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By Email Submission to regs.comments@OCC.treas.gov

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW., Suite 3E-218
Washington, DC 20219
U.S.A.

Re: National Bank and Federal Savings Association Digital Activities, OCC Docket ID OCC-2019-0028, RIN 1557-AE74

Ladies and Gentlemen:

On behalf of the Wall Street Blockchain Alliance ("WSBA")¹ Legal Working Group ("LWG"), and the Value Technology Foundation ("VTF")², we appreciate the opportunity to provide the collective views of our organizations concerning the Advanced Notice of Proposed Rulemaking regarding National Bank and Federal Savings Association Digital Activities [Docket ID OCC-2019-0028] ("OCC ANPR").³ The WSBA LWG and VTF applaud the Office of the Comptroller of the Currency ("OCC") for issuing the OCC ANPR to solicit public input and inform its potential future rulemaking to revise and modernize the regulatory and supervisory framework governing the electronic and other digital activities of national banks and Federal savings associations ("banks").

Due to the profound impact of the OCC ANPR on the blockchain and cryptocurrency industry as a whole, we collectively believe it is important for our organizations to collaborate to offer our joint perspectives to the OCC on establishing and evolving regulations for this industry. We equally believe not only in the benefits of this technology,

¹ The WBSA is a 501(c)(6) non-profit trade association based in New York City. The WBSA LWG is composed of over 100 attorneys from across the United States, all with deep experience in securities law and the emerging ecosystem of digital assets. The comments in this letter do not necessarily represent the views of any individual member of the WSBA LWG.

² The VTF is a 501(c)(3) non-profit think tank focused on blockchain and distributed ledger technologies, advocating and providing policy prescriptions for legislators and regulators for the advancement of these technologies in the United States and in other open, free societies.

³ Available at: <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-76a.pdf>.



but also the need for the United States to be competitive in this new arena of financial technology. Therefore, we provide below specific recommendations and observations to address certain questions posed in the OCC ANPR that are most relevant to both the members of the WSBA Legal Working Group and the educational mission of the VTF.

Question #1 - *Considering the financial industry's evolution, are the OCC's legal standards in part 7, subpart E, and part 155 sufficiently flexible and clear? Should the standards be revised to better reflect developments in the broader financial services industry? If so, how?*

First and foremost, we commend the OCC for acknowledging that the financial industry is undergoing an evolution that has been steadily transforming the traditional activities of banks and the provision of financial services. The COVID-19 pandemic has only accelerated this process. The issuance of the OCC ANPR is thus especially timely and compelling to propel this evolution forward in responsible ways.

In general, we believe the OCC's current legal standards in 12 CFR part 7, subpart E, as well as part 155 (collectively, "Current Electronic Standards")⁴ are sufficiently flexible and clear to authorize and accommodate responsible innovation⁵ through technological transformation of traditional banking activities in response to industry requests and emerging customer preferences. That said, WSBA and VTF have noted the OCC's need to issue a number of interpretive rulings on a case-by-case basis to clarify the OCC's approval of particular innovative, technology-driven banking activities under Current Electronic Standards.⁶ In certain instances, the OCC took the step to codify its interpretive rulings in

⁴ As stated in the OCC ANPR, OCC's Current Electronic Standards address: (1) electronic activities that are part of or incidental to the business of banking; (2) furnishing of products and services by electronic means and facilities; (3) engaging in an electronic activity that is comprised of several component activities (composite authority); (4) the sale of excess electronic capacity and by-products; (5) acting as digital certification authority; (6) data processing; (7) correspondent services; (8) the location of a national bank conducting electronic activities; (9) the location under 12 U.S.C. 85 of national banks operating exclusively through the Internet; and (10) shared electronic space. Separate regulations at 12 CFR part 155 address (1) Federal savings associations' use of electronic means and facilities generally and (2) requirements for Federal savings associations using electronic means and facilities. OCC ANPR at 8.

⁵ We agree with the OCC's definition of the term "responsible innovation" to mean: "the use of new or improved financial products, services and processes to meet the evolving needs of consumers, businesses, and communities in a manner that is consistent with sound risk management and is aligned with the bank's overall business strategy." See www.occ.gov, Topics/Supervision & Examination/Responsible Innovation.

⁶ See OCC ANPR at 8-9. ("Such approvals in the 1990s covered Internet applications (e.g., transactional websites, commercial website hosting services, a virtual mall, an electronic marketplace for non-financial products, and Internet access services", among other technology-based services and products that account for the ongoing evolution of the

12 CFR part 7 to address the banking industry’s need for legal and regulatory certainty and clarity before offering such services to bank customers.⁷ More recently, the OCC issued an interpretive ruling to clarify that banks may provide cryptocurrency custody services for their customers.⁸ We believe this interpretive ruling may similarly benefit the industry by its codification in 12 CFR part 7. To minimize the need for ongoing case-by-case interpretive rulings and future hindrances to responsible innovation for blockchain and crypto-related activities, we also offer in response to Question #2 below some specific recommendations on potential amendments to the OCC’s Current Electronic Standards.

Based upon anticipated case-specific needs and discussions with our respective members and industry experts, WSBA and VTF expect that the OCC’s Current Electronic Standards will need to be periodically revised and updated to accommodate the increasing velocity of innovation in the financial industry, as well as the evolution of broadly disruptive technologies. For example, we share the OCC’s perspective on the rapid proliferation of cryptoassets and blockchain-based technologies available across financial markets, including for payments and remittances. Many of these solutions are based or structured upon versions of open-source computer code which, while cost-effective and efficient, may require further clarification regarding the requirements for using these solutions, particularly in Part 155.210 (*Requirements for using electronic means and facilities*). In addition, to achieve the requisite safety and soundness and operational efficiencies of these technological solutions for banks and their customers on a global scale, we note the growing need for interoperability with other blockchain platforms, systems, datasets and other applications, many of which exist or may exist in a decentralized format.

With these considerations in mind, we respectfully suggest that any proposed revisions and updates to the OCC’s Current Electronic Standards would benefit from increased flexibility to accommodate the rapid developments in open source and decentralized financial transactions. We agree with the OCC that any regulation it adopts should be technology-neutral, so that products, services, and processes can evolve regardless of the changes in technology that enable them. Second, any regulation should facilitate appropriate levels of consumer protection and privacy, including features that ensure

financial services industry.)

⁷ See 12 CFR section 7.5002 (a)(4) (codifying authorized safekeeping for personal information or valuable confidential trade or business information, such as encryption keys) and section 7.5005 (a) (clarifying that a national bank may act as a digital certification authority, issue digital certificates verifying the identity of persons associated with a particular public/private key pair, and maintain a listing or repository of public keys).

⁸ See OCC Interpretive Letter No. 1170 (July 2020).

transparency and informed consent. Finally, regulations on digital activities should be principles-based, rather than prescriptive, to enable effective management of evolving risks and to reduce the potential that the regulations quickly become outdated.

WSBA and VTF welcome the opportunity to discuss our collective views in more detail and assist the OCC in implementing a principles-based framework for the electronic activities of banks and new categories of OCC-regulated entities that is consistent with sound risk management and addresses the increasing demand for efficient and accessible technological solutions for consumers of banking services. Many of these solutions will likely involve partnerships or joint ventures between OCC-supervised banks and non-bank financial technology companies (“FinTechs”) and native crypto companies, or result from bank acquisitions of, or subcontracting arrangements with crypto custodians and crypto-related service providers. To facilitate the OCC’s oversight of these emerging bank arrangements and to strengthen its enforcement authority, we suggest that the OCC establish clear standards for third party due diligence, vendor management and oversight, and contractual considerations for banks.⁹ We believe that the OCC ANPR is especially well-timed to inform possible revisions to the Current Electronic Standards to facilitate banks’ business opportunities to offer new digital products and services to customers, while ensuring fair access to such products and services, and fair treatment of customers in the provision of such products and services.

Question #2 - *Do any of the legal standards in part 7, subpart E, or part 155 create unnecessary hurdles or burdens to the use of technological advances or innovation in banking?*

We do see some risk of potential hurdles that could result from the OCC’s application of its Current Electronic Standards to particular technological advances or innovations in banking products or services, especially those related to cryptocurrencies and the use of blockchain technology.

⁹ We note here that the Federal Deposit Insurance Corporation (FDIC) issued a Request for Information on July 20, 2020 to inform its consideration of whether a standard-setting and voluntary-certification program could help standardize due diligence practices of third-party providers of technology and other services, reduce cost, and address the regulatory and operational uncertainty that may prevent FDIC-supervised institutions from using innovative technologies or entering into partnerships with FinTechs and other private-sector technology firms. Available at: <https://www.fdic.gov/news/press-releases/2020/pr20083a.pdf>. We believe the OCC and the FDIC would benefit from close collaboration on initiatives to promote responsible innovation across the banking sector.



We note the following four factors in 12 CFR section 7.5001(c) to determine whether an electronic activity is part of the business of banking: (i) whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity; (ii) whether the activity strengthens the bank by benefiting its customers or its business; (iii) whether the activity involves risks similar in nature to those already assumed by banks; and (iv) whether the activity is authorized for state-chartered banks. We offer our views and suggested clarifications below to inform potential revisions to Current Electronic Standards to address future hurdles to evolving innovation.

We acknowledge that the OCC may place different weights on the four factors in 12 CFR section 7.5001(c) when assessing the particular facts and circumstances of an electronic activity. However, we believe there is a risk that the OCC's application of these factors may create unnecessary hurdles to broad acceptance of cryptocurrencies and blockchain innovation in banking if the OCC does not properly calibrate the particular activity's potential systemic risk to the banking industry. To address such concerns, we suggest that the OCC consider adding another factor (v): whether an electronic activity may reasonably pose a systemic risk to the safety and soundness of the banking system. For example, when determining if cryptocurrency should be part of a bank's offering, the OCC would apply this proposed factor by undertaking a balanced and proportionate cost-benefit analysis that weighs its use against its risks to the banking system. The OCC's analysis could consider the following macro-level questions:

- If banks provide cryptocurrency alongside the U.S. dollar, will this reduce the amount of deposits against which banks can offer loans?
- Would crypto-collateralized lending by banks introduce rehypothecation and other risks that warrant enhanced standards for documentation and risk management by banks to ensure their safety and soundness?
- Will the use of digital assets by banks increase perceived cybersecurity risks of the bank that are factored into an IT examination? Would the IT examination require a heightened risk review of the adequacy and clarity of the bank's defined infrastructure security protocols for all parties, including oversight responsibilities?
- How will the banks use cryptocurrency as a revenue source?
- Where in terms of accounting should the cryptocurrency be presented on a bank's balance sheet? Would it be considered "Other Real Estate" (ORE) because the IRS considers cryptocurrency to be "property"? We note that ORE is typically regarded as a high-risk factor for banks, indicating higher levels of foreclosures. Banks may thus be encouraged to keep ORE relatively low, which may unduly limit engagement in banking activities involving cryptocurrency.

In addition to these questions, the ability of the OCC to effectively expand the business activities of banking by authorizing electronic activities that are the functional equivalent to, or a logical outgrowth of, a recognized banking activity suggests to us that the OCC should take into account what the business of banking currently encompasses. This may well reveal whether there is a need to fundamentally redefine what a “bank” is to address emerging business models and consumer preferences, such as offering cryptocurrency-related activities. The need for a broader definition of a bank could address the emerging segmentation of banking activities - lending, taking deposits, and money payments - that Brian Brooks, the Acting OCC Comptroller, noted in announcing the OCC’s plans to implement a new national payments charter known as “Payments Charter 1.0”. Given the OCC’s legal position that a “bank” includes any entity that conducts lending, money payments, or takes deposits, the OCC’s regulatory oversight has expanded from traditional banks to FinTech money transmitters and other companies engaged in the global money payment space. The OCC experienced a similar expansion of its regulatory oversight of Federal savings associations as a result of the closing of the Office of Thrift Supervision. The OCC astutely recognized their similarities and made regulatory adjustments to address the different risk profiles of national banks and Federal savings associations. The implementation of the Payments Charter 1.0 may be the catalyst for the OCC to adopt an updated definition of a “bank” and make similarly astute regulatory adjustments to address the distinct risk profiles of the new and expanded categories of OCC-regulated entities and their banking activities. In addition to national banks and Federal savings associations, we believe such entity categories would include cryptocurrency exchanges, FinTech companies, and money transmitting businesses that may require separate OCC regulations to govern their respective activities.

This brings us to our next observation regarding factor (iv), whether the activity is authorized for state-chartered banks. It seems to us that for the OCC to take regulatory action that would dramatically change how banks not only operate, but profit as well, such action would need to be based on what state-level banking organizations do. We suggest that the OCC consider in its section 7.5001(c) analysis whether a particular electronic activity would harm, or otherwise adversely affect, States and their respective economies if a national bank or Federal savings association were to offer activities to the types of customers that community banks typically serve. We also suggest that the OCC consider adding to its current factor (iv), or possibly inserting a separate factor, that would assess whether the electronic activity in question may reasonably have the effect of increasing financial inclusion or whether a Community Reinvestment Activity (“CRA”) obligation is required for the bank’s authorization to engage in such electronic activity. As an example

of this factor's application, if a bank offers more novel ways of banking via mobile phones using cryptocurrency, the bank would be obligated to serve a certain number or percentage of minority populations with its offering, subject to OCC supervision and examination.

We offer more specific recommendations below to Current Electronic Standards to avoid other potential hindrances to innovation related to the use of cryptocurrency and blockchain technology in banking products and services:

In section 7.5001(d), we recommend updating the activities that are incidental to the business of banking to expressly include advisory and consulting services on cryptocurrencies, digital assets, and blockchain technology.

For the sale of excess electronic capacity and by-products in section 7.5004, we recommend an amendment to authorize a bank to engage in cryptocurrency mining activities to the extent such activities support bank customers' engagement in crypto-related activities and transactions. In our view, such an amendment would clarify a bank's ability to use its electronic capacity at branches to mine cryptocurrencies in which customers may invest and receive interest on their holdings as a "by-product" of these investments.

For "data processing services" in section 7.5006, we suggest that the OCC consider authorizing the adoption of blockchain technology by banks to provide such services and thereby avoid any future obstacle or hindrance in doing so. We also believe the concepts of "electronic databases" in section 7.5004(d)(2) and "data bases" in section 7.5006(a) should be clarified by express authorization of distributed ledgers.

As stated in section 7.5007: "It is part of the business of banking for a national bank to offer as a correspondent service to any of its affiliates or to other financial institutions any service it may perform for itself." We believe this section should be updated to include cryptocurrency exchanges and non-bank financial institutions registered with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN").

In section 7.5008 (*Location of a national bank conducting electronic activities*), we recommend updating the provision to include cryptocurrency mining and related crypto-related services. The OCC may wish to consider inserting the following phrase at the end of such section: ", or because the bank conducts cryptocurrency mining or other cryptocurrency servicing activities for customers located in the state. This does not preclude the state in which such cryptocurrency mining and other cryptocurrency-related

services and activities are conducted from collecting taxes on profits from such services and activities.”

Lastly, we expect that the shared electronic space provision in section 7.5010 may become a burden to banks as native cryptocurrencies such as Bitcoin or Ethereum operate on a public network. While requirements such as FinCEN’s travel rule are necessary to designate the identifying information of both the originator and beneficiary for cryptocurrency transactions over the applicable threshold amount, asking a bank to ensure that a public ledger is operated solely by the bank, separate and distinguishable from any third party, may not be technologically feasible. We recommend that the OCC authorize a bank to take reasonable steps to issue customer disclosures or notices indicating that, while this is an offering of the bank (for example, the custody of Ethereum and then sale of Ethereum), the offering involves processes and features of verification that are beyond the bank’s exclusive control.

Question #4 -*What types of activities related to cryptocurrencies or cryptoassets are financial services companies or bank customers engaged? 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?*

Many bank customers currently engage in trading in, or speculating on crypto-related assets. This trend will likely increase with further regulatory clarity, which motivated our specific recommendations in response to Question #2. This growing customer engagement will impact banks. For example, in decentralized finance (DeFi),¹⁰ there is the possibility that individuals will hold more of their assets in crypto that may return better interest rates than physical cash deposits at banks, even though the cryptocurrencies or cryptoassets are not FDIC-insured. If this possibility materializes on a large scale, it would lower the deposit levels of the banks. Eventually, increased activity in trading cryptocurrencies or cryptoassets could lead to a decline in traditional securities transactions. Alternatively, the concept of the securities token may merge with certain

¹⁰ Decentralized finance or “DeFi” refers to a “system of open, permissionless, and interlocking financial products built on Ethereum with a focus on borrowing, lending and banking services.” See [What is DeFi? A 3-minute guide to decentralized finance](#) (April 17, 2020).

crypto-related assets being offered as securities, thus expanding what the banks already do with bank customers in the holding and trading of securities.

We believe that the OCC's regulatory guidance should clarify the protections regarding bank trading of cryptocurrency as well as what percentage of customer assets can be used for such trading. If, for example, a bank was holding \$50 million in Bitcoin for a customer, can the bank treat this holding as it does with customer cash deposits and offer loans against the customer's Bitcoin, or is its value considered too volatile for safe and sound lending activities by banks? What if the bank has \$100 million of Bitcoin and decides to sell half of it based on its analysis that Bitcoin may drop by 10% in value over the next week? If the bank sells and moves the price down, the Bitcoin that its customer holds will also drop in value. Is this similar to the price of gold or a particular "Securities Token Offering"? Considerations that exist under the Dodd-Frank Act need to be addressed to ensure both safety and soundness in the activity of the bank as well as ensuring that bank customers' best interests are not disregarded for the benefit of the bank's bottom line. Would a bank be able to protect itself through standard written risk disclosures to customers, for example, by warning customers who choose to use the bank for Bitcoin custody services that the bank may engage in Bitcoin trading and speculating on its own account?

With respect to the use of stablecoins, we note that the total stablecoin market capitalization has grown to over \$10 billion,¹¹ which may be indicative of their emerging use as a safety hedge for investments after speculating in more volatile cryptocurrencies. Potential obstacles to the banks' use of stablecoins and related services would be reduced or eliminated with clear guidance on whether banks themselves may offer their own stablecoins based on assets held in the Federal Reserve System. As is the case regarding bank trading of cryptocurrency noted in the paragraph above, we expect that there may be a need for an increase in the amount of Federal Reserve assets on deposit for a bank's issuance of any stablecoin product. For a stablecoin that is pegged to, or is a proxy for the U.S. dollar, we see the need for clear OCC guidance on standard customer disclosures for purchasing and investing in stablecoins, as well as how the funds that are supporting the stablecoin are held by the bank and in what ratio, *i.e.*, whether a fractionalized amount or an exact 1-to-1 ratio, based on the bank's balance sheet.

¹¹ See Crowdfund Insider©, [Total Stablecoin Market Cap Surpasses \\$10 Billion for First Time, Ethereum Network Activity Spikes Due to New Coins](#) (May 13, 2020).



Finally, we suggest that the OCC authorize banks to offer “financial advice” as fiduciaries to those customers who are trading cryptocurrency, including stablecoins. The millennial generation stands to be the wealthiest generation in the history of the U.S. by inheritance, and many use and focus on ways of making money by crypto-trading. To attract this generation of new customers with a more comprehensive suite of banking services, banks may wish to offer crypto custodian services, as well as financial advice on overall investment diversification, asset and wealth planning, and other helpful services for a generation of customers that would benefit from the value of such services. In our view, banks have a critical competitive opportunity to create immense value for, and rebuild trust with the millennial generation of customers, many of whom have only had exposure to cryptoasset trading from a short-term investment perspective. Banking services that help these customers grow and protect their wealth by pursuing more informed and longer-term investment strategies based on understanding their risk tolerance and planning for financial goals such as buying a home, saving for retirement, and college tuition for their own children, should be facilitated by the OCC’s Current Electronic Standards and overall regulatory and supervisory framework.

Which brings us to an overarching barrier or obstacle to further adoption of crypto-related activities in the banking industry: the consideration of what “money” is. The very idea of what “money” is has come into question as a result of the creation of cryptocurrencies. Just as much as it is a technological innovation, it has created economic and social policy arguments that need to be revisited about what money, or currency is. In a recent interpretive letter, the OCC described how there is no intrinsic value to a U.S. dollar; even though it is fiat currency, it is no longer backed by gold.¹² Federal Reserve Governor Lael Brainard has noted that U.S. currency has an advantage over cryptocurrencies by being a liability of the Federal Reserve Banks and having legal tender status;¹³ such attributes may provide the intrinsic value that the OCC views as lacking. The debate is further complicated by the distinction between a fiat currency and “legal tender” in defining what “money” is. To preserve the protection of the U.S. dollar and to distinguish the status of cryptocurrency in relation to the U.S. dollar, the OCC may wish to clarify its legal position that cryptocurrencies in electronic banking activities are not legal tender in the United States. This clarification will ultimately depend on how the OCC answers the following

¹² See OCC Interpretive Letter No. 1170 (July 2020) at p. 1 (“Government-issued currencies, including the U.S. dollar following abandonment of the gold standard, are traditional fiat money” that do not have intrinsic value).

¹³ See Remarks by Lael Brainard, Member, Board of Governors of the Federal Reserve System, “Cryptocurrencies, Digital Currencies, and Distributed Ledger Technologies: What Are We Learning?”, delivered at the Decoding Digital Currency Conference on May 15, 2018, available at: [Speech by Governor Brainard on cryptocurrencies, digital currencies, and distributed ledger technologies.](#)

policy question: should a liability of a commercial bank with access to the Federal Reserve be considered a liability as a deposit, which could extend the definition of “money” to include cryptocurrency?

As the OCC may well appreciate as the overseer of national banks since the mid-19th century, the future of money and the status of the U.S. dollar as the global reserve currency are at stake with new players in the global money payment space. Private companies in a consortium, such as Libra, are proposing to offer a global currency, not to mention the emergence of decentralized networks such as Bitcoin and other future global cryptocurrencies that are not based on a sovereign power. The stakes are high and implicate the compelling need for interagency coordination and collaboration. We respectfully suggest that the OCC consider initiating a joint regulatory body with the FDIC, the Federal Reserve, the Financial Stability Oversight Council, and other relevant U.S. regulators to form a “U.S. Monetary Policy Steering Committee” to help determine the appropriate actions here. Failure to initiate a type of joint body like this to help inform a major decision such as including crypto in banking may later draw the critical scrutiny of Congress and stakeholders in the public and private sectors. We believe it is essential for the U.S. to compete in the new digital economy on a global scale. In our view, the OCC will be a key contributor of leadership, analysis, research and development in this important work for our Nation.

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?*

Over the past several years, distributed ledger and blockchain technologies have continued to evolve and to make a beneficial impact in various use cases and implementations throughout the banking and global financial markets. An emerging area of use cases, for example, are payments processing mechanisms leveraging these technologies, including cross-border transactions, which have seen a growing interest from central and commercial banks worldwide. We understand that many banking participants believe the current technological capabilities and payment rails for cross-border transactions are relatively expensive, slow, error prone, and susceptible to a wide variety of money laundering and cybersecurity risks. Specifically, reported costs for cross-border transactions using legacy technologies can average approximately 7% of the transaction



value, and in some instances much higher.¹⁴ Research indicates that payments with blockchain can potentially result in a 40% to 80% reduction in transaction costs.¹⁵ Also, current payments infrastructures can take upwards of two to three days to process transactions, whereas blockchain-based solutions could potentially offer such transactions in a matter of seconds.¹⁶

Another emerging use case for distributed ledger technology in banking is trade finance. The global trade finance market, estimated at approximately \$63.5 billion in 2019,¹⁷ suffers from many of the same risks and inefficiencies posed by current processes for cross-border transactions across global banking and markets, namely transactional inefficiency, cost, and multiple manual processes that compound inefficiencies and increase money laundering risk, among other risks. Delayed payments, duplicative documents, inaccurate invoicing practices, and manual reporting (including for anti-money laundering compliance) are the current hallmarks of global trade finance.¹⁸ The significant extent to which the global trade finance market is manually and intermediary-intensive is supported by a reported estimate that over 5,000 data field interactions are required for a single transaction.¹⁹ Also, the systems and parties involved are typically using disparate data sets and operating in siloed systems that are not readily connected with each other or capable of sharing data.

Blockchain technologies offer multiple opportunities to solve for these inefficiencies by streamlining trade finance industry practices and potentially recognizing the benefits of faster and less costly transactions, accommodating the need for greater velocity of trade, minimizing or eliminating data errors and invoicing fraud, and achieving more consistent compliance with regulations, including anti-money laundering (AML) and Know-Your-Customer (KYC) requirements. We note that there are several trade finance projects leveraging blockchain technology in various stages of production. For example, the Society for Worldwide Interbank Financial Telecommunication (SWIFT) is exploring the use of blockchain in trade finance, with SWIFT CEO Gottfried Leibbrandt stating that “[SWIFT is] looking at the blockchain technology, keeping a very close eye on it. If there is a way to

¹⁴ See Forbes, [Council Post: How Blockchain Is Transforming Cross-Border Payments](#) (March 12, 2019).

¹⁵ See Deloitte, [Cross-border Payments on Blockchain](#) (2016).

¹⁶ *Id.*

¹⁷ See Cision PR Newswire, [Trade Finance Market Size to Reach USD 79.410 Billion by 2026 - Valuates Reports®](#) (June 2, 2020).

¹⁸ See Deloitte, [How Blockchain Can Reshape Trade Finance](#).

¹⁹ See MarcoPolo, [The Evolution of Trade Finance: Blockchain Signals New Era](#) (February 26, 2020).

improve the service we provide to the banks with that new technology, then we will use it”.²⁰ In addition, Turkey’s Isbank became the first financial institution in that country to use the technology for a trade-finance transaction.²¹

There are several specific issues on this topic that could be clarified in regulatory guidance from the OCC and other regulators. For example, there are significant challenges in understanding the validity of “smart contracts” for trade finance under United States as well as international law, which would benefit from legal and regulatory clarity. In addition, while there are several production projects in the trade finance industry leveraging blockchain technology, the large-scale and interoperable deployment of this technology is still in its early days. Thus for example, we observe that the ability for blockchain technology to fully interoperate with the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) for the administration and enforcement of U.S. economic sanctions would go a long way to advancing responsible innovation in global financial markets.

We applaud the work that the OCC and other banking regulators in the United States and around the world are undertaking to accommodate and facilitate technological innovation in responsible and well-considered ways across the banking sector. We believe that such innovation would benefit from a public-private partnership that motivates banks and other financial market participants to explore the benefits of blockchain and other technologies in their banking activities, while ensuring compliance and enforcement of laws and regulations that are designed to protect banks and their customers. We offer ourselves, our respective networks, and WSBA members as constructive resources to facilitate ongoing discussions.

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?*

The advent of new and innovative technologies, such as blockchain, artificial intelligence, machine learning and more has accelerated the evolution of “RegTech”, which we define as the use of technology to automate regulatory compliance processes and manage increasing regulatory reporting requirements with more streamlined and efficient solutions within the financial services industry. The pace of RegTech innovation and development has

²⁰ See American Express, [Streamlining Trade Finance With Blockchain Technology](#).

²¹ See Euromoney, [Blockchain platforms see Covid-19 trade finance opportunity](#) (July 30, 2020).

been increasing in the past several years. Indeed, it is estimated that technology spending on RegTech by enterprises will top \$270 billion across the financial industry.²² With bank fines paid since the 2008 global financial crisis topping over \$300 billion,²³ we expect that banks will continue to explore and invest in both internally developed and third-party RegTech solutions to address persistent pain points in their compliance obligations.

In this context, we understand that banks and other financial services companies are using several new and innovative RegTech tools. For example, a number of RegTech firms have developed electronic solutions to help their financial services clients achieve enhanced compliance with repetitive tasks associated with compliance with AML/KYC rules, such as transaction monitoring, watch list filtering, automation of regulatory reporting, and creation of detailed audit trails to demonstrate compliance efforts to regulators. We are aware of RegTech firms offering solutions for data management, risk management, quantitative analysis, trade monitoring, records management, regulatory change management, workflow management, and point solutions that focus on a particular regulatory compliance problem. In the cryptocurrency space, RegTech firms are offering technology solutions to automate such functions as blockchain analysis, cryptocurrency transactions tracing, verified onboarding of qualified customers, including AML/KYC compliance, as well as fraud detection and cybersecurity prevention. Given the growing enterprise interest in the use of cryptocurrencies on a global scale, many of these RegTech firms count government agencies in addition to financial services firms as their clients. We anticipate that these and other RegTech services and solutions will continue to grow in sophistication and marketplace adoption in the future.

From our perspective, the OCC's regulatory approach under the Current Electronic Standards is sufficiently flexible to accommodate and enable growing innovation and RegTech advancements in the financial industry that will streamline inefficient legacy and manual processes for regulatory compliance. That said, we are continually alert to the increasing velocity of financial innovations, such as evolving developments in blockchain technology and the use of cryptocurrencies and crypto-related services, to become more deeply involved in financial markets and the business of banking. In our view, the OCC and other regulators will play a key role in monitoring technological developments and

²² See Waracle®, [How RegTech innovations are taking the complexity out of compliance.](#)

²³ See: <https://www.reuters.com/article/us-banks-fines/banks-paid-321-billion-in-fines-since-financial-crisis-bcg-idUSKBN1692> (March 2, 2017).



determining on a proactive basis whether there is a need to revise or clarify regulatory standards to enable, rather than hinder these developments within global financial markets.

Concluding Thoughts

Blockchain and cryptoassets continue to drive change, innovation, disruption, and the development of new products and services in the banking and financial services industries, as well as in many other segments of the economy. The Wall Street Blockchain Alliance and the Value Technology Foundation look forward to discussing our thoughts and comments with Acting OCC Comptroller Brian Brooks and the OCC staff. We welcome the opportunity to assist the OCC in any way to address the issues noted in the OCC's Advanced Notice of Proposed Rulemaking.

Respectfully Submitted,

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