



May 31, 2016

Via Electronic Mail
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Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: “Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective” (NR 2016-39)

Capital One appreciates the opportunity to comment on the Office of the Comptroller of the Currency’s (“OCC”) white paper *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective* (hereinafter, “the White Paper”).

The OCC has a long history of supporting responsible innovation. As the business of banking has evolved, the OCC has recognized that the permissible activities of banks must evolve and adapt to keep the banking industry relevant, stable, and thriving through times of significant change. We commend Comptroller of the Currency Thomas J. Curry and the OCC’s leadership for efforts to ensure banks of all asset sizes remain well positioned competitively to lead technological innovation in a safe and sound manner that improves outcomes for consumers. By releasing the White Paper for public comment, the OCC demonstrates a commitment to open discourse and we encourage the OCC to continue to seek feedback from all stakeholders as this initiative progresses. Given the speed of change in the use of innovative technologies across the bank and non-bank financial industry, the White Paper opens an essential dialogue on topics that impact the future of banking in the United States. We strongly support the OCC’s objectives to: (1) “provide a clear path for banks and other stakeholders to seek the agency’s views and guidance;” (2) “clarify these expectations and promote better understanding of the regulatory regime;” and (3) “expedite decision making” related to licensing procedures.

This letter addresses the OCC’s definition of “responsible innovation” and the OCC’s guiding principles for developing a responsible innovation supervisory framework. In addition, Capital One joins and supports the comment letters submitted by The Clearing House Association L.L.C (“The Clearing House”), the Financial Services Roundtable/BITS (“FSR/BITS”), and the American Bankers Association (“ABA”).

Innovation and Capital One

Capital One was an early pioneer in leveraging data analytics and an information-based strategy to expand consumer access to credit. In Capital One’s first annual report issued in 1996, Capital One’s founder and Chief Executive Officer, Richard D. Fairbank declared that “Capital One is an Information Age company built to leverage technology and knowledge capital” to seize upon emerging market opportunities.

Twenty years later, Capital One remains at the forefront of financial technology (“fintech”) innovators in banking. Our latest annual report highlights the continued relevance and critical importance of technology and innovation:

We live in a world where the pace of innovation is breathtaking and the forces of disruption present defining strategic opportunities and risks. Tech companies around the world, from the biggest names to well-funded start-ups, are vying to become the front door to banking. To put ourselves in a position to win as digital redefines banking, we are building the talent and capabilities of a leading information-based technology company. While there is still plenty of work to do, we have reached a tipping point where our investments in technology and digital are starting to have a multiplicative impact on our ability to operate like a native digital company and deliver a great digital experience for our customers.

To that end, we applaud the OCC’s own “call to action” and the White Paper’s recognition that incubating innovation in banking is an important public policy goal. The White Paper is a foundational step to meeting this goal and we believe that the OCC’s investment in this initiative will bring forth substantial long term benefits to the public and to the financial system.

OCC Definition of “Responsible Innovation”

Capital One shares in the OCC’s goal to ensure innovation in banking is conducted in a safe and sound manner and we believe the OCC’s definition of “responsible innovation” strikes the right balance:

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.

We believe the OCC’s definition captures the need for “sound risk management” in the pursuit of innovation. To that end, the OCC’s supervisory frameworks for the risk management activities of OCC-supervised financial institutions, such as the OCC’s Heightened Standards Guidelines and Third Party Management Guidelines, provide a basis for responsible innovation by reinforcing the need for banks to make substantial investments in their risk management and governance frameworks.

Specifically, the Heightened Standards Guidelines clearly define the OCC’s expectations for sound risk management and serve as a strong principles-based foundation to foster credible, stable, and responsible innovation. In addition, the Third Party Management Guidelines provide appropriate risk-focused standards across the lifecycle of the bank’s third party service provider relationships to aid banks in setting and managing appropriate expectations for the provision of innovative products and services. We believe the OCC’s proposed definition of responsible innovation, supported by existing guidelines, adequately support banks’ efforts to build and sustain strong risk management capabilities, and ensure positive outcomes for their customers.

Given the significant risk management progress made by the banking industry, we do not believe that any additional OCC regulations or formal guidelines are necessary to further define or enhance the concept of “responsible innovation.” On the other hand, we believe that the OCC would advance its goals to ensure that the banking industry is engaging in responsible innovation by assessing its existing regulations and guidelines to ensure that they do not inadvertently impede or stifle the innovation necessary for banks to achieve their strategic business goals. In that regard, as technology and innovations evolve at an increasingly fast pace, we believe that a principles-based supervisory approach is better positioned to evolve to changing circumstances than prescriptive, one-size-fits-all regulations.

Guiding Principles for the OCC’s Approach to Responsible Innovation

For purposes of this comment letter, we have grouped the OCC’s guiding principles into three main concepts: (1) those that pertain to internal OCC process improvements, including infrastructure and guidance, that can support responsible innovation by the financial services industry; (2) those that pertain to the banking industry to ensure fair access to financial services and fair treatment of consumers in a safe and sound manner and align with strategic planning; and (3) those that pertain to promoting collaboration by the OCC with other regulators and stakeholders. Although we provide comment on each of these concepts, we strongly believe the OCC’s near-term focus should be on enhancing internal processes for consideration of innovative products and services, including further developing internal capabilities and resources. Whether the OCC intends to focus on these processes and resource needs first or in parallel with other initiatives, we respectfully recommend that the OCC commit to work with all stakeholders in developing and reviewing any substantive proposals, irrespective of the form of adoption and legal rules governing public input.

Internal OCC Process Improvements

Our comments and recommendations in this section focus on talent and organizational structure. We offer specific recommendations for developing and investing in talent as well as provide our views on the OCC’s consideration of its organizational structure.

Develop and Invest in Deeply Skilled and Diverse Tech Talent

As an organization that believes our people are essential to delivering on our strategic imperatives, Capital One strongly supports the OCC’s commitment to develop the expertise of its employees and to “focus on fostering an internal culture receptive to responsible innovation.” The OCC has long been recognized for having highly talented employees across each core banking discipline. Building technological competence requires training existing employees on new technology and methodologies, and, in some cases, recruiting people who may not have followed a traditional regulatory agency career path. We recommend the OCC explore nontraditional sources of talent who have a different set of experiences or formal training than customarily considered by the OCC. Capital One is benefiting from developing existing employees as well as hiring talented technology experts from outside the financial services industry to support our innovation initiatives in a well-controlled manner. These include top

engineers, product managers, data scientists and designers who may not come from traditional banks, but rather from leading technology companies in information security, cloud infrastructure, data technology, and mobile/web development. College campuses also remain a strong source of great talent. The OCC might consider establishing technology internship or fellowship programs, including limited term appointments, to attract talented staff with new skills.

While successful recruiting in this highly competitive employment market is critical, retaining great tech talent remains just as important. Besides the more traditional means of retention, we recommend the OCC consider the value of providing employees with cutting-edge supervisory tools and work environments that are suited to the collaborative, interactive style of the technology industry. Transforming workspaces to enhance design-thinking and enable collaboration is meaningful to the best digital and technology talent. To this end, Capital One has opened innovation Labs in tech hubs like San Francisco, New York City and Austin, and revamped workspace across our company footprint to align with our collaborative digital model. Based on feedback, these investments have played an important role in attracting and retaining technical talent, and improving quality, efficiency and risk management utilizing agile principles.

OCC Organizational Structure

The OCC requests feedback on the optimal organizational structure to support implementing the responsible innovation framework. The White Paper proposes a formal centralized OCC office on innovation that may provide “a forum to vet ideas before a bank or nonbank makes a formal request or launches an innovative product or service” among other possible responsibilities, or in the alternative, a less formal process “where an existing unit within the OCC assumes the responsibility as the agency’s central point of contact on innovation.”

We strongly support a well-defined organizational structure with clear roles and responsibilities to achieve timely and efficient regulatory approvals for innovation initiatives. Whether formal or informal, the function reviewing innovation initiatives should include deep and diverse technology and market expertise so that the novelty of a technology or process in the banking industry does not impede timely agency consideration. In addition, the banking industry will benefit if the OCC function is positioned to be a forum to share insights relating to potential risks and threats. If the OCC moves forward with a central innovation office, we recommend the office not add a new or sequential step to approvals, but instead work alongside and contemporaneously with other units to assist in their assessment of the innovations. There is a risk that a centralized office that acts as a new stage of formal licensing determinations could introduce regulatory complexity or delay. Therefore, the OCC must ensure the office’s role and authority is clear with a mandate to expedite the OCC’s review and approval process.

We support a function within the OCC having responsibility for reviewing existing OCC regulations and guidance to ensure they support evolving technology and sustainable innovation. In the White Paper, the OCC committed to “evaluate existing guidance on new product development and third-party risk management and assess whether additional guidance is appropriate to address the needs of banks and their customers in the rapidly changing

environment.” As discussed above, Capital One does not believe additional prescriptive regulations or guidance is needed in light of the rigorous risk management guidance already in place for covered banks. The OCC’s evaluation of existing guidance may reveal opportunities to clarify how existing regulations and guidance apply to innovations, however, in a way that helps banks meet OCC expectations. For example, the OCC might consider principles-based guidance that links existing regulations and guidance to innovative technology, such as cloud technology. In addition, updating OCC Examiner Handbooks to reflect such principles-based guidance would ensure a consistent understanding in the OCC’s methodology to assess compliance in a transparent way. Introducing new regulations or guidance at a time when the banking industry is seeking to develop new ways to serve customer needs and faces competition from technologically advanced non-banks raises the risk of impeding responsible bank innovation, and introducing redundancy and confusion.

Fair Access to Financial Services and Fair Treatment of Customers

The OCC has also long espoused principles designed to promote fair access to financial services and fair treatment of customers in a manner that ensures safety and soundness and alignment with a bank’s long-term strategic plan. We strongly support banking innovation that promotes fair access and treatment of customers; we see technology as a powerful tool for inclusion and expansion of mainstream banking services to traditionally underserved consumers. We also see an opportunity for the OCC to support the testing of innovative concepts in a well-controlled manner consistent with a bank’s risk appetite.

Support Innovation Promoting Fair Access and Treatment of Customers

Technological innovation is a key to increasing financial inclusion of the unbanked and underbanked populations. In addition to helping meet demand for access to consumer, student and small business loans, technology may provide new, compelling reasons to use banking and financial planning services for individuals not inclined to use banking services previously. For example, the Federal Reserve Board’s *Consumers and Mobile Financial Services 2015* study concluded: “mobile phones are prevalent among unbanked and underbanked consumers” with a significant percentage having smartphones, so that providing access to banking services through new applications available on smartphones exponentially increases consumer choice and access to banking services.

As the OCC has acknowledged, however, the banking industry has a level of conservatism that can displace innovation and, over time, competitiveness. Many banking organizations of all sizes have encountered impediments in pursuing activities in the current environment, which risk placing the banking industry as a whole at a competitive disadvantage relative to non-bank players. We see a significant opportunity for the OCC’s responsible innovation initiative to help turn the corner on this trend by facilitating responsible innovation across all national banks for the benefit of consumers.

Clarify Position Supporting Testing and Experimentation

One potential challenge faced by bank's responsible innovation initiatives is uncertainty about how the OCC views testing and experimentation. A critical phase of the innovation process is small-scale customer "testing" to ensure alignment between the intent of the initiative and its outcome before a full-scale launch. Capital One leverages testing as a foundational element of being well-managed. We employ testing as a risk-management tool to ensure we uncover operational system deficiencies or risks that may impact customers and that we do not deploy new applications, processes or systems without ensuring that we are satisfied that full-scale migration will be successful.

By recognizing the clear benefits of testing as part of a well-managed and controlled risk management program, the OCC's responsible innovation framework would acknowledge that experimentation through testing plays a critical role in technological advancement. The OCC should, therefore, explicitly allow for experimentation when consistent with a bank's risk appetite. We respectfully request that the OCC collaborate with the banking industry in a design-thinking exercise to develop a testing framework that appropriately balances the need for flexibility and consumer protection.

Consider Long-Term Strategic Planning Expectations

In the White Paper, the OCC outlines its expectation for banks to integrate responsible innovation into a bank's long-term strategic planning as a guiding principle. While Capital One generally agrees with the OCC's caution to resist chasing "the latest fad or industry trend," the OCC should ensure this guiding principle retains the underlying flexibility required to allow banks to adapt and pursue innovative opportunities in a well-controlled manner. Strategic planning should remain an integrated compass that sets the long-term course for a bank but should not be used as a binding constraint on future investments in innovation, particularly if those investments are measured and consistent with the bank's risk appetite. Responsible innovation can, and often does, result from taking action on opportunities in a competitive and dynamic marketplace in real-time. Where innovations are within the bank's existing risk appetite, we do not believe they should be subject to prescriptive requirements to be incorporated into a formal strategic plan prior to being adopted. In order to meet its policy goals to promote innovation, it is important that the OCC's principles retain flexibility by recognizing the practical limitations inherent in any long-term strategic planning process.

Promote External Outreach and Collaboration

We welcome the OCC's initiative to promote formal outreach activities with all stakeholders, including banks, nonbanks, innovators and consumers. An avenue for the OCC to build its own brand, position itself to recruit top tech talent, and learn about leading technology is through engagement with the broader technology community. Sponsoring and supporting technology conferences has led to tangible results for Capital One and could have similar benefits for the OCC. For example, Capital One sponsors the Grace Hopper Celebration of Women in Computing® conference, as well as Women Who Code, Black Girls Code and many other innovative organizations and programs. We have also sought to establish a presence at leading technology gatherings, including SXSW. These initiatives have helped Capital One build important relationships with, and learn from, people at the epicenter of some of the most

exciting and innovative work, with applications to the manner in which we serve our customers today and in the future. The OCC's sponsorship, participation and engagement directly in the technology community can only help to advance the OCC's interests and those of its constituent banks, and allow the OCC to gain exposure to diverse technology talent and learn about emerging technology trends and risks.

We also agree with the OCC's recognition that both internal (among OCC staff and functions) and external (with its fellow regulators) collaboration is critically important. A number of bank regulators are initiating their own working groups and are beginning to consider guidance related to technology and innovation. We support the efforts of the broader bank regulatory community to promote responsible innovation for the banking industry, but we believe that the bank regulators must work collaboratively and at a similar pace. Regulatory consistency and clarity will improve the overall industry's innovation efficiency by allowing all banks to fairly compete on a level-playing field, regardless of charter and size, to meet the evolving needs of consumers and comply confidently with regulatory expectations.

Concluding Remarks

Capital One commends the OCC for taking this first step to draft the White Paper and appreciates the willingness of the OCC's leadership team to engage the public in an open and transparent dialogue about how it is thinking about responsible innovation in the banking industry. We hope the OCC finds these comments and recommendations helpful. It is our sincere hope that the open dialogue and transparency continues and the OCC will allow the public to provide feedback and recommendations as the OCC considers its own innovations to support their responsible innovation supervisory framework.

Please do not hesitate to contact me at meredith.fuchs@capitalone.com or (703) 720-2526.

Sincerely,

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