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P.O. Box 505 • 1 South Main Street • Attica, OH 44807
419/426-3641 • Fax 419/426-0421

By Electronic Delivery to comments@fdic.gov

Re: Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses

Dear FDIC:

This letter responds to the July 25, 2024 request for information and comment made jointly by the Office of the Comptroller of the Currency, ("OCC"), Board of Governors of the Federal Reserve System ("Board"), and Federal Deposit Insurance Corporation ("FDIC"), (collectively, "the agencies") regarding bank-fintech arrangements. Sutton Bank has a compelling interest in responding to this request, as relationships with fintech companies involving the delivery of banking products constitute a core component of our overall business strategy. In this regard, we currently issue over 11 million fintech-supported Visa, Mastercard, and Discover payment card accounts, most of which are prepaid card accounts.

As a major participant in the bank-fintech relationship arena, we are closely examined by the FDIC and the Ohio Department of Financial Institutions regarding our conduct of related business activities. Thus, rather than repeat information that is already known to the FDIC through its examination and ongoing supervision of the Bank, this comment addresses only 6 of the 27 requests for information made by the agencies, which are identified and addressed, in turn, below:

<u>Bank-Fintech Arrangement Descriptions</u>

> *Question No. 1: Do the descriptions and categorizations in this RFI adequately describe the types of bank-fintech arrangements in the industry and the companies involved. If not, why? Are the descriptions or categorizations overly broad or narrow, or are there any types of companies or categories of arrangements missing from the description?*

We believe there is a fourth important category of relationships that is missing from the RFI. In both the agencies' request for information and their related *Joint Statement on Banks' Arrangements with Third Parties to Deliver Bank Deposit Products and Services*, also issued on July 25, 2024, the agencies discuss the respective activities of banks, fintechs, and intermediate platform providers (aka processors, middleware providers, aggregation layers, and/or program managers). In our experience, however, providing effective management and oversight for over 150 fintech-supported payment programs would be impossible without the services we receive on an ongoing basis from various third-party consultants, audit firms, technology firms, and law firms. Those parties help supply the necessary manpower, experience, and subject matter expertise needed to enable the Bank to offer a high number and variety of fintech-supported banking products and services. In addition, through outsourcing, management is able to scale-up, and scale-back, first and second line testing and monitoring staffing needs quickly and efficiently, based on business and compliance demands. Furthermore, all of the firms the Bank utilizes for such support are industry leaders in their respective field who provide services to other relevant customers, including large and complex banking organizations, fintech companies, and other institutions engaged in similar relationships with fintechs. As a result, these service providers bring to the equation deep and current knowledge of bank agency expectations and industry best practices – coupled with extensive hands-on experience – that might otherwise be absent. By contributing these benefits, our various service providers function as "equalizer" in arming the Bank to compete successfully against much larger institutions. Finally, as we learn from our dealings with service providers, we are able to transition certain activities in-house over time, with resulting benefits and efficiencies across the Bank.

In *OCC Bulletin 2017-17, Third-Party Relationships: Frequently Asked Questions to OCC Bulletin 2013-29*, which was rescinded in June 2023 by the *Interagency Guidance on Third Party Relationships: Risk Management* (albeit, most of the OCC FAQs contained in *Bulletin 2017-17* were incorporated into the latter guidance), answered the question "May a community bank outsource the development, maintenance, monitoring, and compliance responsibilities of its compliance management system?" in pertinent part as follows:

> Banks may outsource some or all aspects of their compliance management systems to third parties, so long as banks monitor and ensure that third parties comply with current and subsequent changes to consumer laws and regulations. . . (FAQ No. 12).

All service providers deployed by the Bank, including those providing legal and compliance-related services, operate under the direction and oversight of relevant internal management, including in-house counsel in the case of law firms. Based on our experience, the effective use of well-qualified, and appropriately specialized, third-party consultants, audit firms, technology firms, and law firms can help bridge gaps in knowledge or operational capabilities, and may be often essential in our ability to manage a given fintech relationship effectively. Accordingly, we strongly urge the agencies to consider the important role played by these additional third-party relationships in weighing the risks and benefits presented by bank-fintech arrangements.

> *Question No. 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?*

In their *Joint Statement on Banks' Arrangements with Third Parties to Deliver Bank Deposit Products and Services*, the agencies acknowledge the many benefits that may flow to banks from such relationships, including the ability to leverage new technology or offer innovative products. Unacknowledged in that guidance, however, is the agencies' recognition that for rural-based community banks the existence of such relationships may be a matter of survival. To this end, in her keynote address on *The Future of Banking* delivered on October 1, 2019 at the Federal

Reserve Bank of St. Louis, then FDIC Director Jelena McWilliams made the following comments regarding bank-fintech relationships, which remain equally relevant today, nearly five years later:

> The cost to innovate is in many cases prohibitively high for community banks. They often lack the expertise, the information technology, and research and development budgets to independently develop and deploy their own technology. That is why partnering with a fintech that has already developed, tested, and rolled out new technology is often a critical mechanism for a community.
>
> The business case for collaboration is clear. Fintech firms are built on a digital infrastructure that can develop and offer consumer products quickly and with requisite agility as consumer demand evolves. Banks have a built-in customer base, an understanding of regulatory requirements, access to the payment system, and deposit insurance.
>
> [paragraph omitted].
>
> 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.[1]

The Bank's fintech-supported card payments business relies on the Small Issuer Exemption to the Electronic Funds Transfer Act, which was enacted by Congress with the goal of preserving the continued existence of community banks.[2] We strongly embrace this goal, as is evidenced by our eight brick and mortar branches, all of which are located in rural north central Ohio – an area ignored by large banks. A significant portion of the earnings we receive from our fintech-related activities are invested back into the otherwise underserved communities we operate in, providing individuals, small businesses, including small farmers, a secure way to build savings and obtain credit. We are also a major source of well-paying, secure jobs in areas where obtaining any form of employment can be a major challenge. Finally, we routinely make sorely-needed investments in community development. For example, not long ago, we contributed to the creation of an armed forces veterans memorial park in downtown Attica, Ohio, which replaced a long abandoned, dilapidated building and has become a source of pride among the citizens of our community.

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[1] https://www.fdic.gov/news/speeches/2019/spoct0119.html

[2] See 156 CONG. REC. S4977 (daily ed. June 16, 2010) (Statement of Senator Richard Durbin, noting that small banks and small credit unions were being "terrorized" by the strong concentration of industry power in large banks and commenting on the resulting lack of competition in the marketplace).

During her tenure as the FDIC's Director, Ms. McWilliams was a particularly strong advocate for community banks, noting in another speech, delivered on June 29, 2021 at the *Fintech: A Bridge to Financial Inclusion* conference that community banks are "often the financial lifeblood of the communities they serve. . ."[3]. In evaluating the risks and benefits of bank-fintech relationships involving the delivery of banking products and services, we strong urge the current senior leadership of the respective agencies to heed Ms. Williams' comments and consider the vital importance of such relationships present for community banks.

Regarding the second part of the agencies' question, the existence of an effective intermediate platform provider can be extremely important for a number of reasons. First, for a start-up fintech, the existence of such a provider can provide knowledge, operational capabilities, and compliance support that would otherwise be lacking and likely fatal to the subject initiative. Second, for any fintech-supported program, it is essential that either the program or the intermediate platform provider perform ongoing first line testing and monitoring for the purpose of ensuring compliance with applicable legal and regulatory requirements, and provide timely and regular reporting to the bank on the results thereof. Third, for subcontractors with whom the bank lacks a contractual relationship, the bank necessarily depends on the due diligence and ongoing monitoring conducted by the program or intermediate platform provider, as applicable. Finally, fourth, an intermediate platform provider that is familiar with the bank's risk appetite can help filter out prospective programs which are likely to pose unacceptably high risks.

Risk and Risk Management

> *Question 16: To what extent would additional clarifications or further guidance be helpful to banks with respect to bank-fintech arrangement? If so, please explain. In what specific areas would additional clarification or further guidance be most helpful?*

We urge the agencies to expressly adopt the response to FAQ 12 from rescinded *OCC Bulletin 2017-17* stating that "Banks may outsource some or all aspects of their compliance management systems to third parties, so long as banks monitor and ensure that third parties comply with current and subsequent changes to consumer laws and regulations. . ." This position is implicitly acknowledged in existing interagency guidance, including in the agencies' *Joint Statement on Banks' Arrangements with Third Parties to Deliver Bank Deposit Product and Services* and the instant RFI, but express acknowledgement would be helpful. As noted earlier in this letter, the various third-parties the Bank relies on to support our fintech relationships extend beyond program providers and intermediate platform providers, and include consultants, audit firms, technology firms, and law firms. If judiciously chosen and properly managed, we believe the contributions provided by such parties strongly benefit end users, including consumers. Alternatively, without the benefit of their support, we would face insurmountable disadvantages in our ability to compete with large banks.

[3] https://www.fdic.gov/news/speeches/2021/spjun2921.html

Trends and Financial Stability

> *Question 2: In what ways do or can bank-fintech arrangements support increased access to financial products and services? Alternatively, in what ways do or can these arrangements disadvantage end users?*

We refer the agencies to the remarks then FDIC Director McWilliams made on this topic in her speech delivered at the *Fintech: A Bridge to Financial Inclusion* conference in June 2021. Without question, fintech companies have been at the forefront throughout the current decade in driving increased access to financial products and services. We believe this is the result of big banks' continued strong focus on serving customers who posses strong creditworthiness and ready access to financial products and services, leaving the door open to those willing to serve everyone else. Through their innovative ideas and resulting ability to find ways for serving underbanked customers profitably and sustainably, fintechs have helped certain populations to enjoy the benefits of financial services they would otherwise be denied. Partnering with community banks gives those fintechs access to important, nationwide payments systems, such as the ACH and payment card networks (e.g., Visa, MasterCard, and Discover) they would otherwise not have. Thus, acting together in properly managed bank-fintech arrangements, community banks and fintechs have been able to expand access to financial products and services.

In our opinion, bank-fintech arrangements for delivering banking products and services would only disadvantage end users if the participants in such arrangements failed to act responsibly in selecting the products and services they choose to offer, including regarding the targeted market, or failed to manage and oversee their relationships in a manner that complies with applicable laws, regulations, and agency guidance.

> *Question 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?*

In the Bank's experience, engaging in relationships with fintechs has resulted in year-over-year increased profitability, and the resulting diversification in our products and services has helped shield the Bank from the adverse effects of economic downturns that would otherwise have affected us. In this regard, we fully appreciate that not all community banks engaged in banking-as-a-service relationships with fintechs have achieved similar positive economic results. Briefly, as with any banking activity, whether the financial impacts of such relationships are productive boils down to management's effectiveness, and the Bank has been fortunate to employ highly effective leaders in our Accounting and Finance function.

Thank you for your careful consideration of this letter. In weighing our comments, we ask the agencies to keep in mind the vital importance of bank-fintech relationships for the continued existence of community banks. Please feel free to call or email either of the undersigned if you have any questions regarding the above.

Sincerely yours,

[redacted]

Chief Executive Officer

[redacted]

Mark T. Dabertin
General Counsel and Chief Risk Officer