2020), <https://www.bankofengland.co.uk/paper/2020/central-bank-digital-currency-opportunities-challenges-and-design-discussion-paper> (outlining a model of a UK CBDC); Lael Brainard, The Digitalization of Payments and Currency: Some Issues for Consideration (Feb. 5, 2020), <https://www.federalreserve.gov/newsevents/speech/brainard20200205a.htm> (describing China’s CBDC efforts and evaluating the potential for a U.S. CBDC); Robert Hockett and Lawrence Rufrano, The Wall Street Journal, Digital Dollars for All (Apr. 6, 2020), <https://www.wsj.com/articles/digital-dollars-for-all-11586215100> (describing CBDC provisions of draft legislation responding to the current coronavirus crisis).

OCC question 8: What new or innovative tools do financial services companies use to comply with applicable regulations and supervisory expectations (i.e., “regtech”)? How does the OCC’s regulatory approach enable or hinder advancements in this area?

RegTech tools hold the potential to greatly enhance banks’ ability to comply with regulations efficiently. For example, a bank may use RegTech tools to comply with regulatory reporting requirements across its business lines or to automate report filing, exception filing, regulatory notifications, and other tasks through smart contracts, dramatically reducing filing times and error rates. These tools are less useful, however, if different businesses, activities, or products are subject to inconsistent reporting requirements. Consistent with the principle that regulation should be consistent and coordinated across U.S. regulators and jurisdictions globally, the OCC should work with U.S. and global regulators to encourage adoption of global standards, such as the Legal Entity Identifier, ISO 20022, CPMI-IOSCO Critical Data Elements.²⁵ This would increase the efficiency of reporting and the ease with which banks could leverage RegTech solutions to enhance reporting capabilities.

In addition, the OCC should facilitate banks’ use of RegTech tools by permitting a bank flexibility to test promising technology as a means to satisfy regulatory and supervisory expectations without requiring the bank to simultaneously use existing, BAU technologies to perform the same task. Duplicating efforts in this way naturally reduces a bank’s incentive to test new RegTech tools because of the additional resources required.

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Thank you for your consideration of these issues. We are available to serve as a resource as the OCC continues its evaluation of these issues.

Very truly yours,



Amy Davine Kim
Chief Policy Officer

²⁵ See, e.g., Commodity Futures Trading Commission, Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 21,578 (Apr. 17, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-04-17/pdf/2020-04407.pdf> (proposing changes to swap data recordkeeping and reporting rules that would harmonize with international standards).