FINANCIAL TECHNOLOGY ASSOCIATION

April 22, 2022

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Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
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Response to Request for Comment on Supplement to the Board's Proposed Guidelines for Evaluating Account and Services Requests
(Docket No. OP-1765)

The Financial Technology Association (FTA) appreciates the opportunity to respond to this supplemental request for comment issued by the Board of Governors of the Federal Reserve System (Board) on updates (Updated Proposal) to its proposed guidelines (Account Access Guidelines) to evaluate requests for accounts and services at Federal Reserve Banks (Reserve Banks). FTA is encouraged by the Board's interest in promoting responsible financial innovation and consistency in the review of applications by new entrants.

FTA refers to and relies on its prior comment letter to the initial Board proposal, given the ongoing relevance of recommendations provided therein.[1] The Board's approach to determining whether to provide institutions with accounts and services remains consistent with its previous Proposal, where access is dependent on whether the institution is "legally eligible" to obtain an account and therefore only available to depository institutions that are either insured by the FDIC or eligible to make an application to become insured by the FDIC. FTA reaffirms the position of its initial comment letter that the Board should further pursue a path forward for innovative payments companies seeking direct access to the payments system, as such activities are inherently different from deposit-taking and lending activities.[2] Providing fintech companies with access to the federal payments infrastructure would substantially lower costs for payments services, increase innovation and competition, and diversify significant infrastructure risk away from single points of failure.

[1] *See* Financial Technology Association, *Response to Request for Comment on Proposed Guidelines for Evaluating Account and Services Requests* (July 12, 2021), available at https://www.ftassociation.org/wp-content/uploads/2021/07/FTA_Response-to-Fed-Payments-Access.pdf.
[2] *See id.*

With regards to the Updated Proposal, FTA offers the following additional comments.

The Tiered Review Framework

FTA appreciates the conceptual three-tiered framework proposed by the Board as it provides the public with additional clarity on how Reserve Banks should review account applications. A tiered approach can help applicants anticipate Reserve Bank expectations and take affirmative steps to implement policies and safeguards designed to satisfy requirements. The following comments are intended to ensure that the framework does not unintentionally and unnecessarily become overly rigid in its application or disfavor innovative new entrants seeking to improve payments services to consumers and small businesses.

Focus on Risk

The Updated Proposal creates three tiers for account applicants based on the entity's chartering status and related state and/or federal oversight. Tier 1 would consist of federally-insured depositories, subject to "a less intensive and more streamlined review" unless the institution presents a higher risk profile. Tier 2 would include uninsured entities subject to prudential supervision by a federal banking agency, and whose holding company is subject to Federal Reserve oversight, by statute or by commitments. And the strictest scrutiny would be applied to institutions in Tier 3, i.e., uninsured applicants "not subject to prudential supervision by a federal banking agency at the institution or holding company level."

The underpinning of these tiers is the assumption that Tier 2 and Tier 3 applicants present more significant risks to the system than Tier 1 entities based on how they are regulated. While FTA agrees it is prudent to begin with such an assumption, we respectfully assert that such assumptions should be revisited based on ongoing engagement with and understanding of different chartering and oversight regimes.

When assessing an application, the Reserve Banks will learn the regulatory framework to which the entity is subject, including the regulatory requirements applied to the entity, the regulatory and financial information the entity provides, and what gaps, if any, exist that create risk. Depending on the regime, additional risks as compared to Tier 1 applicants may or may not be found. If new risks are found, then the Board and Reserve Banks should provide public guidance to future applicants indicating how such risks can be mitigated. If new or unmitigated risks are not found, there is no principled reason to subject prospective applicants to greater scrutiny.

Additionally, as the Updated Proposal states, risk related to a particular applicant may also be specific to the unique business model of that entity. The Board accordingly notes that in certain cases, a Tier 1 entity may require greater diligence based on the specific risks presented by the applicant's business model. FTA notes similarly that it may also be true that some Tier 2 or even Tier 3 applicants will present reduced risks given the specifics of their business models. More specifically, as noted in our initial comment letter, given their typically narrow focus relative to traditional financial institutions, fintech firms can develop expertise regarding a potentially unique product or technology and, accordingly, are able to mitigate identified risks readily. For this reason, a review of a smaller or more narrowly focused firm should prove less onerous to Reserve Bank staff than a review of more complex institutions, which in many cases pose substantial systemic risk concerns.[3] In the case of smaller or more narrowly focused applicants, the Reserve Banks should not be compelled to adhere to an overly rigid tiered review framework when the implicated risks do not warrant such scrutiny.

Avoid Form Over Substance & Permit Banking Innovation

Given the above considerations, FTA suggests that the Board and Reserve Banks engage in periodic reviews of the existing three-tiered framework to determine whether categories of regulated entities should be moved up or down based on real-world learnings. If, for example, Reserve Banks determine that non-federally insured banks subject to federal banking regulator oversight and with a holding company subject to Federal Reserve supervision do not categorically introduce additional risks into the Fed system, then there is no principled reason to subject similarly situated entities to Tier 2 scrutiny. To do so would elevate form over substance and deter banking innovation.

Additionally, FTA cautions against using the tiered framework to deter new entrants from pursuing legally available chartering options. If, for example, the Reserve Banks apply a de facto ban on granting admission to Tier 3 banks, this would necessarily deter new entrants from pursuing such legally available charters. Instead, to the extent that Tier 3 applicants categorically raise identifiable risks or concerns, the Board and Reserve Banks should routinely provide guidance on

[3] *See* Congressional Review Service, *Systemically Important or "Too Big to Fail" Financial Institutions* (Sept. 24, 2018), available at https://sgp.fas.org/crs/misc/R42150.pdf.

such deficiencies so that future Tier 3 applicants can pursue remedies or better prepare for an account application.

Avoid Imposing Duplicative, Burdensome, or Non-Statutory Obligations

The Updated Proposal categorizes Tier 2 applicants as uninsured banks with a federal banking regulator and with a holding company subject to Federal Reserve supervision, by statute *or commitments*. In a footnote, the Board notes that "it would expect holding companies of Tier 2 entities to comply with similar requirements as holding companies subject to the Bank Holding Company Act."

FTA recommends that any such requirements be directly and narrowly tailored to mitigate identifiable risks tied to one or more of the five risk principles outlined in the Fed's proposal. Imposing conditions that do not address identifiable risks would undermine the Fed's stated policy goal in "promoting a safe, efficient, inclusive, and innovative payment system." More specifically, broader commitments not tied to the Fed's proposed risk principles, including imposing restrictions on the business activities of the holding company, would appear unnecessarily burdensome, not solve for actual risks, and would deter new entrants and business model innovation.

Additionally, Fed-imposed commitments should not be duplicative or inconsistent with existing commitments secured by the OCC or FDIC on the applicant and/or its holding company. In considering non-traditional charter applications, both banking regulators secure commitments ensuring that the parent company satisfies substantial capital and liquidity requirements and that the parent is limited in its ability to influence the bank's operations. The ultimate objective is to ensure that the holding company serves as a source of strength. It is therefore unclear whether it is necessary for the Federal Reserve to impose separate commitments when the holding company of an uninsured bank would likely already be subject to commitments imposed by the OCC or FDIC. Any additional commitments should be consistent with OCC and FDIC requirements and narrowly tailored to mitigate identifiable risks.

Conclusion

FTA appreciates the Board's ongoing work to enhance clarity and certainty regarding Account Access Guidelines. 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. The U.S. payments system has long been the envy of the world, and FTA believes that now is a pivotal moment where the inclusion of leading firms and technologies in the system can ensure its future vibrancy.

Sincerely,

Penny Lee

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