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Response to Request for Comment on Proposed Guidelines for Evaluating Account and Services Requests

(Docket No. OP-1747)

The Financial Technology Association (FTA) appreciates this opportunity to respond to this request for comment issued by the Board of Governors of the Federal Reserve System (Board) on proposed guidelines (Account Access Guidelines) to evaluate requests for accounts and services at Federal Reserve Banks (Reserve Banks).

The Board's thoughtful proposed guidelines serve the Board's interest in addressing risks that all institutions might present to the Federal Reserve payments system and financial stability, and in supporting responsible financial innovation that benefits consumers with greater choice and improved product offerings. The FTA applauds the Board's current engagement on this important topic and is confident that the result will be the further development of safe, resilient, and robust financial services for American consumers and small businesses.

The Financial Technology Association and Modern Chartering Frameworks

The FTA is a nonprofit trade organization that educates consumers, regulators, policymakers, and industry stakeholders on the value of technology-centered financial services and advocates for the modernization of financial regulation to support inclusion and innovation.[1] The FTA is focused on informing tomorrow's regulations, policy frameworks, and public understanding in order to safeguard consumers and advance the development of trusted, digital financial markets and services.
A core pillar of the FTA's effort to advance consumer-centric financial services development in the

[1] The FTA's members include Afterpay, Betterment, Brex, Carta, Figure, Klarna, Marqeta, Nium, Plaid, Quadpay, Ribbit Capital, Sezzle, Truework, Wise, and Zest AI. For more information on the FTA, please see Home - Financial Technology Association (ftassociation.org).

U.S. is ensuring modern regulatory frameworks that recognize the benefits of financial technology-driven innovation and accommodate new models within the regulatory perimeter. This is the opposite of a deregulatory approach and is one that can best safeguard consumers and the financial system, while allowing for ongoing improvement to the status quo in how consumers and small businesses access financial services.

The importance of developing forward-leaning approaches and frameworks cannot be overstated. It is a critical and positive development that in the face of an increasingly concentrated banking landscape in the U.S., select fintech firms are seeking a broad range of statutorily authorized state and federal charters in order to offer consumers and small businesses additional choice, targeted product offerings, and lower costs. Since the mid-1980s, the number of banks in the United States has declined by more than 50% and from 2011 to 2016 only a handful of new FDIC-insured bank charters were approved. Concentration is increasing as well, with the top 15 banks holding over 56% of total deposits in 2020, and only two banks generating nearly half of all ACH payments.[2]

It is against this backdrop, and pursuant to the well-established dual banking system in the United States, that entities involved in the "business of banking" can choose to be chartered at the federal or state level. At the federal level, the National Bank Act gives the Office of the Comptroller of the Currency (OCC) the authority to grant a charter "[i]f…it appears that such association is lawfully entitled to commence the business of banking." The manner in which the "business of banking" is conducted is constantly evolving and in turn banking regulators, including the Reserve Banks, have broad statutory authority, tools, and knowledge to authorize and oversee a range of chartered banking entities, whether full-service or more limited.

To this end, the OCC has long used its broad bank chartering authority to charter both insured and uninsured banks, including by issuing special purpose bank charters for credit card banks, community development banks, and trust banks. Some of the largest and most well respected financial services institutions today were chartered as credit card banks. And, notably, until the introduction of deposit insurance in 1933 all national banks were uninsured.

State banking regulators have similar chartering authorities as federal regulators do, and the recognition of such charters is required pursuant to federal banking laws and by adherence to principles of U.S. federalism. Additionally, Industrial Loan Companies (ILCs) are FDIC-insured

[2] *See* Financial Technology Association, *Just the Facts: Bank Charters for Fintechs* (May 13, 2021), available at https://www.ftassociation.org/wp-content/uploads/2021/05/FTA-Just-the-Facts_-Fintech-Bank-Charters-1.pdf.

state-chartered depository institutions and the FDIC serves as the primary federal banking supervisor of ILCs. An ILC charter therefore subjects the entity to banking supervision by both state and federal banking regulators.

Applying banking regulation and oversight to fintech firms subjects these firms to heightened supervision and regulatory requirements – it is the opposite of deregulation. Banking supervisors are keenly focused on whether banks are being operated in a safe and sound manner. It is worth underscoring that it is the *very same banking regulators* that oversee full-service banks as those overseeing so-termed "novel" banks. It stands to reason that these very same regulators understand the regulatory risks outlined by the Board in the Account Access Guidelines, including around privacy, consumer protection, cybersecurity, resiliency, and stability, and take measures to mitigate such risks presented by <u>all</u> chartered entities.

To be sure, chartered banks are subject to regular examinations, including with respect to privacy, fair lending, and consumer protection compliance, and must take affirmative steps to mitigate risks identified by regulators. In its most recent approvals of two ILC applications, the FDIC underscored its focus on safety and soundness by imposing capital and other requirements that exceed those typically imposed on traditional *de nov*o banks and ensured, pursuant to the Dodd Frank Act, that the parent company of the ILC will serve as a "source of financial strength" for the ILC. The OCC has likewise in its recent trust bank approval orders imposed capital and other requirements that go beyond the requirements that apply to full-service OCC chartered banks.

U.S. statutory frameworks grant broad chartering authority to state and federal regulators and for decades have provided financial services firms with flexibility to pursue charters appropriate for their business models and services that they offer. This is not regulatory arbitrage. This broad chartering authority and innovation in the provision of banking services is healthy and pro-consumer, since it safely introduces competition, allows for the mitigation of identifiable risks, and enables the offering of tailored and customer-centric services that otherwise may not be offered. It also allows for the business of banking to evolve – as it has throughout history – and to do so within the regulatory perimeter.

The Consumer and Economic Benefits of Payments Innovation

Before specifically addressing the Board's Account Access Guidelines, it is important to underscore the benefits of payments innovation and modernization. These benefits have been recognized by

regulators domestically and abroad, resulting in many pursuing robust payments model and regulatory modernization efforts. As the Board considers the proposed Account Access Guidelines, it should be centrally guided by the best interests of consumers and small businesses, all of whom can benefit from further responsible payments innovation.

At the core, fintech innovators are leveraging internet and mobile technologies to offer consumers new payment and money transfer options that can significantly reduce costs, speed access to funds, improve transparency and convenience, and enhance financial inclusion. Fintech payments innovation is dramatically reducing the cost consumers and small business merchants pay for a range of payment services, including those that cut across borders where legacy services can charge more than 20% of the transaction amount in fees.[3]

New payments models are further improving the speed at which consumer access to funds, which can improve cash flow and reduce overdraft fees, while also offering easy mobile access. Mobile access has been a big driver in providing un-or-under-banked individuals with an onramp into the financial system.

Additionally, payments innovators are partnering with consumer-facing businesses to advance "embedded finance" or "banking as a service" payments models; these solutions provide consumers with low-cost and compliant financial services products without the business partner bearing the cost or complexity of building unique payments infrastructure. By leveraging API-based connectivity and open banking frameworks, platform payments companies are democratizing financial services, empowering small businesses to digitize and entrepreneurs to scale, enabling digital banks to innovate, and enhancing consumer access to digital payments solutions.

It is also notable that fintech payments companies are often at the forefront of improving pricing transparency for consumers, a critical benefit when UK government-supported research has found that consumers and small businesses are often unaware of exchange rate markups, and are significantly more likely to choose the best option when total costs are disclosed.[4] The Australian government has added that consumers should have access to digital tools that enable them to see the

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[3] Sonia Elks, *Migrants losing $25 billion per year through remittance fees - UN*, Reuter (Sept. 20, 2018), available at https://www.reuters.com/article/us-global-migrants-un/migrants-losing-25-billion-per-year-through-remittance-fees-un-idUSKCN1NP2BA.

[4] The Behavioural Insights Team, *The impact of improved transparency of foreign money transfers for consumers and SMEs* (Mar. 21, 2018), available at https://www.bi.team/publications/the-impact-of-improved-transparency-of-foreign-money-transfers-for-consumers-and-smes/.

full composition of cross-border payments fees and how that impacts the final price of a transfer.[5] Fintech innovation – which relies on digital – is best suited to continue a push for pricing transparency and consumer-centric pricing competition.

Unfortunately, unlike other global jurisdictions, direct access to the federal payments systems is largely restricted in the U.S. to traditional depository banks. Providing fintech companies, including those with federal or state banking charters, with access to the federal payments infrastructure would substantially lower costs for fintech companies offering payments services, which ultimately benefits consumers through lower-cost products.

There are other major systemic benefits, too. Increased access to federal payments would increase innovation and competition. Moreover, allowing fintech firms to reduce their sole reliance on banks would diversify significant infrastructure risk away from single points of failure, as half of all ACH payment originations nationwide are currently generated by only two banks.

Notably, other leading economies have recognized the cost, competition, and resiliency benefits noted above and have modernized their payments regulations.

For example, the UK allows non-bank payment companies to directly access its Faster Payments Scheme and to obtain a settlement account at the Bank of England.[6] The EU, Canada, Singapore, and Japan are all launching or announcing similar initiatives that contemplate fintech participation.[7] And, international governmental bodies are supportive as well. Following previous calls from the United Nations, World Bank and others, the Financial Stability Board's (FSB) Committee on Payments and Market Infrastructures (CPMI) recently recommended direct access for non-bank payment companies to help make cross-border payments more accessible and affordable.[8]

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[5] Australian Competition & Consumer Commission, *Transparent pricing of foreign currency conversion services* (December 2019), available at https://www.accc.gov.au/system/files/1651FAC_FX%20busines%20guide%20Transparent%20pricing%20D02.pdf.

[6] Bank of England, *First non-bank payment service provider (PSP) directly accesses UK payment system* (Apr. 18, 2018), available at https://www.bankofengland.co.uk/news/2018/april/non-bank-psp-access-to-the-payments-system-announcement.

[7] *See generally*, Bank for International Settlements, Financial Stability Institute, *Policy responses to fintech: a cross-country overview* (Jan. 2020), available at https://www.bis.org/fsi/publ/insights23.pdf.

[8] Financial Stability Board, *Enhancing Cross-border Payments: Stage 3 roadmap* (Oct. 13, 2020), available at https://www.fsb.org/2020/10/enhancing-cross-border-payments-stage-3-roadmap/.

Account Access for State- and Federally-Chartered Banking Entities Allows for Safe and Responsible Innovation, while Recognizing the Proper Authority and Expertise of State and Federal Banking Regulators

As noted above, there is nothing inherently "novel" about the existence and availability of a set of state and federal banking charters that recognize different banking business models and apply regulatory requirements in a manner that solves for actual and identifiable risks.

Credit card and trust banks, for example, have been key contributors to the success of the American banking system, and the diversity of business models has permitted ongoing and consumer-centric financial innovation. States similarly have chartered banking entities under the nation's dual-banking system since the 19th century. Both state and federal regulators oversee, examine, and safeguard consumers and the banking system, regardless of the specific form of charter.

With this backdrop, FTA is supportive of the Board's proposed Account Access Guidelines and related advancement of a transparent process for evaluating applications. FTA is further supportive of an approach that recognizes the importance of Reserve Bank discretion in crafting appropriate requirements to mitigate specific and identifiable risks – a process that is inherent and common in all banking oversight regardless of the specific charter.

FTA provides specific comment below in response to topics and questions raised by the Board. FTA underscores at the outset, however, an appreciation for the Board's interest in ensuring that Reserve Bank staff have complete understanding of the contours and requirements of particular state and federal charters to ensure that there are no oversight or compliance gaps that could introduce risk to the federal banking and payments systems.

To this end, more extensive due diligence with a particular "novel" charter may be appropriate until Reserve Bank staff become comfortable with the particulars of a chartering regime. But once such familiarity is achieved and particular transparent requirements developed in response to identifiable risks, there is no reason to treat one type of bank charter differently from another when considering applications. And to the extent that a specific fintech applicant engages in activities involving unique products or technologies, FTA notes that such fintech firms are typically more narrowly focused than "traditional" financial institutions, which allows the firms to be more attuned to, and address, any risks particular to its business. The specific risk assessment of a particular firm, however, does not necessitate categorical, differential treatment of an entire category of applicants.

Eligible Banks Under the Federal Reserve Act

The Board notes at the outset of its request that it "may in the future be useful to clarify the interpretation of legal eligibility under the Federal Reserve Act for a Federal Reserve account and services." The FTA offers that there is already sufficient clarity and authority within the Federal Reserve Act for the Reserve Banks to approve access to a broad range of state and federal chartered banking entities so long as such entities are safe and sound. To this end, holding insured deposits is not an indicator of an institution's safety and soundness and should not be a factor in making this assessment.

As noted above, the manner in which the "business of banking" is conducted is constantly evolving and in turn banking regulators, including the Reserve Banks, have broad statutory authority, tools, and knowledge to authorize and oversee a range of chartered banking entities, whether full-service or more limited. Overly rigid definitions would otherwise entrench the status quo and prevent the healthy and long-standing evolution of banking in America.

Understanding the Applicable State or Federal Supervisory Regime

The proposed Account Access Guidelines note that Reserve Bank staff should "incorporate, to the extent possible, the assessments of an institution by state and/or federal supervisors into its independent assessment of the institution's risk profile." This is an important element of a Reserve Bank's review, especially to the extent that staff is reviewing an application from the recipient of a "novel" state or federal charter. In this case, the review also provides Reserve Bank staff an opportunity to spend the necessary time to understand the applicable regime, its requirements, and any specific areas where existing risks with respect to the Reserve Bank and the overall payments system require further mitigation. If it is within this context of "novel" charters that the Board proposes the Reserve Banks engage in "more extensive due diligence," then the FTA is favorable.

Once a Reserve Bank becomes familiar with a particular state or federal charter, however, FTA does not believe it would be necessary or appropriate to subject subsequent applicants to more extensive due diligence. Instead, to the extent an existing identified risk specific to the framework exists, appropriate mitigating requirements should be readily applied. These regulatory expectations should be applied consistently across the Reserve Banks and transparently messaged to prospective applicants so that they can take appropriate steps to satisfy related requirements, as with any chartered entity.

Additionally, as noted above, as with any chartered entity, it is always possible that a specific applicant may engage in unique activities and present unique risks. Given their typically narrow focus relative to traditional financial institutions, fintech firms are able to develop expertise regarding a potentially unique product or technology, and, accordingly, are able to readily mitigate identified risks. For this reason, review of a smaller and/or more narrowly focused firm in many cases should prove less onerous to Reserve Bank staff than review of more complex institutions.

Potential Impact on Monetary Policy

The proposed Account Access Guidelines note that Reserve Banks should consider whether a particular applicant or group of applicants might impact the implementation of monetary policy. While this is a reasonable consideration, FTA notes that the size of fintech firms and the nature of their business models – especially if heavily focused on payments activities – render it highly unlikely that such firms would have any negative impact on the implementation of monetary policy. To the contrary, introducing additional competition and consumer choice in the market should *strengthen* the overall financial system, including the Fed's ability to implement monetary policy.

As noted above, the ongoing consolidation of the banking industry and growth of the largest institutions can pose systemic and resiliency risks to the financial system, including with respect to monetary policy implementation. Should one or a number of the largest institutions face instability or other operational challenges, the impact can easily cascade throughout the financial system. Diversifying the financial system by allowing for new entrants should help edify the financial system, while giving consumers greater choice.

To this end, FTA recommends that the Board encourage Reserve Banks to consider the benefits of introducing new entrants into the federal payments system when reviewing applications. This factor should weigh in favor of approving applicants and is the natural corollary to the Board's interest in advancing financial innovation and competition.

Additional Considerations

FTA applauds the Board's guidelines as promoting a transparent process for Reserve Banks to review new applicants seeking account and direct payments services access. FTA encourages the Board and Reserve Banks to remain forward-leaning in the application of such guidelines and support responsible new entrants given the clear consumer and systemic resiliency benefits that would derive

from such a policy. Indeed, the need for competition and an environment that permits new entrants is becoming increasingly clear across the economy, including in financial services.

FTA cautions, however, against using the notion of enhanced diligence as an opaque way to block new applicants; instead, as noted above, Board staff should engage with state and federal banking regulators to fully understand the contours of particular chartering options and calibrate requirements to mitigate identifiable risks, if necessary.

The U.S. payments system has long been a model for global emulation; this is largely thanks to the sound oversight of the Federal Reserve and ongoing incorporation of new private sector technologies. The U.S. should not take its leadership in this important area of financial services for granted, however, as countries around the world take strides to modernize their payments infrastructure and regulation. This modernization drives enhanced consumer and economic outcomes, and can ensure the safety and soundness of the financial system.

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FTA looks forward to working with the Board and the Reserve Banks on implementation of the Account Access Guidelines and advancing a consumer-centric future of finance.

Sincerely,

Financial Technology Association