CENTER FOR CAPITAL MARKETS COMPETITIVENESS

Julie Stitzel
VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5339
jstitzel@uschamber.com

August 3, 2020

Chief Counsel's Office
Attention: 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)

Dear Sir or Madam:

The U.S. Chamber of Commerce's ("Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the advanced notice of proposed rulemaking ("ANPR") issued by the Office of the Comptroller of the Currency (the "OCC") regarding national bank and federal savings association digital activities.[1]

Technology is revolutionizing the financial industry at a remarkable rate. The way we transact, save, bank, and shop have significantly evolved because of technological innovations in the financial services sector. Technological development is a critical variable of success for any financial services company because it marries convenience with efficiency to better serve consumers and improve their everyday lives.

New and innovative activities by the financial industry are bound to introduce new risk. If those risks are properly controlled, they should not weigh against the business of banking. The nearly 1200 banks and thrifts supervised by the OCC already face numerous supervisory and regulatory obligations, consisting not only of laws and regulations, but supervisory bulletins, guidance, and FAQs. There is confusion within the industry due to lack of reliable guidance that may, in some instances, lead to greater uncertainty and slower innovation by banks when compared to non-banks in the financial services sector.

[1] *See* National Bank and Federal Savings Association Digital Activities, 85 Fed. Reg. 40827 (July 7, 2020).

CCMC supports the agency's stated goal of creating "a regulatory and supervisory framework that enables banks to adapt to rapidly changing trends and technology developments in the financial marketplace to meet customers' evolving needs while continuing to operate in a safe and sound manner." For decades, banks have leveraged technology to better serve consumers—in some cases by partnering with non-depository institutions.

CCMC agrees with the OCC's focus on a regulatory framework that: 1) ensures technology neutrality, 2) facilitates appropriate levels of consumer protection and privacy—including features that ensure transparency and informed consent, and 3) promotes a principles-based approach to manage evolving risk and mitigate the expiration of relevance.

We write to emphasize three points:

- **A principles-based approach is necessary to strike the right balance between regulatory certainty and evolving innovation;**
- **The importance of the emerging digital assets space; and**
- **The need for agency coordination on artificial intelligence, machine learning, distributed ledger, and blockchain technologies.**

Discussion

I. A principles-based approach is necessary to strike the right balance between regulatory certainty and evolving innovation.

The financial services sector is changing rapidly, driven by new technology, emerging competition, and consumer demand for new and innovative services. As a result, the industry is experiencing an influx of investment and new entrants that are driving business model evolution, and creating a complex and dynamic competitive landscape. As the financial services ecosystem continues to evolve, government policies should support open, secure, and interoperable digital environments that facilitate innovative solutions and help drive growth in the digital economy. A regulatory framework for the digital environment that is principles and risk based ensures enough flexibility to enable innovation.

We suggest a digital regulatory framework guided by the following principles:

a. **Enabling interoperability through effective global standards.** It is important to have effective industry led consensus-based standards that we can successfully scale globally. Effective global standards can contribute to economic growth by improving security, lowering adoption costs, facilitating innovation, creating competition, and enabling companies to achieve economies of scale.

b. **Prioritizing privacy protection**. The Chamber believes that consumers benefit from the responsible use of data. Data-driven innovation and investment enable consumers to take advantage of faster, higher quality, and customized services at lower costs. This data evolution requires policies that promote innovation, regulatory certainty, and respect for individual privacy and choice. Underpinning these efforts is a recognition that consumers must have assurance that data is safeguarded and used responsibly.

Safeguarding consumer information is paramount for the safe and continued growth of the digital ecosystem. It is important that consumers understand how digital financial services work and what choices they have before providing data to participate in a financial product or service. When asked to share data, consumers should receive clear information as to how personal information will be used, by whom, for what purposes, over what period of time, and, where appropriate, how to manage their information in conjunction with the service with clarity, ease, and consistency.

Since 2018, the Chamber has pursued a robust data privacy agenda that also takes a principles-based approach—prioritizing among other things a national data privacy framework that is industry neutral, transparent, and protections that are risk-focused and contextual.[2]

c. **Ensuring technology neutrality**. Flexible, principles-based, and technology-neutral regulatory frameworks enable organizations to maintain consumer trust and achieve compliance with security, privacy, and industry-specific laws, regulations, and other self-governing frameworks in the ways that best suit an organization's specific profile. Principles-based frameworks recognize that there is no one-size-fits-all approach. It is preferable to enable organizations to deliver effective, innovative, and secure products and services in a way that best meets customers' demand for convenient and privacy-aware technologies.

---

[2] *See* U.S. Chamber Privacy Principles

Further, it is important that the benefits of a principles-based framework are not undone by a regulation by enforcement approach.

d. **Championing security.** While financial services firms have an unwavering commitment to security, the government also has an important role to play. The Chamber supports government policies that promote a flexible, risk-based approach to cybersecurity and encourages transparency and information sharing among industry players. Given the fast-changing nature of cyber threats, it is vital that companies develop robust cyber-resilience and operational resilience capabilities and that the government allow them to do so.

II. The importance of the emerging digital assets space

The global financial cycle is currently a U.S. dollar cycle, and the U.S. dollar remains the reserve currency of the world. Despite the infancy of the digital assets market, many U.S. businesses and investors see the potential for new ways to raise capital, start new businesses powered by digital assets, and promote new payment systems—drawing similarities to the early stages of the internet. Much like the internet in the early 1990's, digital assets are still a new concept for many people, making it hard for most to conceptualize the impact they will have on their everyday life.

Digital assets, (i.e. cryptocurrencies, security tokens, non-security—or so-called "utility"—tokens, stablecoins, and other similar assets) that leverage blockchain technology have the ability to significantly enhance the performance of the U.S. financial system by bringing the unbanked into the financial system, including enabling access to credit; creating new opportunities for entrepreneurs to raise capital; reducing transaction costs; increasing efficiency; and enhancing compliance. In short, digital assets can generate economic activity by eliminating points of friction and democratizing access to financial services.

Currently, financial services companies and consumers may engage in the types of digital asset related activity that include, but are not limited to: investment in digital assets; use of digital assets to fund traditional financial products/investments; using a digital asset as payment; tokenizing physical assets as digital; the safekeeping or safeguarding of digital assets; and access to traditional banking offerings to service digital assets. That said, banks, customers and investors are currently discouraged in acquiring, investing, and utilizing digital assets due to regulatory uncertainty. As discussed more below, a clearer delineation of regulatory jurisdiction and robust interagency coordination to avoid duplication and overlap would help the ecosystem flourish.

The OCC's recent Interpretive Letter allowing federally charted banks and thrifts to provide custody services for crypto assets is a positive step toward clarity for the digital assets ecosystem.[3]

National and state banks and thrifts have long provided safekeeping and custody services, including both physical objects and electronic assets. The OCC has specifically recognized the importance of digital assets and the authority for banks to provide safekeeping for such assets since 1998. In the letter published today, the OCC concludes that providing cryptocurrency custody services, including holding unique cryptographic keys associated with cryptocurrency, is a modern form of traditional bank activities related to custody services. Crypto custody services may extend beyond passively holding "keys."[4]

The OCC's approach is a positive example of an agency recognizing the need to update how we think about regulation in the physical world to accommodate the technology of today. The OCC's Interpretative Letter illustrates that there are instances where we can achieve regulatory certainty working within our existing framework. Further, this appears to address concerns discussed around custody requirements under the Investment Advisors Act that the Securities and Exchange Commission administers—speaking to the points below regarding the need for agency coordination.

III. The need for agency coordination on artificial intelligence, machine learning, distributed ledger, and blockchain technologies.

Emerging technologies like artificial intelligence, machine learning, distributed ledger, and blockchain technology affect a wide variety of sectors and industries including financial services. Consequently, many regulatory agencies will be asked to consider future actions impacting their applications.

We commend the OCC's ongoing efforts to better understand the role of innovation in financial services and analysis of how the agency can respond to the dynamic environment. Further we are encouraged by ongoing interagency collaboration by the OCC—particularly through the Office of Innovation. [5]

---

[3] *See* OCC Interpretive Letter #1170 (July 22, 2020)

[4] *See* Office of the Comptroller of the Currency, News Release, "Federally Chartered Banks and Thrifts May Provide Custody Services For Crypto Assets," (July 22, 2020).

[5] *See* Office of the Comptroller of the Currency, New Release, "CFPB, OCC Host Virtual Innovation Office Hours," (July 2, 2020).

Non-regulatory approaches can often achieve the same policy objectives and offer the same level of protections as regulatory approaches, but without many of the burdens of regulation. If federal action is necessary to address the evolution of the emerging technologies previously mentioned, the Chamber urges the OCC to first consider non-regulatory approaches. For example, the Chamber supports all three of the non-regulatory approaches contemplated in draft guidance addressing artificial intelligence: (1) sector-specific policy guidance or frameworks, (2) pilot programs and experiments, and (3) voluntary consensus standards.[6] Generally, the Chamber encourages agencies to consider the following guiding principles to produce and implement non-regulatory approaches: interagency collaboration, voluntary requirements, agency leadership, public and private participation, and information sharing with relevant stakeholders.

It is important to ensure robust interagency coordination to prevent duplicative or conflicting approaches to emerging technologies and to provide a consistent and interoperable approach across the federal government. An uncoordinated approach may hinder the growth and adoption of promising emerging technologies resulting in a missed opportunity for economic growth in the United States.

* * * * *

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

Sincerely,

Julie Stitzel

[6] *See* Draft OMB Memo on Regulation of AI (January 7, 2019)