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## The OCC's Request for Comments and Discussion on the Future of Fintech Regulation

*By Charlie Carter and Tony Yerry*

U.S.-based digital banking startups have raised more than \$10 billion since 2010, and investment in financial technology (“fintech”) companies has surpassed \$24 billion worldwide. These firms are attempting to disrupt the banking value chain by providing services such as lending, bill payment, wealth management, and mobile banking. The significant federal and state regulation of these services create an obstacle for these fintech companies that technology companies in other vertical markets, such as social, internet infrastructure, and enterprise technology, do not face. It is critical for these companies, at the earliest stages of development, to understand how and when to engage with regulators and to build a culture of compliance, and it is critical for regulators to listen and adapt to the complaint from traditional banks and startups that the current regulatory framework stifles innovation and is unable to provide oversight for new forms of finance and banking.

These companies face regulation from a variety of federal and state regulators, each with different rules and views on the fintech market. One federal agency, the Office of the Comptroller of the Currency (“OCC”) oversees the national bank chartering system. As noted in a recent article by Rachel Witkowski in *The Wall Street Journal*, this mandate causes some industry experts to believe that the OCC is in the best position to bring fintech firms into the banking space under one federal regulatory regime.

On March 31, Comptroller of the Currency Thomas Curry released a white paper on innovation in the financial services space during a speech at Harvard University. This paper is intended to launch a more formal discussion between regulators and the industry over how to create rules that better fit a market rapidly evolving through technology innovation. Previewing the white paper with *The Wall Street Journal* in an interview, Amy Friend, chief counsel with the OCC, said that “What we’re talking about now is receptivity to exploring these issues and understanding these different models as opposed to saying ‘no’ right off the bat.” *The Wall Street Journal* is calling the white paper “the first major move by any federal bank regulator to try to provide clear guidelines for fintech companies and products ranging from online lending to digital currencies.”

After reading the white paper, one will notice immediately that it contains little in the way of specific proposals or rulemaking. Rather, by its own admission, the white paper is intended to spark conversation and formal discussions between the agency, traditional banks, and fintech companies. The main aim of such discussions is how to best set up a new framework within the OCC so fintech companies and traditional banks can have a main point of entry to submit an innovative idea directly to regulators, and regulators can determine how to best govern the implementation of such ideas into the banking sector. Presently, fintech companies and traditional banks access regulators through several different points of entry, including approaching examiners, requesting a legal opinion, filing a required application with the appropriate licensing office, or contacting one of the agency’s experts on credit, compliance, payments, cybersecurity, or modelling.

The white paper suggests one possible approach is to create a centralized office on innovation within the OCC. The office could act as a central point for submitting new innovative ideas where

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regulators and other interested parties could vet ideas before a fintech company or traditional bank makes a formal request or launches its innovative product or service to the public. The advantage of submitting an idea to a central office would allow the OCC to coordinate among OCC examiners and experts to identify supervisory, policy, legal, or precedent-setting issues early in the process. Submissions would also allow a fintech company or traditional bank to have facetime and dialogue with OCC regulators to fully explain the product and its future impacts on the financial sector.

Alternatively, the white paper suggests a less formal approach where an existing unit within the OCC would assume the responsibility as the agency's central point of contact on innovation. The unit, like the central office of innovation, would be responsible for ensuring appropriate OCC staff and experts were involved early in the process when evaluating innovative proposals. The white paper also recognizes some of the key complaints from traditional banks and fintech companies, specifically a need for more guidance with respect to third-party relationships, including partnerships between banks and nonbanks. Although the white paper does not specifically set out any rules or amendments, the OCC is accepting comments and evaluating its current policies surrounding these issues.

Perhaps the most concrete section of the white paper is the OCC's formulation of its perspective on responsible innovation. One can imagine how this perspective will be a central touch point for future rulemaking and discussions for regulating the fintech industry. In the Approach to Responsible Innovation section of the OCC sets forth its definition of responsible innovation as:

The use of new or improved financial products, services, and processes to meet the evolving needs of customers, businesses, and communities in a manner that is consistent with sound risk management and is aligned with the bank's overall business strategy.

To further expand on this point, in the same section, the OCC set forth eight "guiding principles" that it will use to approach responsible innovation:

1. Support responsible innovation.
2. Foster an internal culture receptive to responsible innovation.
3. Leverage agency experience and expertise.
4. Encourage responsible innovation that provides fair access to financial services and fair treatment of consumers.
5. Further safe and sound operations through effective risk management.
6. Encourage banks of all sizes to integrate responsible innovation into their strategic planning.
7. Promote ongoing dialogue through formal outreach.
8. Collaborate with other regulators.

For further explanations and descriptions of the guiding principals see the Guiding Principals for the OCC's Approach to Responsible Innovation section of the OCC white paper. In the middle of what many industry observers are calling a slowdown in venture capital funding and decreasing bank profits, it is more important than ever for regulators to get it right when it comes to new innovations in the banking and financial sector. Those interested in commenting on the discussions are urged to provide written submissions to the OCC through email to [innovation@occ.treas.gov](mailto:innovation@occ.treas.gov) by May 31, 2016.

The OCC white paper can be found here: <http://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf>

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