

STATEMENT OF

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Introduction

Chairwoman Waters, Ranking Member McHenry, Chairman Perlmutter, Ranking Member Luetkemeyer, and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss bank charters, financial innovation, and the importance of a pathway for companies that provide financial services for millions of Americans to opt into a system of federal supervision that has ensured a safe and sound banking system for generations.

Framing this important topic requires that we first understand three facts.

First, the number of traditional banks in America – meaning insured depository institutions – has declined significantly over the past generation. In 2000, there were 8,315 insured commercial banks in the United States. By 2019, that number had shrunk to 4,519.¹ To be sure, much of that change reflected consolidation in the industry, but consumers also saw a reduction in access to traditional banks over the latter part of that period as the number of bank branches shrank from a peak of 83,000 to a little under 77,000.² The number of bank branches in low- and moderate-income (LMI) communities in particular fell significantly over this time period, with the largest banks closing thousands of LMI branches over a ten-year period.³

Second, the banking agencies all but halted new bank charters in the years following the financial crisis – a period when access to capital and credit was more important than ever.

Between 1996 and 2007, between 100 and 250 new bank charters were granted every year save

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https://banks.data.fdic.gov/explore/historical?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2020&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc

² *Id.*

³ <https://www.spglobal.com/marketintelligence/en/news-insights/trending/9j-uq-pfo45qidsxcfqig2>

for 2002, when 90 new charters were granted.⁴ By contrast, in 2011, 2012, 2014, and 2016, *zero* new banks were chartered in the United States, and only one charter was granted per year in 2013 and 2015.⁵ Only starting in 2017 did the pipeline for new charters open up, and then only modestly.

Third, as mega banks increased their market share and new entrants fell to near zero, customers in many financial services segments turned to financial technology firms (fintechs) and other nonbanks – either because the increasingly consolidated banking system was not serving them or because the products and services offered outside of the traditional system were more attractive. Neobanks that exist only online have the specific purpose of serving customers who either do not need, or do not live near, a traditional bank branch. Some, but not all of these, have sought banking charters and have explicitly made a business model of financial inclusion; one good example is Varo Bank, the first fintech ever to receive a bank charter, which I was proud to sign last year. On the lending side, consider the startling fact that fintechs today supply more personal loans than banks.⁶ JP Morgan Chase CEO Jamie Dimon put it best in his annual shareholder letter released just last week. Under a headline stating that “Banks are playing an increasingly smaller role in the financial system,” Mr. Dimon candidly observed that “U.S. banks ... have become much smaller in size relative to multiple measures, ranging from shadow banks to fintech competitors and to markets in general.”⁷ This trend is likely to continue given that

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https://banks.data.fdic.gov/explore/historical?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2020&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR

⁵ *Id.*

⁶ <https://internationalbanker.com/banking/how-unbundling-and-decentralization-are-reshaping-banking-and-financial-services/>

⁷ <https://reports.jpmorganchase.com/investor-relations/2020/ar-ceo-letters.htm>

both customer preferences and investor pressure for the higher rates of return on fintechs⁸ are driving lending, payments, and other traditional banking activities onto specialty platforms and out of the traditional system.

With these facts in mind, the country faces a set of important and complicated policy choices. Are we comfortable presiding over the historic shrinkage of the banking system, in which the biggest banks get bigger and more powerful and Americans in LMI communities both urban and rural have a hard time finding a traditional bank branch? If not, do we believe there is somehow significant capital waiting on the sidelines to invest in new brick-and-mortar insured depository institutions, and the political will on the part of the banking agencies to start chartering hundreds of new banks despite the trend of the past decade? If not, and Americans increasingly obtain their financial services from fintech startups and other nondepositories, are we really sure the system is better protected by keeping these companies outside the federal banking system – or might everyone be better served by allowing such companies to apply for and obtain a federal bank charter and thereby subject themselves to the rigor of bank supervision? That would certainly be one step toward leveling the regulatory playing field, something the bank trade associations claim to want.

The reality is that the current American financial system is an amalgam of banks and nonbanks. Innovation will improve the way traditional banks do business in certain areas while simultaneously continuing to drive certain other business lines out of traditional depositories. Thus any discussion of innovation and banking needs to consider (a) how innovation can make the traditional banking system stronger, more efficient, and more responsive to customer needs,

⁸ <https://internationalbanker.com/banking/how-unbundling-and-decentralization-are-reshaping-banking-and-financial-services/>

and (b) how the scope of the bank charter can adjust to accommodate the safe and sound delivery of traditional banking products and services by companies that are not chartered as banks today.

Innovation Within the Traditional Banking System

The Federal Banking Agencies Are (Slowly) Re-learning How to Charter New Banks

As noted above, in the years following the financial crisis the federal banking agencies largely lost the muscle memory for issuing bank charters. Complicating matters is the fact that many would-be new entrants into the banking system envision business models and technologies that differ from the traditional branch-based depositories of old. In order to accommodate these innovative new approaches, the OCC and the other banking agencies must develop new approaches for calculating capital requirements, assessing how well new risks can be managed, and implementing reasonable financial inclusion expectations. The good news is that this process has started.

Before delving into specific chartering challenges, it is first important to note that the OCC's historical process for chartering banks was time-consuming and complicated, often requiring multiple approvals from multiple internal committees (and sometimes even multiple approvals by the *same* committee) – a process that, when added to the FDIC's review for deposit insurance eligibility and the Federal Reserve's review for Fed membership, could take multiple years from initial consideration to charter approval. During my tenure as Acting Comptroller I set a goal of cutting the time from application to approval in half, and I am proud to say that the agency is on a path to hit that target based largely on a front-end reality check meeting with the Comptroller and the senior licensing team and a back-end elimination of duplicative committee

reviews. Oversight by this subcommittee would help ensure that this directional progress continues.

I am also optimistic that the lessons learned from some of the recent licensing approvals will speed the chartering process in the future. For example, Varo Bank – the first true fintech to receive a national bank charter – took three years to navigate the three-agency process for approval. Grasshopper Bank, a venture bank using a novel technology platform, took more than a year and a half to get through the process. It is not likely that a process this lengthy will be able to satisfy Americans’ demand for banking services in a world when the number of banks today is roughly half what it was 20 years ago, but unless new agency heads purposely slow down or limit new charters, agency staff now has a roadmap and a set of lessons learned that can be used to speed the process in the future.

Some of the most innovative new entrants have elected to acquire incumbent banks rather than seek de novo charters, as evidenced by completed or pending change-in-control applications from companies such as Lending Club, SoFi, and Jiko. Still others have learned that narrower bank charters with fewer required agency approvals – specifically the national trust bank charter – provide a simpler path to providing a defined set of financial services within a chartered bank environment.

These developments do not address perhaps the most crucial banking problem facing millions of Americans, however: In much of rural America,⁹ and in many urban LMI areas,¹⁰ there are simply no banks.¹¹ Residents of such areas thus either need to obtain their financial

⁹ Shaila Dewan, *A Small Town Loses a Pillar: Its Only Bank*, New York Times, March 28, 2009.

¹⁰ Nelson D. Schwartz, *Bank Closings Tilt Toward Poor Areas*, New York Times, Feb. 22, 2011.

¹¹ See Testimony of Prof. Mehrsa Baradaran, <https://www.congress.gov/116/meeting/house/109303/witnesses/HHRG-116-BA15-Wstate-BaradaranM-20190409-U2.pdf>

services online, or from new banks, or from shadow banks in some form. Fintechs that operate online are useful for many things, but they do not operate with the same level of supervision and compliance oversight that a bank does – one reason why Comptrollers of both parties have advocated bank charters for fintechs since the Obama Administration. New brick-and-mortar depository banks are unlikely to be chartered at scale anytime soon unless the process and requirements for obtaining a charter are simplified significantly, as some on this panel have urged. Which leaves us with the shadow banking system – the payday lenders, title lenders, buy-here/pay-here establishments and the like. That alternative may be unattractive, but unless we are willing to make it easier for new companies to enter the banking system, it is the reality for many of our fellow citizens.

Valid When Made and True Lender: Increasing Credit Availability By Allowing Banks to Leverage Their Balance Sheets Through Fintech and Other Partnerships

The total demand for consumer credit in the United States far exceeds the amount of bank balance sheets dedicated to that business segment.¹² Moreover, state interest rate caps historically made it harder for residents of some states to access credit than residents of other states. Congress and the Supreme Court have addressed these problems in two ways. First, the Supreme Court's 1978 decision in *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*¹³ and Congress's 1980 enactment of the Depository Institutions Deregulation and Monetary Control Act allowed both national and state banks to export their home state's interest rate to customers in other states. *Marquette* reached a bipartisan result – *Marquette* was successfully argued by Robert Bork, and Justice William Brennan authored the decision for a

¹² <https://www.federalreserve.gov/releases/g19/current/>.

¹³ 439 U.S. 299 (1978).

unanimous Court. And Congress's decision to expand the *Marquette* rule on interest rate exportation to state banks as well as national banks was similarly bipartisan, passing with an overwhelming majority of both Democrats and Republicans and signed into law by President Jimmy Carter. In short, in the inflation crisis of the late 1970s, when the prime rate peaked at 21.50 percent and some states had eight percent usury caps, American leaders of all political stripes understood the importance of preempting state interest rate caps in order to improve access to credit.

The second way Congress addressed the inadequacy of bank balance sheets to address all consumer loan demand is in empowering national banks to sell their loans to third parties. The National Bank Act provides that banks may enter into contracts, and the Supreme Court has held consistently for almost 200 years that banks' contracting powers specifically include the power to sell and assign their interest in loans to investors.¹⁴ The implication for credit access is clear: When a bank sells a loan, it frees up balance sheet to make the next loan. This is true when a bank sells a consumer loan to a marketplace lender; when a bank sells a mortgage to one of the GSEs; or when a bank securitizes its credit card receivables. The principle is the same: Banks tap secondary market investors to sell loans and use the proceeds to make more loans. If we think access to credit is a good thing, it follows that letting banks make more loans rather than less is desirable.

This idea was called into question in the 2015 Second Circuit Court of Appeals decision in *Madden v. Midland Funding LLC*.¹⁵ In marked contrast to the bipartisan consensus of the late 1970s surrounding interest rate exportation, some advocates cheered *Madden* for enforcing a state usury law and protecting consumers from high interest rates. But the reality of that

¹⁴ See *Planters' Bank of Miss. v. Sharp*, 47 U.S. 301 (1848).

¹⁵ 786 F.3d 246 (2d Cir. 2015).

“protection” was far murkier. Multiple studies of the effect of *Madden* on credit markets found that, when unable to sell higher interest rate loans to investors, banks focused their lending activities on smaller loans to wealthier and higher-credit-score consumers.¹⁶ One study found that banks in the states subject to the *Madden* ruling reduced lending to LMI borrowers by an astounding 64 percent.¹⁷ In short, the available evidence showed that enforcing a state usury limit against a bank-originated loan did not make credit less expensive for LMI borrowers; it made credit less available.

This is one reason the OCC (and separately the FDIC) adopted the “valid when made” rule in May 2020 – to increase access to credit by clarifying what had been established law until 2015, that banks can originate loans at a rate legal in their home state and may sell that loan in the secondary market without impairing the legality of the original loan terms. Of course, the rule was supported by other reasons as well, including the need for banks to manage the risks of their loan books in different economic environment and to manage concentration limits and other regulatory considerations.

The OCC understood, however, that some bank partnerships in the past had skirted the edges of consumer protection law through so-called “rent-a-charter” arrangements in which the involvement of a bank preempted state usury and other laws but neither the bank nor the bank partner accepted responsibility for consumer protection, anti-discrimination, and other legal requirements. That is why the OCC’s true lender rule specifically addresses “rent-a-charter” practices and states that, in any case where a national bank either is named on the note or funds

¹⁶ See Colleen Honigsberg et al., *How Does Legal Enforceability Affect Consumer Lending? Evidence from a Natural Experiment*, 60 J.L. & Econ. 673, 675 (2017) (cited in *McShannock v. JP Morgan Chase Bank, N.A.*, No. 19-15899 (9th Cir. 2019)).

¹⁷ See Piotr Daniesewicz & Ilaf Elard, *The Real Effects of Financial Technology: Marketplace Lending and Personal Bankruptcy* 22 (2018), <https://tinyurl.com/y5s3s7oh>.

the loan on the date of origination, the OCC will hold the bank responsible for ensuring compliance with all applicable laws. In the words of the final rule, “[i]f a bank fails to satisfy its compliance obligations, the OCC will not hesitate to use its enforcement authority consistent with its longstanding policy and practice.”¹⁸

In short, these two companion rules – “valid when made” and true lender – allow innovative fintechs and other companies to increase access to credit while ensuring that national banks subject to strict federal supervision are held accountable for consumer protection in the process. That, surely, is an advance over the previous status quo.

Expanding Our Understanding of Bank Charters to Accommodate New Technologies and Business Models

Economic Pressure to “Unbundle” Lending and Payments from Deposit-taking Is Driving a Significant Percentage of Traditional Banking Services Outside of Traditional Banks.

In a number of op-eds and speeches, I have detailed the reasons for the rise of fintech as a distinct category within the financial services market.¹⁹ They are simple. **First**, as in other areas of the economy, consumers have voted with their feet and migrated away from financial “supermarkets” and toward firms that specialize in particular financial products. SoFi’s early success in the student loan refinance market, Affirm’s point-of-sale financing product, or Square’s success as a payments processor for small retailers are all examples. All such businesses involve activities that, in an earlier generation, would have been conducted inside of a bank. **Second**, investment dollars are flowing into fintech because returns on a given activity

¹⁸ <https://www.occ.gov/news-issuances/federal-register/2020/85fr68742.pdf>

¹⁹ *E.g.*, Brian P. Brooks & Charles W. Calomiris, *Fintech Can Come Out of the Shadows*, Wall Street Journal, Sept. 9, 2020; Brian P. Brooks, *How Unbundling and Decentralization Are Reshaping Banking and Financial Services*, International Banker, December 3, 2020.

conducted on a specialty fintech platform are far higher than returns on the same activity when bundled with other activities inside a traditional depository institution. As I illustrated in a recent op-ed, investment returns in the fintech payments sector were 58 percent in the five-year period ending in Q3 2020, while returns in the Invesco KBW large bank ETF were up three percent in the same period.²⁰ That is why venture funding for North American-based fintechs has exceeded \$20 billion in each of the past several years.²¹

The Rise of Decentralized Networks, Including Blockchains Powered by Cryptocurrencies, Is Likely to Transform the Way Economic Value Is Stored and Transferred.

The significance of cryptocurrency can scarcely be doubted if for no other reason than the market capitalization of all cryptocurrencies exceeds \$2 trillion as of this writing.²² Yet the project of cryptocurrency is not well understood by the lay public or by many policymakers and is often analyzed in reductionist discussions about whether Bitcoin “is backed by anything,” whether a large or small amount of crypto transactions involve money laundering or other criminal conduct, or whether it is possible to have the benefits of blockchain technology without the need for cryptocurrencies.

In truth, the entire project of cryptocurrency is to eliminate middlemen in financial transactions. Historically, society needed middlemen to serve as neutral, trusted third parties in transactions between principals who neither knew nor trusted each other. The role of the middleman – i.e., the banker – was to allocate capital based on decisions as to who was a good credit risk to lend someone else’s money to, to maintain ledgers of account as to who owed what

²⁰ <https://internationalbanker.com/banking/how-unbundling-and-decentralization-are-reshaping-banking-and-financial-services/>

²¹ <https://finledger.com/2020/12/18/2020-saw-a-record-number-of-fintech-mega-rounds/>

²² See <https://coinmarketcap.com/> (visited April 12, 2021).

to whom, and the like. The middleman, in turn, got paid for performing these functions. Those payments took the form of loan origination fees, minimum balance fees, late fees, recordation fees, and many others. But those functions and their associated fees were not any more necessary *a priori* than postage is necessary to send a letter to another person. In the same way that email eliminated the need to buy a stamp to send a message to someone, technology arose that allows many financial functions to be performed by computer rather than by human beings. The most advanced technology for doing that is called blockchain.

In a true public blockchain, the inducement for any given person to connect their computer to the network and maintain the ledger is the promise of receiving a reward for doing so. The reward is in the form of the token native to the given blockchain being maintained.²³ This is why decentralization requires cryptocurrencies. But it also helps explain why cryptocurrencies actually *do* have value and actually *are* backed by something, contrary to the popular understanding. The native token for any given blockchain represents the value and adoption trajectory of that particular network – it is a more direct way of investing in the actual Internet protocol than we have for investing in the original Internet, where the best proxy for Internet adoption is perhaps Google stock or the stock of another large Internet portal.

Like the original Internet, blockchain networks powered by native crypto tokens not only transfer value directly, but sometimes also serve as the framework on which other Internet applications are built. One category of application directly relevant to banking consists of so-called stablecoins, crypto tokens that are created and transmitted on a blockchain but that are pegged in value to some underlying asset (usually fiat currency) and that perform the same function as payment cards or travelers' checks. US dollar-backed stablecoins currently total in

²³ See generally Paul Vigna & Michael Casey, *The Age of Cryptocurrency*, chapter 5 (2015).

the tens of billions of units in circulation and hold the promise of providing real-time payments and settlements long before any realistic government-created project is expected to become available in this country. For a stable cryptoeconomy to develop, at least three things must coexist: blockchains, performing the function of ledger management and transaction rails; cryptocurrencies native to each blockchain to reward unrelated parties for validating transactions and maintaining the network and its ledger; and stablecoins, which allow for instant transactions without the price volatility that often makes cryptocurrencies a less-than-optimal means of payment.

The next frontier of decentralization is decentralized finance, or “DeFi” – a phenomenon I termed “self-driving banks” because of their similarity in the financial world to self-driving cars being tested on roads across America.²⁴ The concept of DeFi is that, not only can value be transmitted over Internet-like public blockchains, but *other* functions of banks and broker-dealers can be conducted away from any centrally controlled institution. Savings, lending, capital allocation – all conducted by open-source software with little human involvement and no central management.²⁵ The trick, however, is that participants in DeFi networks are lending or borrowing or saving or shorting crypto assets rather than fiat currency or traditional securities. But from the standpoint of the participant, it may not matter that they are using a stablecoin or a cryptocurrency if, unlike at their bank, they can receive the now-astonishing sum of 8.6 percent interest.²⁶

²⁴ Brian P. Brooks, *Get Ready for Self-Driving Banks*, Financial Times, January 12, 2021.

²⁵ See <https://forkast.news/explainer-decentralized-finance-defi-guide/#:~:text=DeFi%20are%20financial%20services%20with,blockchain%20technology%2C%20in%20layman's%20terms.>

²⁶ As advertised at <https://blockfi.com/> (visited April 12, 2021).

Why are top US computer scientists devoting their careers to cryptocurrency projects, and why are Americans and others around the world flocking to the asset class? Again, contrary to the popular narrative, there are articulable reasons. One is that decentralized networks are almost always faster, cheaper, and more resilient than single points of failure. Yes, cryptocurrency exchanges get hacked from time to time, but so do credit bureaus, banks, broker-dealers, and other traditional institutions. On the other hand, as a popular meme has it, “the Fedwire is down. Bitcoin never goes down.” Or perhaps more familiarly, the library closes at 5 pm – the Internet never closes. Another reason for increasing cryptocurrency adoption is the idea that the preprogrammed scarcity of certain cryptocurrencies, including Bitcoin, provides a hedge against inflationary monetary policy.²⁷ And third, in a world characterized by political polarization of everything from social media platforms to lending to payments, in the world of cryptocurrency, there is no human decisionmaker to prohibit a person from sending money to the recipient of his or her choice on ideological grounds.

Unbundling and Decentralization Present Regulatory Policy Challenges, But Not Insurmountable Ones.

1. Can – and *Should* – Unbundled Financial Services Companies Receive National Bank Charters?

Since the time of Comptroller Thomas Curry, the OCC’s position under leadership from both political parties has been that companies engaging in one or more core banking activities – deposit-taking, lending, or payments – are potentially eligible to receive national bank charters. Opposition to this idea has been premised significantly on (a) concerns about protecting incumbent banks and (b) protecting the turf of state regulators to solely license nonbank financial

²⁷ Vigna & Casey at 294.

companies while simultaneously enjoying the power in tandem with the federal government to charter banks.

While the legality of chartering nondepository financial services companies as banks is currently being litigated in the Second Circuit Court of Appeals, in my opinion the analysis is not complicated. The National Bank Act, under which banks are chartered, nowhere requires banks to take deposits. Deposit-taking is a *power* of national banks, not a requirement. Throughout history there have been nondepository banks, both in this country and elsewhere; credit card banks and national trust banks are examples. And a long line of judicial decisions, including from the Supreme Court, has deferred to the OCC's interpretation of which powers banks may or must exercise.²⁸ This is as it should be, since banks, like all business organizations, have had to evolve and adapt over the years to keep up with changing consumer preferences, a changing market environment, competition from new products and technologies, and other things.

But the legality of nondepository bank charters will be decided by the courts, and probably soon. What should American *policy* be on this subject? None of the policy arguments against the OCC's authority to charter nondepository banks is especially persuasive. A national bank charter for nondepositories will not destroy the dual banking system as some critics claim; today states and the federal government charter banks in parity with each other, so why should only the states charter nondepository companies engaged in banking activities such as lending and payments? A state monopoly on such licensing authority is hardly *dual* banking.

A state-centric model for lending and payments platforms is hardly consistent with national economic growth. All such a model ensures is that some of our largest and most efficient innovators – global payments companies, national marketplace lenders, and others –

²⁸ See, e.g., *Nationsbank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251 (1995).

must pay a state-by-state regulatory tax for the privilege of serving customers all over the country. They could certainly do that if they choose, but must they?

Nor is a system of state licensing monopolies necessary to ensure robust consumer protection. No bank operating under OCC supervision would claim that federal regulation is lighter-touch than state regulation. In my short tenure at the OCC, I personally authorized roughly \$1 billion in civil money penalties against banks that had violated consumer protection and other laws. By contrast, many state-licensed entities, ranging from payday lenders to subprime mortgage lenders, have a history of consumer protection violations that do not necessarily reflect well on the state regulatory system that supposedly supervises them.

None of this is to impugn the effectiveness of state banking regulators or the importance of state bank charters, which play a vital role in our system. Indeed, many important regulatory innovations have arisen in state laboratories of experimentation, ranging from industrial loan companies which have played an important role in specialty financial services for more than a century to cutting-edge crypto bank charters being explored in places like Wyoming. But as the founders recognized in jettisoning the Articles of Confederation for the Constitution, and as Alexander Hamilton recognized in organizing the first Bank of the United States, a country based on a fragmented economy in which each state acts as mini-sovereign will not be a robust competitor on the international stage and will not experience the kind of growth and wealth creation that Americans expect as their birthright. This point is all the more compelling given the simultaneous decline of branch banking and rise of online financial services. In such a world, arbitrary geographic limitations that may have made sense two generations ago make little sense today.

2. Can Regulation Adapt to the Decentralized Nature of Cryptocurrency?

In a series of releases in 2020 and 2021, various government agencies and interagency groups finally began providing clarity for the building blocks of a future cryptoeconomy. The OCC started the dialogue with an interpretive letter clarifying that national banks can provide custody services for cryptoassets held by their customers.²⁹ Shortly thereafter, the OCC authorized national banks to hold reserve deposits for, and otherwise support, stablecoin projects that meet certain requirements.³⁰ The SEC simultaneously stated that stablecoins meeting the specified criteria could request no-action letters from the SEC clarifying that they do not constitute regulated securities.³¹ The OCC then clarified that banks can connect directly to blockchain networks as validator nodes for purposes of both accepting and remitting stablecoin payments and maintaining the blockchain networks on which stablecoins transact.³² Underscoring the importance of these issues to national economic policy, the President's Working Group on Financial Markets provided additional clarity on expectations surrounding stablecoins and their related networks, including both the set of safety-and-soundness requirements to ensure that customers can redeem their stablecoins at par on demand and a technology-agnostic approach to ensuring compliance with anti-money-laundering requirements.³³

While this policy work was going on, OCC supervision staff spent the summer and fall of 2020 working on a supervisory framework to ensure that crypto-related activity inside the federal banking system would comply with capital, risk management, compliance, and other standards

²⁹ <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-98.html>.

³⁰ <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-125.html>.

³¹ <https://www.sec.gov/news/public-statement/sec-finhub-statement-occ-interpretation>.

³² <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2a.pdf>.

³³ <https://home.treasury.gov/system/files/136/PWG-Stablecoin-Statement-12-23-2020-CLEAN.pdf>.

that are as rigorous as those expected of traditional banks. Only after career staff was satisfied did the OCC conditionally approve the first two crypto bank charters in history. As with any new banking activity, both the banks and the regulators will learn in the early days. But I am proud that my former colleagues did the work necessary to understand and evaluate this emerging class of assets and activities to ensure that it can safely be brought into the U.S. financial system subject to prudent risk management and consumer protection.

3. How to Assess Financial Inclusion

Depositories are subject to the financial inclusion requirements embodied in the Community Reinvestment Act (CRA). The CRA is an important civil rights law that embodies a basic social contract: Institutions that gather artificially cheap retail deposit funding (artificially cheap because deposits are insured by the Federal Deposit Insurance Corporation) in a given community should reinvest a portion of the benefit of their low funding costs in that community. Nondepositories by definition don't receive the benefit of cheap deposit funding and thus, as a technical matter, the terms of the CRA do not apply. And yet if the events of Summer 2020 taught us nothing else, it is that financial inclusion is critical for social peace and cohesion in this country. Thus one challenge facing the OCC and other banking regulators, not to mention you and your colleagues in Congress, is how to think about an appropriate means of assessing financial inclusion for nondepository financial services companies. Importantly, fintech is all about financial inclusion because the primary business model involves providing financial services to individuals not well served by traditional banks. And fintechs, at least those in the lending business, are subject to the same antidiscrimination laws – the Equal Credit Opportunity Act, the Fair Housing Act, and potentially others – as banks.

Still, more rigorous thinking needs to be done about the appropriate measure of a sustainably profitable fintech's contribution to its community. We should be cautious about politicizing technology innovation because, as members of this panel have pointed out before, banks that are themselves subject to CRA do not always do a perfect job of serving all segments of their communities. Innovators exert market pressure on banks to up their game, and also make it easier for banks to serve underserved segments of the market. But one of the reasons I founded Project REACH at the OCC was precisely to explore ways that technology innovators and banks can work together to solve the structural issues behind race disparities in access to credit – issues such as the disproportionate number of racial minorities that lack a usable credit score, or the difficulty that disproportionately many minorities have in saving for a house down payment. Fintech has something to teach us on these and many other financial inclusion subjects. I encourage you and your colleagues to unleash their energies – not to disincentivize them. Working together, we can harness market forces to build a financial system that is simultaneously inclusive and innovative.