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VIA ELECTRONIC SUBMISSION
Brian P. Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Re: National Bank and Federal Savings Association Digital Activities – Docket ID OCC-2019-0028

Dear Comptroller Brooks:

The Electronic Transactions Association ("ETA") submits these comments in response to the Office of the Comptroller of the Currency's ("OCC's") advanced notice of proposed rulemaking entitled *National Bank and Federal Savings Association Digital Activities*. ETA supports regulation reflective of an evolving industry and appreciates that the OCC is looking at ways to modernize the regulatory framework to enable innovation and consumer protection in the digital age. Given the substantial technological changes that have occurred in the banking industry over the two decades since the OCC issued 61 FR 4849, it is imperative the regulatory expectations keep pace with those changes. We enthusiastically support modernization of the regulatory framework with continued successful adherence to the OCC's five key principles outlined in the ANPR – Flexibility, Simplicity, Consistency, Timeliness, and Transparency.

Who We Are

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include banks, mobile payment service providers, mobile wallet providers and non-bank financial technology companies ("FinTech") that provide access to credit, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives.

Given the changes in the financial services industry, FinTech companies are uniquely suited to offer assistance in a modernization of the regulatory framework, as these companies offer innovative financial products and services in an increasingly-digital age – facilitating over $22 trillion in payments in 2019 worldwide.

General Comments

ETA encourages the OCC to focus on a regulatory framework that ensures a positive regulatory environment – encouraging growth and innovation governed by common principles but tailored appropriately to a company's particular risk profile. Additionally, as companies increasingly offer a wide variety of products and services to reach a broad spectrum of consumers and businesses, we encourage an intentional effort toward regulatory harmony. Financial technology is highly regulated at the Federal and State level, and harmonization between regulatory schemes and prudential regulators is critical to fostering an environment where companies and consumers can flourish as digital banking continues to evolve.

As the industry continues to evolve it is imperative the regulatory framework is equipped to embrace emerging capabilities without stifling progress. Providing the proper safeguards will both protect consumers and reassure the industry that they have the flexibility to innovate in a manner consistent with the principles of safety and soundness.

Responses to Specific Requests for Comment

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?

The lack of a specific regulatory framework for new distributed ledger and cryptoasset types is a potential barrier to bank adoption and engagement. Distributed ledger technology offers substantial untapped potential for many banking and fintech services. However, lack of clarity and structure governing the deployment of such technology creates market apprehension – slowing investment, research, and development of cutting-edge products that could benefit consumers and the financial ecosystem at large. Specifically, we urge the OCC to consider how it, in partnership with other regulators, could monitor bank and non-bank providers alike in the distributed ledger space more consistently to flag any systemic risks and clarify how these activities need to conform with bank regulatory requirements.

ETA and its members are encouraged by the recent OCC interpretative letter encouraging national banks to act as custodians for crypto assets, including digital keys. We would support additional activity and structure in this space, both to protect consumers and foster innovation. Expanded coordination with prudential regulators in this regard would expand the number of institutions capable of providing services directly to customers engaged in activities related to cryptoassets and ensure that state-chartered institutions are not left at a competitive disadvantage.

Question 6. How are AI techniques, including machine learning, used or potentially used in activities related to banking (e.g. credit underwriting or monitoring, transaction monitoring, anti-money laundering or fraud detection, customer identification and due diligence processes, trading and hedging activities, forecasting, and marketing)? Are there ways the banking industry could be, but is not, using AI because of issues such as regulatory complexity, lack of transparency, audit and audit trail complexity, or other regulatory barriers? Are there specific ways these issues could be addressed by the OCC? Should the OCC provide regulatory guidance on this issue, including by issuing regulations?

Financial institutions sometimes may choose to incorporate forms of AI techniques into their credit underwriting models, including machine learning. While the uses may vary through credit models and often has proprietary components, there are clear benefits to consumers from administering new credit modeling techniques.

A core goal of ETA member companies is the expansion of an inclusive financial system that offers access to consumers in all walks of life, particularly LMI consumers. New forms of credit modelling, when paired with clear standards, help broaden financial inclusion, improve financial access, expand consumer choice, and give financial institutions the tools they need to determine a borrower's ability to repay while decreasing the cost of responsible credit – all while minimizing biases. Many institutions that stand to benefit from application of AI technology, a lack of clarity and uniformity across Federal Agencies and States proves a barrier for implementation.

While regulatory harmonization is always encouraged, the agency could provide specific help by expanding current third-party risk management guidance to account for new AI methodologies. As AI technology becomes more advanced, more robust guidance on oversight obligations and documentation requirements for complex models would provide lenders with confidence that they have proper understanding of third-party models and can comfortably support their use.

Question 7. What new payments technologies and processes should the OCC be aware of and what are the potential implications of these technologies and processes for the banking industry? How are new payments technologies and processes facilitated or hindered by existing regulatory frameworks?

Over the past two decades, financial institutions and financial technology companies have transformed the financial landscape through the introduction of new technologies that expand access to and the number of financial offerings for consumers, lower costs, improve financial management, and increase transaction security. These products and services are continuing to evolve, offering innovative new financial opportunities for all consumers. A modern, flexible regulatory framework capable of evolving along with the technology it oversees is ideally suited to fostering continued innovation for the benefit of all.

Many of the most exciting developments emerge from partnerships between Banks and FinTech companies. That partnership would be enhanced by OCC clarity and guidance on the bank partner model. Payment providers often lack direct ownership of their product, and direct relationships with the national regulators. Instead, they must increasingly rely on intermediaries – a process that could be improved by OCC work to address blockers and friction that occur as a result of the current bank partner model. To that end, ETA supports the goal of a national payments charter, and recommends that the OCC adopt a carefully constructed, transparent approach to regulation that accounts for differences in risk-profile of each entity and business model while preserving the safety and soundness of the payments system.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully Submitted,

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