October 30, 2024

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RE: ***Cross River Bank's Comments on the Interagency Request for Information on Bank-Fintech Arrangements Involving Bank Products and Services Distributed to Consumers and Businesses***

To whom it may concern,

On behalf of Cross River Bank ("Cross River" or "Bank", "we" or "our"), I would like to thank you for the opportunity to provide comments on the joint Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses (the "RFI"). The RFI was issued by the Board of Governors of the Federal Reserve System (the "Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("OCC"), collectively referred to as the "Agencies". This RFI is immensely important as the Agencies and the banking industry have an opportunity to foster a more inclusive and equitable financial services sector that utilizes responsible technology to increase options and access for consumers.

We believe that the emergence of responsible financial technology providers ("Fintechs") has been tremendously positive for both market participants and consumers. Fintechs have been an important source of innovation the traditional banking industry sorely needed, providing access to modern financial services and products to people traditionally excluded from the marketplace. Some Fintechs are regulated at the state and/or federal level as a licensed lender and/or a money service business. However, many of the services offered by Fintechs, in fact, require a partnership arrangement with a regulated financial institution, such as a bank; Cross River is proud to be one of the pioneers in the United States, and possibly one of the largest, when it comes to such bank-Fintech arrangements.

The RFI is a well-intentioned project by the Agencies to better understand bank-Fintech arrangements. We believe that the current set of laws, rules and regulations ("LRR") generally balances the compliance obligations of banks and fosters responsible innovation. It is absolutely critical that policymakers strike a careful balance between identifying discrete areas for improvement in the existing

regulatory and supervisory framework (for example, the FDIC's recent pronouncement on custodial deposit accounts) while at the same time being careful not to impede innovations that could otherwise bring massive benefits to the banking industry and the general public. In particular, bank-Fintech arrangements have materially increased access to the banking system for those that have traditionally had to rely on more expensive, more risky, and less regulated credit and deposit-like services. Unnecessarily impeding responsible bank-Fintech arrangements could push these customers back into the arms of the less regulated parts of the financial system and force them to fend for themselves.

About Cross River Bank

Cross River is a New Jersey state chartered FDIC-insured financial institution. Beginning with our first technology partnership in 2010, Cross River has pioneered, grown and improved the bank-Fintech arrangement model, combining the innovative approach and solutions of a technology company with the security, reliability and trust of a regulated financial institution.

In the wake of the 2008 financial crisis, when the credit markets had all but evaporated, Cross River used our clean balance sheet and strong capital to provide access to affordable credit for consumers most in need. As Cross River continued to evolve and partner with Fintechs, the Bank expanded access to credit beyond its single branch location, reaching consumer's nationally, who may otherwise not have access to traditional banking services.

During the Covid-19 pandemic, Cross River was able to leverage our pre-existing, proprietary technology to quickly and securely process loan applications for borrowers who had been shut out of the early stages of the Paycheck Protection Program ("PPP"). By the end of the PPP, Cross River was the second largest PPP lender in the country. Cross River originated approximately 480,000 PPP loans of about $13.8 billion, saving an estimated 1.4 million jobs. It would have been impossible for Cross River to act quickly and at such a scale without a mature bank-Fintech arrangement program already in place.

Today, Cross River partners with multiple marketplace lenders and technology companies to originate loans and safely provide access to credit across the country. Since 2008, we have originated over 96 million partnership loans with an aggregate value of over $140 billion ($54 billion of which came in 2022 and 2023 combined). These bank-Fintech arrangements have been a benefit to the Bank in and of themselves, but they have also informed and enhanced our compliance and risk management practices with respect to other Bank activities. We remain proud of our accomplishments and the millions of consumers that have been able to access modern financial services and necessary capital through our model.

Cross River's Commitment to Compliance and Risk-Management

The Bank's compliance and risk management frameworks are reasonably designed to address applicable regulatory requirements with respect to consumer compliance obligations, the detection and prevention of financial crimes, and the management of credit, liquidity, operational, and other non-compliance related risks. This starts with the appropriate tone at the top. The Bank's Board of Directors and executive management team have demonstrated a tremendous commitment to compliance and risk management. Supporting this tone at the top are 170+ full-time employees, and 200+ contractors/consultants, all dedicated to the Bank's compliance and risk management programs. With

respect to bank-Fintech arrangements, the Bank's compliance and risk management programs encompass the full life-cycle of each particular bank-Fintech arrangement: (i) onboarding, (ii) monitoring, and (iii) offboarding.

The Bank's risk management practices are rooted in the principals articulated in the OCC's 2013-29 bulletin on Third Party Relationships (the "2013 OCC Bulletin"). The 2013 OCC Bulletin fostered a 'risk-based' approach to managing compliance and other risks associated with different flavors of third-parties. The Bank's due diligence reviews of, and monitoring practices with respect to, potential Fintech partners incorporate the laws, rules, regulations, and other requirements specific to the products and services offered by the Fintech.

The 2013 OCC Bulletin, and other Agency guidance on bank-Fintech arrangements, was updated in 2023 when the Agencies published their Interagency Guidance on Third Party Relationships (the "2023 Guidance"). The risk-management principles in the 2023 Guidance were generally the same principles on which the Bank had built its own third-party risk management program. In alignment with the 2023 Guidance, identification, management, and oversight of risk and compliance factors associated across the third-party risk management lifecycle incorporate existing LRR applicable to the products, services and/or activities being offered through or in partnership with a Fintech. Examples of such oversight practices are the same oversight practices that would be in place if the Bank were conducting the activity itself. These examples include:

- Comprehensive Risk Assessment Reviews (e.g., review of control environment (third party risk & compliance mitigants) impacting residual risk for that third party);
- Ongoing monitoring of key controls tied to risks and compliance requirements (e.g., performance, transaction volumes, financial health, cyber security, etc.);
- Use of tools and technology to provide real time monitoring for various risk stripes including but not limited to Cyber Incidents, Financial Stability, Negative News, Reputational;
- Frequent reporting and oversight of financials, issues management, complaints, transaction monitoring, system outages, data availability and quality, operational resiliency, etc.; and
- Assessments of the aggregated impact to the Bank of each individual Fintech offering.

Evolution of the Bank-Fintech Arrangement

The current state of bank-Fintech arrangements is the result of political and economic developments over the last twenty years, as well as various policy choices made by the Agencies. In the wake of the great financial crisis, Congress created the Consumer Financial Protection Bureau (the "CFPB"). The CFPB soon thereafter brought a number of enforcement actions; oftentimes, these enforcement actions had a third party risk management component.[1] Partially in response to the CFPB's

[1] *See e.g.* 2014-CFPB-004 (CFPB has ordered Bank of America, N.A. and FIA Card Services, N.A. to provide an estimated $727 million in relief to consumers harmed by practices related to credit card add-on products); *see also*

enforcement actions, the OCC became more focused on third-party risk management. This culminated in the 2013 OCC Bulletin. This bulletin was considered the primary source of guidance on this topic for a number of years. Though rescinded, it is still very influential.

At the same time, mass adoption of smart phones led to mass demand for API-based financial services. This demand fed the growth of retail-focused Fintechs. Many of these companies came to believe that the next strategic step in growing their Fintech was acquiring a banking charter. But few Fintechs succeeded in acquiring a bank charter. This led to a strategic shift from the Fintech community to the bank-Fintech arrangement model. Cross River recognized this demand early on and was one of the first banks to offer such partnership services in a compliant, safe and sound, and systemic way.

Most recently, the regulatory environment for bank-Fintech arrangements has grown increasingly skeptical; some might even say hostile. This is unfortunate given that there is so much the Agencies have done and could do in support of the industry to maximize the benefits of bank-Fintech arrangements. Therefore, the RFI is timely and welcome as an opportunity for the industry to provide the Agencies with a review of the bank-Fintech arrangements and compliance and risk-management best practices.

The RFI

We support and share the Agencies' efforts to better understand the nature of bank-Fintech arrangements, effective risk management practices regarding the same, and the implications of such arrangements. These exact considerations have been a major theme of Cross River's strategic plan since 2010. Sound risk management, customer service, and profitable operations are not mutually exclusive – to the contrary, each prong can reinforce the other. At the same time, we suggest that the Agencies carefully consider potential benefits foregone by/opportunity costs of pursuing a potential course of action, be it a new regulation or additional interpretive guidance, prior to adoption/issuance.

We do not share the view held by some that the Agencies lack enforcement tools or the will to address the irresponsible actions of certain bad actors (as evidenced by recent enforcement actions). Nor do we share the view that further rulemakings are never warranted: as we have said recently "Clear and reasonable guidelines for bank partners encourage innovation and build trust in the model by mitigating risk, enhancing operational efficiency, encouraging market stability and most important of all, strengthening consumer protection."[2] However, we have real concerns about the cumulative effect of the regulatory and supervisory resources being brought to bear on the bank-Fintech model, coupled with clear biases on the part of some against the existence of such arrangements. Inhibiting bank-Fintech partnerships will not stop Fintechs from offering bank-like products and services; instead, it will divert those activities out of the banking system and into less-regulated segments of the economy. Such an outcome is a lose-lose-lose: it deprives the banking system of revenue and the learning opportunities that come with collaborating with firms at the cutting edge of technological developments, it shrinks the

2015-CFPB-0015 (CFPB ordered Citibank N.A. and its subsidiaries to provide an estimated $700 million in relief to eligible customers harmed by illegal practices related to credit card add on products and services).

[2] Cross River Bank, Statement on Proposed Requirements for Custodial Deposit Accounts, October 22, 2024, available at https://www.crossriver.com/newsroom/statement-on-proposed-requirements-for-custodial-deposit-accounts

scope of activities over which the Agencies have oversight, and it undoubtedly leads to a reduction in responsible options for consumers and more opportunities for customer harm.

We also disagree with the use of the terms "rent-a-bank" and "rent-a-charter" and all that those terms imply. As we have said before, "no bank should enter a relationship with a Fintech without complete control over all activity."[3] Why would a bank put its reputation, its profitability, its safety and soundness or its existence at risk by ceding control over its operations to a third-party? Parties can have legitimate disagreements over the fine-tuning of risk-adjusted controls, but skeptics of bank-Fintech arrangements do everyone a disservice by glossing over the complexities of this topic and resorting to bad faith accusations, including invoking the "rent-a-bank" and "rent-a-charter" aspersions. No one ever rents Cross River.

Comments on the RFI

Our summary comments to the RFI are focused primarily on sharing some of the lessons we have learned over the course of fourteen years of operating in this space. We also share some more subjective views on things that we believe the Agencies, respectfully, should consider, or should continue to consider, when it comes to its supervisory and regulatory approach to bank-Fintech arrangements. Unfortunately, due to time and space limitations (or because such information is proprietary), we do not always address each and every part of a question, nor have we answered any questions completely. Our responses should not be interpreted as being evasive or non-responsive; we would welcome the opportunity to continue a conversation with the Agencies outside of the RFI process.

We begin with responding to some of the specific questions in the RFI, addressed in the order they are raised in the RFI.

Bank-Fintech Arrangement Descriptions

> *2. Are there any benefits of bank-fintech arrangements that are not addressed by this RFI? What benefits do the bank or the fintech company receive by using an intermediate platform provider?*

Yes.

The RFI adequately addresses the benefits that can accrue to a bank from a bank-Fintech arrangement. For example, a bank can increase revenue, lower its liquidity risk profile, and broaden its customer base through well-structured bank-Fintech arrangements.

The RFI, however, is less focused on the benefits to customers of bank-Fintech arrangements. Such benefits include, (i) expanded access to banking products to customers that traditionally have been unbanked (more inclusion), (ii) customers having access to additional options for modern financial products and services (more competition) and (iii) greater consumer protection by virtue of having the service occur within a regulated and supervised banking charter (more consumer protection). We are just beginning to quantify and understand how bank-Fintech arrangements are expanding access to

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[3] *Id.*

traditional banking products and benefiting consumers. For example, the Bank for International Settlements published an academic study in September 2022 that concluded that

> *fintech [small business lending] platforms lent more in zip codes with higher unemployment rates and higher business bankruptcy filings. Moreover, fintech platforms' internal credit scores were able to predict future loan performance more accurately than the traditional approach to credit scoring, particularly in areas with high unemployment.*[4]

Bank-Fintech arrangements also bring more banking activity within the banking industry, which is good for the industry (because it diversifies and expands activity) and good for the regulators (because it exposes them to different technologies, banking strategies, markets, and risks). Bank-Fintech arrangements may also provide an additional, vital line of business to community banks, especially rural-based community banks.[5]

We note that the word "risk" appears 108 times in the RFI. The word "benefit" appears 9 times in the RFI. We believe this risk-to-benefit-word ratio in the RFI is indicative of the framework with which supervisors have generally, as of late, viewed the topic of bank-Fintech arrangements. Undervaluing the benefits of the bank-Fintech arrangements to customers and the broader financial system is currently the least appreciated, and least understood, risk in this space.

With respect to the use of an intermediate platform provider, it is hard to generalize whether such intermediate platform providers are inherently good or inherently bad. However, generally speaking, the presumption should be that there should be only so many parties involved in a bank-Fintech arrangement that are necessary to provide the banking product or service in a safe and sound manner. Increasing the number of parties beyond that introduces tradeoffs between increased operational risk against marginal incremental risk reduction that would have to be considered on a case-by-case basis.

> *5. Describe the range of practices regarding the use of a core bank service provider or other third-party providers in bank-fintech arrangements. How do these providers help or hinder bank-fintech arrangements?*

The products offered by most core bank service providers were not designed to accommodate bank-Fintech arrangements. That is why, in 2018, Cross River enhanced its already strong set of banking operations by developing and implementing a proprietary, modular, and event-driven core banking

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[4] BIS Working Papers No. 1041, *The Impact of Fintech Lending on Credit Access for U.S. Small Businesses* (Sept. 2022).

[5] *See, e.g.,* Keynote Remarks by FDIC Chairman Jelena McWilliams on the "The Future of Banking" at The Federal Reserve Bank of St. Louis; St. Louis, Missouri, October 1, 2019 ("The challenge for the regulators is to create an environment in which fintechs and banks can collaborate. It is my goal that the FDIC lays the foundation for the next chapter of banking by encouraging innovation that meets consumer demand, promotes community banking, reduces compliance burdens, and modernizes our supervision. This is not optional for the FDIC. We must lay this foundation because the survival of our community banks depends on it. These small banks face challenges from industry consolidation, economies of scale, and competition from their community bank peers, larger banks, credit unions, fintechs, and a plethora of other non-banks lenders.").

system called Cross River Operating System, or, COS. COS was built in-house from the ground up to meet the needs of our bank-Fintech arrangements. COS was built with regulatory compliance and consumer protection top of mind. Direct connectivity to the core was also designed to ensure secure, efficient transactions as every API call is digitally signed to ensure non-repudiation and optimum security. COS minimizes the large volume of paperwork associated with other wire systems and creates an intelligent digital process for all wire transactions. Additionally, COS offers robust ready-to-use API-based capabilities and advantages to developers, including Webhook, sub-ledgers, COS Explorer, integration with compliance tools, customized accounts and a web-based operations portal. You can find more information about COS on our website, for example, here, here and here.

Cross River's COS is just one example of the overall technology stack that plays a role in bank-Fintech arrangements. Separate technology solutions support the provision of things like KYC/CIP services, transaction monitoring services, and complaint management services. Each service is modular and can be integrated on a case-by-case basis into any particular bank-Fintech arrangement. Fintechs can not only receive core banking services through a bank-Fintech arrangement; they can also leverage these compliance and risk management services.

6. Describe the range of practices in cases where bank-fintech arrangements involve affiliates of the bank, including fintechs. What are the benefits and risks of these arrangements?

There are a range of roles that bank affiliates can play with respect to bank-Fintech arrangements.

In some cases, a bank may acquire a Fintech to bolster the bank's compliance or risk-management program or if the Fintech provides a particular business line that the bank wishes to bring in-house. Such acquisitions, as a general matter, should not be discouraged as they tend to enhance risk management practices and/or provide additional revenue sources for the bank.

In other cases, a bank may buy or build a traditional non-banking business that can complement or enhance its bank-Fintech arrangements. For example, Cross River has created its own broker-dealer to help facilitate the securitization of loans issued by bank-Fintech arrangements. This helps the Bank manage its own balance sheet, and its credit, liquidity and capital risk profile, while simultaneously meeting customer demand and providing the Bank with an additional source of revenue.

Banks have long managed the compliance and operational risks associated with affiliate activities in other contexts. We are confident that banks have the tools to do the same in the bank-Fintech arrangement domain as well.

3. Describe the range of practices parties to a bank-fintech arrangement may use in contractually allocating functions among themselves, including the advantages and disadvantages of each such practice. For example, while the parties to such arrangements remain responsible for their own compliance with applicable laws and regulations, as a matter of contractual allocation, who performs which activities related to risk and compliance management, customer identification and due diligence, transaction monitoring, sanctions screening, fraud monitoring, end-user complaint management, dispute resolution, data protection, or credit underwriting, if applicable? Who develops and oversees marketing materials, develops and provides disclosures and account statements, addresses errors, receives and resolves disputes, and responds to complaints? How are contractual breaches and indemnifications typically addressed in these types of arrangements? Describe the range of practices for monitoring compliance with applicable laws and regulations, notwithstanding contractual allocations.

The flexibility of allocating functions through contract enables parties to assign responsibility, on a commercial basis, for a task to the party that is best equipped to perform that task. This flexibility should be embraced. For example, on a commercial basis, some of Cross River's technology partners assist the Bank in processing credit applications and account opening, and service the accounts on an ongoing basis, on behalf of, and with oversight by, the Bank.

However, the stress here is on the *commercial* allocation of responsibility for a task: such a commercial allocation (if it occurs) does not and should not in any way relieve or absolve a bank for the ultimate responsibility to monitor and oversee the Fintech, nor does it impact a bank's full responsibility for complying with all LRR. It is also worth keeping in mind that certain LRR may also apply directly to the Fintech as a matter of law, depending on the Fintech's activities and licensed status. In such circumstances, both the bank and the Fintech are incentivized to monitor and oversee compliance with all LRR.

8. Describe the range of practices regarding how banks manage the risks of connecting to multiple technology platforms and exchanging data in bank-fintech arrangements.

As a result of our long experience working directly with technology platforms and building our own proprietary core banking platform, we have developed a high level of inhouse data security engineering expertise. This enables us to mitigate risk in a number of areas, including with respect to technology systems integration and secure data management and exchange within our bank-Fintech arrangement program. In fact, this is a good example where the experience with bank-Fintech arrangements has translated into a set of skills and practices that are broadly applicable to other more traditional parts of the Bank. For example, we have leveraged our learnings with respect to data security, fraud prevention and customer privacy in bank-Fintech arrangement contexts and have applied the resulting expertise in our in-house deposit and lending operations as well.

9. Describe the range of practices regarding planning for when a fintech company or intermediate platform provider exits an arrangement, faces a stress event, or experiences a significant operational disruption, such as a cyberattack. Describe the range of practices regarding how arrangements are structured to minimize harm to end users, meet compliance requirements, and minimize liquidity risks and other risks in the event of such exits, stresses, or disruptions.

12. How do banks ensure bank-fintech arrangements can be suspended or terminated based upon safety and soundness, compliance, or consumer protection concerns? What fees or other costs are typically involved in exiting these arrangements?

Planning for a Fintech stress event and/or suspension or termination of a particular bank-Fintech arrangement encompasses the Bank's (i) risk appetite, (ii) due diligence program, (iii) contractual practices, (iv) monitoring practices, and (v) technology capabilities. We only accept risks from a bank-Fintech arrangement that are consistent with our risk appetites and our ability to manage those risks.

A key risk management control here is the contract that governs the bank-Fintech arrangement. Each contract is tailored, including the suspension and termination provisions, based on Cross River's due diligence of the Fintech and the Fintech's risk profile. Suspension and termination rights are designed to ensure that Cross River retains sufficient control over the arrangement and that the Bank retains the ability to access records which are often needed after termination. The renewal and/or amendment of a partnership contract is subject to input from a variety Bank stakeholders. Additionally, should a partnership and/or program no longer remain within the Bank's risk appetite (either based on the oversight, monitoring activities detailed above or a reassessment of the Bank's risk appetites), management may suspend or limit the bank-Fintech arrangement or terminate the arrangement.

If the decision is made to terminate an arrangement, Cross River carefully considers how such a termination can be achieved in an orderly fashion so as to minimize the adverse impact on customers. The details of the wind down process will vary depending on the Fintech, the reason for the wind down, and the type of arrangement that is being wound down. For example, transfers of deposit-related arrangements typically involve the Fintech identifying a new banking partner and working with Cross River and that new banking partner to facilitate the transfer of the deposits. In some cases, this can be accomplished without any material impact on the underlying customer. Transferring credit-related arrangements tend to be more complicated if there are other actors involved in the provision of credit-related services (e.g., a credit card network). Our proprietary core, and other aspects of our technology stack, are key to supporting a more orderly suspension and termination of bank-Fintech arrangements then would otherwise be possible without such tools.

10. Describe the range of practices, and challenges, in negotiating contracts with, or conducting due diligence on fintech companies. Describe the range of practices in maintaining ongoing monitoring of bank-fintech arrangements, particularly related to risk management, regulatory compliance, data ownership and use, and information security assessment rights. What impact, if any, does the size and negotiating power of the bank or the fintech company have on these issues? What impact, if any, does the fintech company's or intermediary platform provider's degree of control of operational functions have on these issues? What impact, if any, does bank liquidity or revenues concentration represented by any particular fintech company, intermediary platform provider, or business line have on these issues?

Strong onboarding and monitoring programs are key to any successful bank-Fintech arrangements. Here is a brief summary of how Cross River has structured these programs.

Onboarding

Effective planning and due diligence activities associated with these two core TPRM lifecycle phases, in alignment with existing 2023 Guidance, form the foundation for onboarding requirements. The practices associated with identifying the right partnerships and conducting due diligence on those specific partnerships include an engagement model aligned with industry-wide standards incorporating applicable risk and compliance groups early in the TPRM lifecycle phases (and throughout). During the due diligence process of evaluating a new Fintech and their products, the reviews and assessments on the adequacy of the Fintech's risk and compliance frameworks are focused on identifying whether the Fintech has the ability to maintain strong controls to mitigate those risks associated with the proposed product. Where weaknesses are identified, compensating controls are put into place until those weaknesses are addressed. In alignment with industry best practices, due diligence of a potential Fintech, like other third-party relationships, informs both parties of the overall terms of the relationships with regards to roles, responsibilities, rights and obligations.

Monitoring

A key TPRM lifecycle phase post-contract involves ongoing monitoring of third-party relationships commensurate with the level of risk associated with the particular relationship. The planning and due diligence outcomes drive this view, where often the complexity and risk differs based on the product/service itself, or a number of other factors such as number of product/services being offered through a Fintech, volume, and targeted audience of the product (e.g., commercial vs. consumer). Therefore, monitoring activities may differ from partner to partner; however, minimum standards includes oversight of the Fintech's adherence to risk and compliance requirements and effectiveness of key controls aligned to mitigating the risks associates with those requirements. Management information, reporting, and oversight drive key processes from both the Fintech and Bank to monitor performance. Other ongoing monitoring activities include periodic reviews of third parties, risk assessment refreshes, reviewing and fine-tuning key controls, and potentially conducting site visits.

14. In the context of bank-fintech arrangements, how are deposit accounts usually titled? Describe the range of practices reconciling bank deposit account records with the fintechs' records. Generally, what party holds and maintains the account records? Describe the structure in place to exchange accurate customer information between the bank and the fintech company and how the agreements between banks and fintech companies generally address these matters. Describe any additional controls, that banks or fintechs may use to provide for accurate reconciliations. Describe the range of practices regarding how banks manage the risks of connecting to multiple technology platforms and exchanging data in bank-fintech arrangements.

15. Describe the range of practices regarding the maintenance of systems of records and account titling in the context of bank-fintech arrangements. Do certain account structures pose greater risk considerations to banks and end users than others? What additional controls, if any, do banks or fintechs place on these accounts to manage these risks?

Bank-Fintech arrangements involving deposit accounts require strong controls at the bank. These controls cannot be delegated. Customers rely on their deposits. If a deposit-related bank-Fintech arrangement is not managed in a safe and sound manner, the results could be disastrous. Banks cannot offload their fiduciary responsibilities to their depositors by relying on Fintechs and other middleware providers to maintain the books and records associated with the deposit accounts. Such actions not only damage the bank and their customers, but also sow the seeds of mistrust that impacts all players in the banking industry and the future of bank-Fintech arrangements.

The solution is for the Agencies and the industry to agree on clear rules and to hold bad actors accountable. Additionally, all parties should be careful not to infer that breakdowns or shortcomings in any one particular bank-Fintech arrangement are an indictment of all bank-Fintech arrangements. Many banks today offer deposit-related bank-Fintech arrangements in a safe and sound manner, including Cross River. We stand with the FDIC on its proposed rule on Custodial Deposit Accounts.[6] No bank should enter a relationship with a Fintech without complete control over all activity, including maintaining its own ledger. This is not negotiable.

Trends and Financial Stability

3. In what ways might bank-fintech arrangements function as transmission mechanisms to amplify financial shocks (i.e., threaten financial stability)? Conversely, how could these arrangements help to contain shocks and reduce contagion?

It is difficult to see how bank-Fintech arrangements could amplify financial shocks: bank-Fintech arrangements played no material role in the large bank failures that occurred in 2023. Additionally, bank-Fintech deposit arrangements are no more risky, from a liquidity risk perspective, than traditional deposits (in fact, given the costs associated with onboarding bank-Fintech deposit relationships, fintech deposits may be more sticky than traditional deposits).

[6] *Supra*, note 1.

Bank-Fintech arrangements can counteract shocks by serving as the delivery mechanism for government assistance programs, as Cross River did in connection with the Paycheck Protection Program. The government did not have the capabilities to provide such relief directly and there are concentration risks associated with relying on a few, large financial services firms to function as the transmission mechanism for such programs, which bore out in the early stages of the program. Cross River (and other community banks with bank-Fintech experience) played a key role in getting PPP relief to those who needed it the most, the smallest businesses and independent contractors: the average PPP loan was about $111,000, whereas Cross River's average PPP loan was $44,062.[7] All told, we serviced close to 500,000 small businesses and saved over 1.4 million jobs in connection with our PPP efforts.[8] And the reason we were able to make the impact we did is because we had spent ten years working on and refining the technology ,compliance and risk management systems that power the bank-Fintech arrangement model. PPP was effectively a stress test of Cross River's systems and technology during a highly important time and under historically expedited timeframes.. This stress test provided us with an incredible amount of data and experience that we are continuing to analyze with a view towards leveraging the lessons learned to further enhance our program to better serve our customers.

Additional comments on the RFI

In addition to the numbered questions in the RFI, we would also like to respond to a few of the passages quoted below:

> *Under certain bank-fintech arrangements, it may be difficult for the bank to perform oversight and control functions over the fintech company effectively where the fintech company has substantial negotiating power relative to the bank or where the bank relies on revenue or liquidity from the fintech company.*[9]

This is not a concern that is specific to bank-Fintech arrangements. Rather, it is a generally applicable concern whenever there is an earnings or liquidity concentration issue and/or whenever management imprudently overvalues potential short term positive impacts at the expense of long-term reputation and strategic risk. In any event, the solution is not to ban the activity. It is to remind boards of directors and senior management of the risks associated with concentration in all its forms, be it bank-Fintech relationships, a lending relationship, a deposit relationship, etc.

> *a bank's existing risk and compliance management systems, as well as management's and employees' expertise and roles and responsibilities, may neither be commensurate with the risk profile of the new business model nor be sufficiently scalable without significant investments in resources and training*[10]

Again, this is not a concern that applies to just bank-Fintech arrangements. All banks, regardless of the products and the services they offer, must be able to proactively manage their risk management and compliance management systems. Quality and quantity of management and staff is an ever present

[7] *New York Times,* The Tiny Bank That Got Pandemic Aid to 100,000 Small Businesses (June 23, 2020).
[8] *Cross River Bank Op-Ed,* The American Dream in Peril (July 23, 2024).
[9] 89 Fed. Reg. 61,581 (July 31, 2024).
[10] *Id.*

strategic risk to banks. Additionally, risk profiles are always evolving, even if the products and services offered are static, which is why training is so important.

> *In some cases, banks do not have or are unable to develop the infrastructure to adequately address these complexities, and instead rely on manual workarounds, which could lead to operational breakdowns that may implicate various other risks, including compliance and legal risks.*[11]

We agree with the importance of preparing and validating the infrastructure to support any particular bank-Fintech partnership. Further guidance from the Agencies on specific expectations for this infrastructure would be helpful.

> *The growing prevalence of nested relationships may materially alter the traditional third-party risks present, complicating the bank's ability to provide effective oversight to the arrangement. This is especially so if the additional entity may be contractually allowed to add operating partners or subcontractors without the bank's prior consent.*[12]

We think there is some confusion in terminology here between "third party risk"/"banking services supply chain risk" (the risk to the bank arising from the activities of a Fintech's vendors) and "nested relationships" (the risk to a bank arising from the activities of a Fintech's customers). Both risks are important, but they are distinct, present different risk profiles, and can and should be managed in different ways.

> *Bank-fintech arrangements may also result in the bank's business becoming highly concentrated in the arrangement. This concentration risk may amplify other risks to the bank, including from any market stresses or if deposits are used to fund longer-term assets. For example, in a rising interest rate environment, a bank-fintech arrangement involving loan products may see a reduction in originations. This reduction may pose particular risk to a bank whose business has become heavily concentrated in that arrangement and that, as a result, relies on those originations for a material portion of its earnings. Such an environment may increase the bank's exposure to credit risk from the arrangement (e.g., the credit risk of the fintech company or of loans originated under the arrangement, whether still on the bank's balance sheet or for which the bank retains any contractual interest, even if repurchased by the fintech company). Such an environment may also lead to an increase in the credit risk of a bank's overall retail loan portfolio.*[13]

We do not disagree with any of these statements. However, again, these are risks that are just as applicable to more traditional bank activities, such as mortgage lending. The take away is not that we need less mortgage lending because mortgage lending is so inherently risky. It is that mortgage lending must be done thoughtfully, carefully, with a commitment to vigilance and consistent, incremental improvements in process. This is precisely Cross River's approach to bank-Fintech arrangements (as well as to its other products and services).

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[11] *Id.* at 61,582.
[12] *Id.*
[13] *Id.*

Policy Considerations for Future Regulatory Action with Respect to Bank-Fintech Arrangements

We believe the Agencies generally have sufficient authorities, and have issued sufficient regulations, to adequately supervise bank-Fintech arrangements. To the extent the Agencies disagree, and are considering additional regulations in this space, we offer three principles to guide the crafting of such regulations:

- **Consistency is Key.** We applaud the fact that this RFI is being done on an interagency basis. We think it is important to create a level playing field with respect to bank-Fintech arrangements where all banks are held to the same standard, regardless of charter, primary federal regulator and asset size.

- **Less innovation is a risk and source of potential foregone consumer benefits.** The banking industry and its regulators are generally good at capturing the costs and risks to customers and the banks themselves of the unsafe and unsound provision of banking products and services. Capturing the costs of stifled innovation, however, is more difficult. Future rules of the road for bank-Fintech arrangements need to consider the risks and costs of foregone benefits/opportunity costs as well as the benefits of bank-Fintech arrangements to all stakeholders (e.g., the industry, consumers and the regulators).

- **Regulators cannot control demand.** Some critics of bank-Fintech arrangements may believe that doing away with such arrangements will extinguish a particular product or service. Respectfully, it won't. Regulations and supervisors generally cannot impact the demand for a particular product or service – just whether that demand will be able to be satisfied by a bank. Regulators should be careful about driving banking activity out of the banking sector and the costs and risks associated with that.

Conclusion

We appreciate the continued coordination of the Agencies on bank-Fintech arrangements and the spirit of inquiry embodied in the RFI. Cross River's deep experience in this space, and our commitment to responsible innovation and customer service, has resulted in our development of a platform for bank-Fintech arrangements that is designed to reasonably balance benefits with strong risk management practices. We are proud of our accomplishments. We thank you again for the opportunity to provide comments on this RFI and welcome the opportunity to function as a resource for the Agencies in the future on this important topic. If you have any questions, please feel free to contact me at agelbard@crossriver.com or 201-808-7189.

Sincerely,

Arlen Gelbard
EVP, General Counsel