October 10, 2023

Chief Counsel's Office
Attention: Comment Processing, Docket ID: OCC–2023–0003
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

Re: Request for Information on Annual Consumer Trust in Banking Survey; Docket ID OCC–2023–0003; 88 Fed. Reg. 37917 (June 9, 2023)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the above-captioned Request for Information ("RFI") issued by the Office of the Comptroller of the Currency ("OCC" or "the Agency").[2]

The RFI presents the OCC's plan for developing an annual survey to understand, measure, and track consumer trust in banking and bank supervision, and it requests input on three components: the scope of the survey, the components and drivers of trust, and ways to track and analyze trust over time. This survey and its results will help achieve Goal 2 of the OCC's 2023-2027 Strategic Plan, related to the Agency's credibility and public trust.[3] The OCC recognizes that public trust in the banking system and trust in the federal and state regulators and supervisors that oversee it contribute to financial stability.

We support the OCC's focus on trust, as it is indeed a foundational aspect of a strong banking system, but the OCC's plan to develop a survey to measure trust is misguided and should be materially revised and refocused. There are already numerous surveys and studies, some of which are even cited in the RFI, that clearly show a severe lack of trust in the banking system.

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies – including many in finance – to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Request for Information on Annual Consumer Trust in Banking Survey; Docket ID OCC–2023–0003; 88 Fed. Reg. 37917 (June 9, 2023), https://www.federalregister.gov/documents/2023/06/09/2023-12301/request-for-information-on-annual-consumer-trust-in-banking-survey.

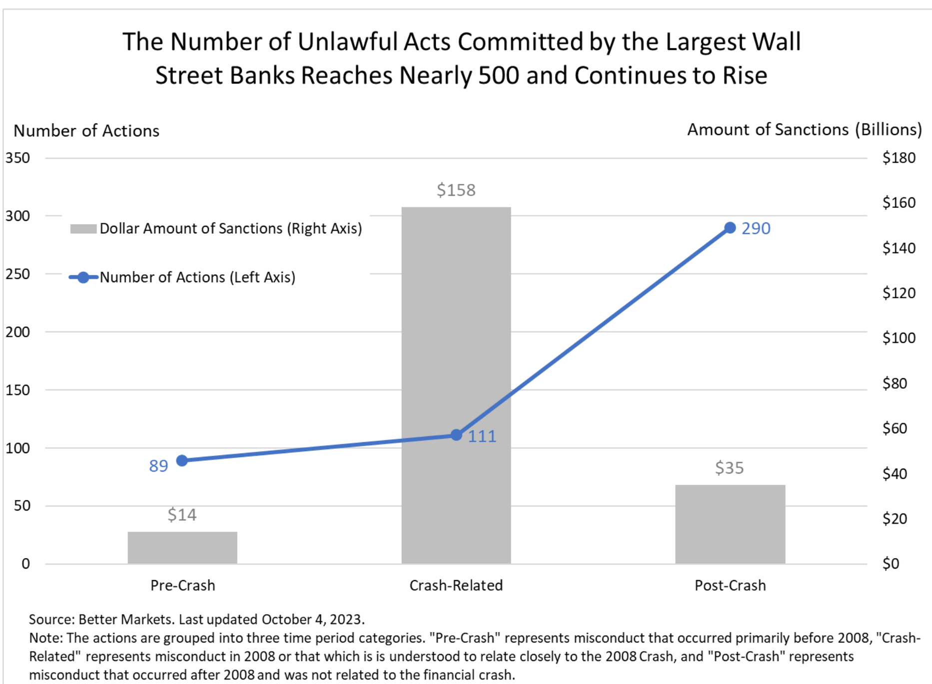
3 *See* Office of the Comptroller of the Currency, *The OCC Strategic Plan, Fiscal Years 2023-2027* (Sept. 2022), https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-occ-strategic-plan-2023-2027.pdf.

Moreover, while a survey capturing what people ***say*** about trust at a particular point in time might be interesting, what people actually ***do*** is much more informative and compelling.

For example, the lack of trust in banks and bankers if not regulators was on full display in March 2023, when countless depositors' fear of bank failures and imminent loss of their money caused them to precipitously withdraw their money from banks. There is simply no stronger evidence that depositors ***did not trust their banks***. Equally telling, they didn't put their money under their mattresses. Instead, they moved their money where their trust or confidence was: in bank and nonbank financial institutions that they believed were too big to fail, meaning they wouldn't lose money because the government wouldn't allow those financial institutions to fail. Given the high-profile bailouts of those institutions in 2008 and again in 2020, that was a rational response. Regrettably, the banking regulators did the same thing in response to the banking crisis of 2023, which only validated the wisdom of the depositors' actions pre-bailout.

Beyond specific periods of panic, trust in the banking system is consistently being undermined by the steady stream of illegal, predatory, dishonest, and deceitful behavior that blatantly harms the American people, particularly the most vulnerable members of our communities. The frequency and severity of cases against the largest banks in the country for engaging in such conduct against their customers is a trust-killer. As discussed in more detail below, Figure 1 illustrates the shocking pervasiveness of repeated egregious lawbreaking by just the six largest Wall Street megabanks over the last two-plus decades.

Figure 1



These almost 500 matters and more than $200 billion in fines and settlements are widely reported and visible to the American public. The public not only sees that the banks break the law repeatedly, but that they are never meaningfully or effectively punished. The public also sees puny fines imposed on banks while the bankers just keep pocketing billions of dollars in bonuses while continuing to break the law. Moreover, it's not just that those banks were all bailed out in 2008 and that not one Wall Street banker went to jail for crashing the global financial system, but it's equally visible to the public that the banking regulators failed to do their jobs.

Rather than spending time and resources to create and run a trust survey, the OCC (and all banking agencies) should be focused on the mission of ensuring that the banking system is safe, sound, fair, and not run by a bunch of lawbreakers. The banking agencies, including the OCC, currently face several critical issues that must be resolved to facilitate the safe operation of our country's banking system, including, first and foremost, enforcement of the law, strengthening capital requirements, bank resolution processes, stress tests, merger rules, and consumer protections. The OCC should focus on this work, along with its other bank supervision responsibilities, which if done well will help increase and safeguard public trust in the banking system.

Indeed, the most important thing any of the banking agencies can do to increase trust in the banking system is to rigorously oversee banks and hold those who run them accountable in meaningful ways when they are managed poorly or exploit their customers, which unfortunately is far too often. As Figure 1 and the discussion below makes clear – and as the OCC well knows - the decade-long customer abuse crime spree at Wells Fargo was not an aberration; lawbreaking in banking is far too high and regulators and prosecutors have failed to stop it, making them look, at best, ineffective. The American people place their trust in the banking agencies who work on their behalf. It is the agencies job to promote well-run, safe, and sound banks that do not rip off customers, commit crimes, or otherwise fail to operate within rules and laws that govern them. Until the agencies clearly and effectively accomplish this, trust in the banking system will continue to be appropriately low.

BACKGROUND

By its very nature, trust is a difficult concept to measure and is affected by a wide range of factors. As the RFI states, trust in the banking system and in bank regulators and supervisors is directly influenced by a customers' experiences with financial institutions and financial products. Trust can also be influenced by factors such as a customer's race and ethnicity, income level, financial literacy, and much more.

External events such as the banking crisis of 2023 and the 2008 Crash have had large and persistently negative effects on consumers' trust in the banking system. One study,[4] cited in the RFI, based on a survey of American households, first in December 2008 and then again in quarterly

4 *See* Luigi Guiso, *A Trust-driven Financial Crisis. Implications for the Future of Financial Markets*, EINAUDI INST. FOR ECON. AND FIN.: Working Paper No. 06/10 (Mar. 2010), https://www.eief.it/files/2012/09/wp-06-a-trust-driven-financial-crisis-implications-for-the-future-of-financial-markets.pdf.

intervals through autumn of 2009, explores trust in depth. The study authors define trust and explain why it is so important to the banking system:

> Trust – the belief a person has that his counterpart in a transaction will not take advantage of him – is normally ignored in standard economic models, perhaps on the presumption that external bodies, such as the police and courts, can enforce any promise and thus effectively protect contracting parties from each other's abuses. But this is rarely the case: because legal protection is often imperfect and costly it leaves many open gaps which are typically filled in by trust. Thus, without trust, financing disappears and economic activity suddenly stops. This is what happened in October 2008 and the subsequent months.

The study then highlights several important insights that emerged from the survey results. Before the 2008 Crash, respondents had more trust in banks than in a random citizen. After the 2008 Crash, trust in banks declined to a level that was about equal to the level of trust that respondents had in a random citizen. Notably, respondents differentiated between trust in *banks* and trust in *bankers*. After the Crash, trust in bankers was much lower than trust in random people and in banks. The study authors attribute the lack of trust in bankers to three things:

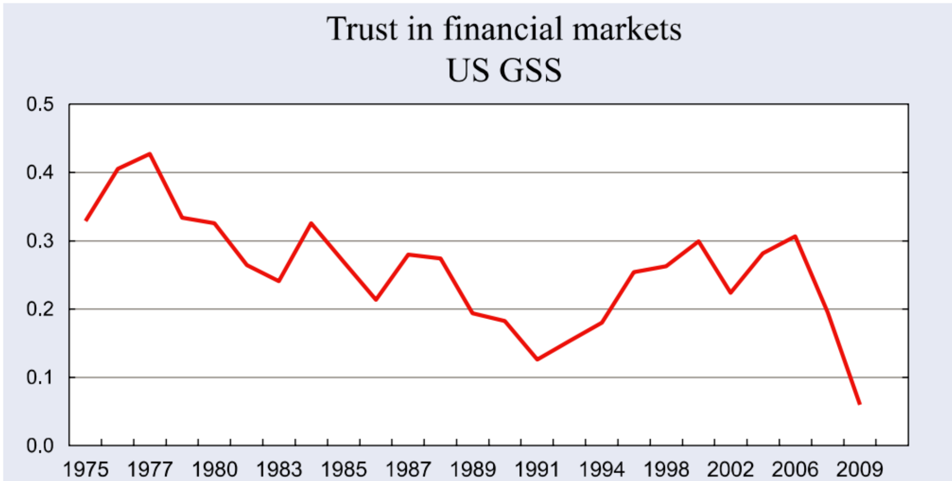
1. opportunistic behavior by bankers;
2. incentive structures that benefit bankers even during times of crisis or after wrongdoing and do not reflect the negative consequences of bankers' actions; and
3. fraud that is attributed to bankers that has resulted in respondents feeling cheated or misled.

Finally, respondents' trust in random people and in banks exceeded their trust in government and the Fed, two entities that are charged with and pride themselves in being stewards of public trust!

The study shows that the decline in trust is a trend that has existed and persisted for decades (see Figure 2).[5] At the peak in the late 1970s, about 40 percent of respondents had "a great deal of confidence in banks and financial institutions." Objectively, this is a low level of trust; but it is remarkably the highest level in the four decades for which data are available. Trust fell during the 1980s, consistent with multiple bouts of banking turmoil and bank failures during that time; climbed somewhat during the 1990s and early 2000s; but then dropped to an all-time low in 2009, when less than 10 percent of respondents reported a high level of trust and confidence in banks and financial markets. The overall decline in trust has been driven by negative outcomes associated with bad bank behavior and clear evidence that regulations and supervisory oversight were not strong enough to be working effectively in the public interest.

[5] *Id.* at 3.

Figure 2



Note: Fraction that answer they have a great deal of confidence in banks and financial markets. The figure for 1985 is interpolated taking the mean of the two adjacent years. The value for 2009 is imputed using the fraction that trust completely banks, brokers, mutual funds or the stock market in the first three waves of the trust index survey and taking the mean. "I am going to name some institutions in this country. As far the people running these institutions are concerned would you say you have a great deal of confidence, only some confidence or hardly any confidence in them?".
Source: US General Social Survey.

A lack of trust can also negatively affect banks' earnings, funding costs, and business models. For example, if depositors withdraw their money from a bank because trust and confidence have deteriorated, the bank may need to replace that lost funding with a potentially higher-priced funding source such as new deposits or brokered deposits, which would in turn reduce the bank's earnings. If the decline in funding is severe or long-lasting, it could prompt the bank to adjust its business model or reduce lending. The bank's overall handling of such a situation could eventually negatively affect its safety and soundness.

A lack of trust can also erode financial inclusion and financial stability. The RFI highlights two studies[6] that use data from the World Bank's Global Findex Database[7] to illustrate how trust in financial institutions leads to increased economic growth, reduced poverty, and ultimately financial stability and financial inclusion.

It is thus clear that trust can affect lending, financial stability, economic growth, and other desirable goals in the financial system. Efforts to measure and enhance levels of trust in banks

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6 *See* Xiaoyan Xu, *Trust and Financial Inclusion: A Cross-Country Study*, 35 FIN. RES. LETTERS, (July 2020), https://www.sciencedirect.com/science/article/abs/pii/S1544612319303915. *See also* Franklin Allen et al., *The Foundations of Financial Inclusion: Understanding Ownership and Use of Formal Accounts*, 27 J. FIN. INTERMEDIATION (July 2016), https://www.sciencedirect.com/science/article/abs/pii/S1042957315000534.

7 The Global Findex Database is a definitive source of data on global access to financial services from payments to savings and borrowing. It is based on nationally representative surveys of more than 100,000 adults in more than 100 economies. It contains information on access to and use of formal and informal financial services and provides insights into the behaviors that enable financial resilience, particularly for women and poor adults. *See* The World Bank, *Global Findex Database*, https://www.worldbank.org/en/publication/globalfindex.

therefore are appropriate and beneficial, if not imperative. But as discussed above, it is equally clear that bank regulatory agencies are best positioned to pursue those goals directly through activities that increase the stability of banks, require fair lending practices, and hold banks and their executives accountable when they exploit customers, pursue risky strategies, and otherwise violate the law, not develop and manage a survey.

SUMMARY OF THE RFI

The OCC's proposed annual survey on trust in banking contributes to one of the components in its 2023-2027 Strategic Plan, supporting the Agency's efforts to "safeguard the public's trust in the federal banking system and contribute to a federal banking system that is safe, sound, and fair."[8]

The RFI lists four factors that influence consumers' trust in financial institutions:

- Competency: a financial institution's ability to consistently provide customers with relevant financial services, promptly address problems and complaints, and safeguard customer information.

- Goodwill: a financial institution's responsiveness and empathy for customers' needs and welfare.

- Integrity: a financial institution's fair and equal treatment of customers, including avoidance of fraud or misuse of private information.

- Transparency: a financial institution's clear communication with customers to disclose relevant information on costs and benefits of financial products and services.

The RFI cites several possible options to scope the survey and draw conclusions from its results. The scope of the survey would be sufficiently broad to understand opinions and behaviors from different demographic and geographic groups as well as from different levels of financial literacy. Results would be analyzed to understand *direct* measures of trust, indicated by respondents' answers to survey questions, or *indirect* measures of trust, demonstrated by respondents' behaviors such as closing a bank account or changing banks entirely in relation to their reported trust levels.

SUMMARY OF COMMENTS

We applaud the OCC's focus on trust and its aspiration to be a credible and trusted public servant. However, the taxpayer resources that would be devoted to development, implementation, and analysis of the proposed survey and its results that in many ways would duplicate existing surveys will be significant. Moreover, the survey may serve as a distraction to the OCC's key job of overseeing banks and ensuring they are well run and don't cheat their customers. Therefore, we

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8 Request for Information on Annual Consumer Trust in Banking Survey, *supra* note 2, at 37918.

recommend leveraging existing surveys that already measure trust in banks and the banking industry. This would allow the OCC to redirect resources to other efforts that would improve policy and make meaningful changes to protect consumers and the financial system.

Our specific comments in response to the RFI are summarized as follows:

- Taxpayer money and federal government resources ***should not*** be spent on another duplicative survey to measure trust in the banking industry. Instead, the OCC should leverage existing surveys and other information to understand trust in the banking system more efficiently. There are numerous surveys and studies, some of which are cited in the RFI, that sufficiently establish that there is a lack of trust in the banking system and that explore the various ways in which this lack of trust is demonstrated. The OCC should not use its time and resources, and funding provided by taxpayers, to conduct yet another survey. Instead, it should focus efforts on making changes in its oversight and enforcement practices to improve trust in the OCC, and by extension the banks it oversees in the public interest.

- The OCC should focus on the illegal, predatory, dishonest, and deceitful behavior that continues to harm customers of the country's largest banks, implement appropriately strong penalties to address it, and provide greater transparency to the public about what they are doing to stop it. The Wall Street megabanks have consistently and in many cases increasingly, broken laws, discriminated against customers, and financially endangered the American people. The OCC should focus its efforts on uncovering these violations and quickly addressing them in a meaningful way that clearly and publicly punishes the specific wrongdoers and deters others. That is the way to rebuild trust in the banking system.

- The OCC should work cooperatively with other federal banking agencies to pursue existing efforts to build trust and transparently share the results of this work with the American people. Recent banking crises demonstrate the need for all banking regulators to work together more effectively to address key issues that undermine trust such as insufficient capital requirements, ineffective resolution processes, inadequate stress tests, the broken merger process that favors too-big-to-fail institutions, and failures in consumer protection.

COMMENTS

We agree with the OCC's foundational premise that the public's trust in banks is an important ingredient for a stable banking system. Without at least some level of trust, banks encounter difficulty attracting or retaining customers and depositors, and in turn cannot meet the credit needs of the communities they serve. But we believe the OCC and other prudential regulators should dedicate their resources to strengthening and more vigorously enforcing the standards governing banks. The best way to increase trust in the banking system is for agencies to do a better job of regulating and overseeing the banks, and to strengthen their enforcement practices such that banks that are operated unsafely or that cheat their customers are appropriately and transparently held to account.

I. TAXPAYER MONEY AND FEDERAL GOVERNMENT RESOURCES SHOULD NOT BE SPENT ON ANOTHER DUPLICATIVE SURVEY TO MEASURE TRUST IN THE BANKING INDUSTRY. INSTEAD, THE OCC SHOULD LEVERAGE EXISTING SURVEYS AND OTHER INFORMATION TO UNDERSTAND TRUST IN THE BANKING SYSTEM.

There are numerous surveys and studies, some of which are cited in the RFI,[9] that sufficiently establish that there is a lack of trust in the banking system and explore the various ways in which this lack of trust is demonstrated. Beyond these, a simple internet search yields many more surveys that provide insight into the topic of trust in banks and in the federal government. For example:

- Gallup, a global analytics firm that is well known for its polling capabilities, conducted a survey of Americans' sentiment about banks in April 2023, following the failures of Silicon Valley Bank and Signature Bank.[10] Results were analyzed relative to factors such as income level, educational attainment, and political affiliation, and were also compared to prior periods of banking industry stress, namely 2008. Gallup also conducts and publishes its annual Confidence in Institutions survey which reports on the level confidence that Americans have in many different entities ranging from the church and organized religion, the military, Congress, and banks.[11] Data about confidence in banks begins in 1979 and is available regularly through 2023.

- The Pew Research Center, as part of its American Trends Panel ("ATP") conducted a study to understand the American public's view of current events and public entities, including banks.[12] The survey panel was formed through national, random sampling of residential addresses, to ensure that all American adults have a chance of selection. The survey is technically representative of the U.S. adult population by gender, race, ethnicity, partisan affiliation, education, and other categories.

- The American Banker has worked with RepTrak, a global company that employs data scientists to understand sentiment, to conduct and publish an annual reputation survey for the banking industry since 2017.[13] Survey data are available for large banks, regional banks, and nontraditional banks.

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9 *See supra* notes 4, 6, 7 and accompanying text.

10 *See* Megan Brenan, *About Half in U.S. Worry About Their Money's Safety in Banks,* GALLUP (May 4, 2023), https://news.gallup.com/poll/505439/half-worry-money-safety-banks.aspx.

11 *See* Gallup, *Confidence in Institutions*, https://news.gallup.com/poll/1597/confidence-institutions.aspx.

12 *See* Amina Dunn & Andy Cerda, *Anti-Corporate Sentiment in U.S. Is Now Widespread in Both Parties*, PEW RES. CENTER (Nov. 17, 2022), https://www.pewresearch.org/short-reads/2022/11/17/anti-corporate-sentiment-in-u-s-is-now-widespread-in-both-parties/.

13 *See* Kyle Campbell, *Banking Crisis Drags Down Reputations Across the Industry*, AM. BANKER (Sept. 3, 2023), https://www.americanbanker.com/news/banking-crisis-drags-down-reputations-across-the-industry.

These surveys and their results contain many of the same demographic and geographic metrics that the OCC is considering for its survey. They also explain many of the same causal relationships that the OCC mentions in the RFI linking consumers' level of trust to actions such as withdrawing deposits or switching banks.

Furthermore, many of the existing surveys are conducted by institutions that have established expertise in conducting surveys and interpreting the results. While the OCC could potentially develop existing staff skills or hire to gain this same expertise, the OCC is a banking regulator first and foremost, not a market research or polling expert. There is significant work to do in the banking regulatory arena and that is where the OCC should concentrate its time, talents, funding, and other resources.

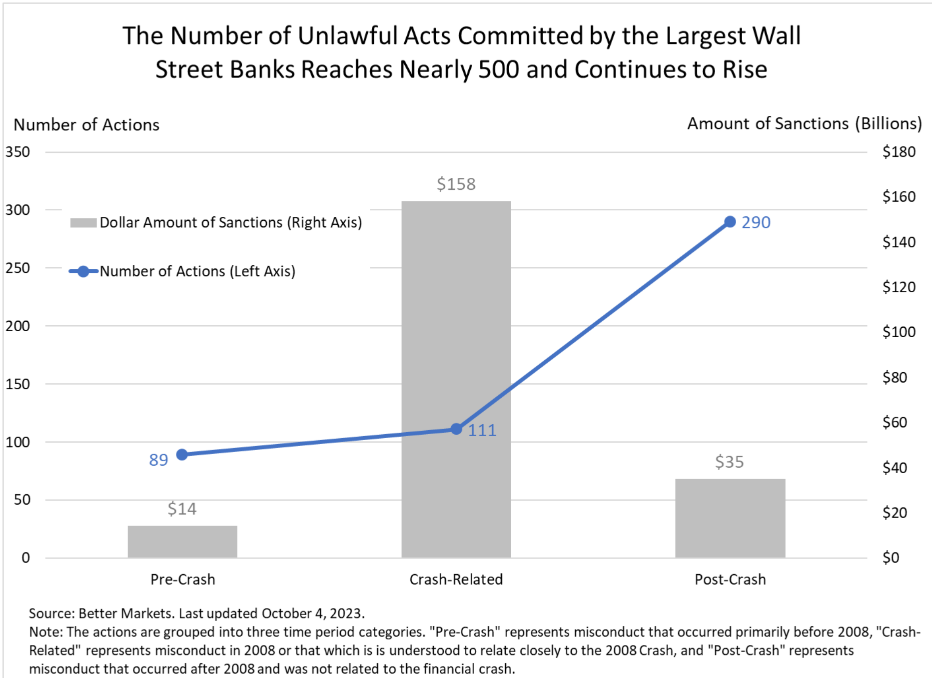
II. THE OCC SHOULD FOCUS ON THE ILLEGAL, PREDATORY, DISHONEST, AND DECEITFUL BEHAVIOR THAT CONTINUES TO HARM CUSTOMERS OF THE COUNTRY'S LARGEST BANKS, IMPLEMENT APPROPRIATELY STRONG PENALTIES TO ADDRESS IT, AND PROVIDE GREATER TRANSPARENCY TO THE PUBLIC ABOUT WHAT THEY ARE DOING TO STOP IT.

As Better Markets has detailed,[14] the Wall Street megabanks have consistently and in many cases increasingly and repeatedly, broken laws, discriminated against customers, and financially endangered the American people. Even a casual observer can quickly see that while our country's largest banks portray themselves as upstanding corporate citizens working tirelessly to help the American people fulfill their financial dreams, they have a lengthy record of lawbreaking that is breathtaking in depth and breadth. The biggest banks are all shockingly repeat offenders, and not just of civil lawbreaking but also of criminal lawbreaking. Given that, as well as the bailouts and gigantic bonuses, no one should be surprised that consumers' trust in banks is low and deteriorating.

All six megabanks were heavily engaged in illegal activity before the 2008 Crash; they reached new heights of lawlessness in connection with the Crash; and they continue to violate the law in the post-Crash era. In fact, the lawlessness has gotten worse. As shown in Figure 3, the number of cases against just the 6 megabanks has doubled in the post-Crash era relative to the Crash itself and tripled since the pre-Crash era. The dollar amount of sanctions imposed on the banks during the post-Crash era has also increased relative to the pre-Crash period. Worst of all, the nature and variety of the violations are astounding and appalling, spanning virtually every conceivable type of white-collar crime, fraud, and breach of contract that a bank could commit including money laundering, market manipulation, foreclosure abuses, unlawful debt collection practices, antitrust violations, conflicts of interest, and kickback schemes.

[14] *See* Better Markets, *Wall Street's Ongoing Crime Spree* (May 12, 2022), https://bettermarkets.org/wp-content/uploads/2022/05/BetterMarkets_Wall_Street_RAP_Sheet_Report_052022.pdf. An updated version of this report, containing the latest information about continued illegal activity at the largest banks, is expected to be published in October 2023 and will be available at www.bettermarkets.org.

Figure 3



This recidivist record along with the clear impunity that banks enjoy from regulators and prosecutors are starkly visible to all Americans and are key drivers of the lack of trust in banks. Until regulators and prosecutors change this, and banks and bankers change their behavior, trust will never be regained. To do that, Better Markets urges regulators to strengthen enforcement practices to better protect consumers from banks' and bankers' lawlessness by:

1. Focusing on large banks' boards of directors to ensure that they are in fact carrying out their responsibilities and holding them accountable when they are not;[15]

2. Focusing on banks' senior executives and officers as well as gatekeepers like internal and external audit, inside and outside lawyers, and compliance and risk personnel, and imposing meaningful personal sanctions against individuals rather than merely imposing cost of doing business fines against the bank that are so meaningless that they reward past crimes and incentivize future lawbreaking;

3. Revising the structure of penalties that result from banks' unlawful behavior to make the financial and reputational cost to banks and their executives commensurate with the

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15 *See also, e.g.,* Better Markets Comment Letter re *Proposed Guidance on Supervisory Expectation for Boards of Directors* (Feb. 15, 2018), https://bettermarkets.com/sites/default/files/FRS-%20CL-%20BoD%20Supervison%20Expectations%202-15-18.pdf.

nature of the offense and severe enough to incentivize a change in banks behavior;[16] and

4. Increasing the public disclosure of supervisory information related to the unlawful behavior and risky practices at banks to leverage the power of market discipline.

Rather than creating another survey to measure trust, the OCC should focus its efforts on recognizing the blatant violations of trust that are occurring regularly in the banking industry and addressing them with appropriate sanctions to rebuild trust in the banking system.

III. THE OCC SHOULD WORK COOPERATIVELY WITH OTHER FEDERAL BANKING AGENCIES TO MORE AGGRESSIVELY PURSUE FINANCIAL STABILITY REFORMS THAT WILL BUILD TRUST AND TRANSPARENTLY SHARE THE RESULTS OF THIS WORK WITH THE AMERICAN PEOPLE.

The failures of First Republic Bank, Silicon Valley Bank, and Signature Bank demonstrate the need for all banking regulators to work together more effectively to address key policy issues that undermine consumer trust.[17] Those measures are set forth in greater detail in numerous reports issued by Better Markets, cited in footnotes below. They include, but are not limited to:

- Claw back executive compensation:[18] Literally on the day the FDIC was bailing out Silicon Valley Bank (and was on its way to losing $16.1 billion in the Deposit Insurance Fund), photos of the bank's CEO arriving at his multimillion home in Hawaii were all over the media. That CEO engaged in reckless if not illegal conduct that enriched him by tens of millions of dollars while simultaneously undermining the stability and viability of his bank. Yet, as everyone saw, he got to keep every penny while the bill for the bailouts is going to be paid by the American people in higher fees for products and services as banks recoup the money they had to pay to replenish the DIF. If you are serious about changing banker behavior, then you cannot let this continue, which in fact guarantees even more future reckless and illegal banker conduct. If you are serious about changing public attitudes about trust, changing this has to be job #1.

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16 For example, monetary amounts, including penalties, although sometimes headline-grabbing, typically represent just a fraction of a bank's profits. Moreover, those amounts are typically significantly less than they appear because the settlements often assign unrealistically high values to future purported remedial actions (many of which the banks would have undertaken anyway) and because the settlements are usually structured to be largely tax deductible.

17 *See* Better Markets, *Ten Actions Necessary to Prevent Large Bank Failures, Strengthen the Financial System, and Protect Main Street Families* (May 9, 2023), https://bettermarkets.org/wp-content/uploads/2023/05/Better_Markets_Policy_Brief_SVB_Banking_Crisis_Responses_5-9-2023.pdf.

18 *See, e.g.*, Better Markets Comment Letter, *Incentive-Based Compensation Arrangements* (July 22, 2016), https://www.bettermarkets.org/sites/default/files/FRS%20NCUA%20FDIC%20OCC%20SEC%20FHFA%20-%20CL%20-%20Incentive-Based%20Compensation%20Arrangements%20-7-22-2016.pdf.

- <u>Strengthening capital requirements</u>:[19] Capital protects banks, depositors, taxpayers, the banking system, and the economy from risk and failure, which in turn boosts consumer trust. In fact, the data show that nothing erodes trust in the banking system more dramatically than a financial crash, which regrettably is compounded by government bailouts of the very banks and bankers that caused the crash. This, of course, does not only relate to 2008, but also just months ago in 2023.

- <u>Supporting the creation of robust and workable resolution plans</u>:[20] Bank failures will happen in a normally functioning banking system and regulators should ensure that the largest banks have reasonable plans in place to mitigate problems related to a bank failure before it occurs. This would allow resolution in an orderly and straightforward way, which would increase consumer trust. Bank regulators have had since 2008 to put in place workable resolution plans that prevented contagion and bailouts, but the 2023 banking crisis proved that they have utterly failed. Making that even worse, they reprised the 2008 playbook by handing First Republic Bank to JPMorgan Chase as happened with Bear Stearns 15 years ago is a sad testament to the depth of regulatory failure here. At the same time, regulators made the too big to fail problem worse by enabling the biggest bank in America to get even bigger. This simply cannot continue, and regulators must not allow this to happen again.

- <u>Making stress tests for the largest banks more stressful</u>:[21] Stress tests provide an objective way to gauge the safety and soundness of the banking system and understand banks' vulnerability to adverse events. Strengthening the stress testing process would likely translate into increased trust in the financial health of the banking system, especially if, through a transparency campaign, the public understands the importance of those tests and the measures taken to make them more effective. The stress tests in the spring of 2009 proved how effective and impactful credible tests can be.

- <u>Improving the review process for bank mergers</u>:[22] Consumers and the economy benefit from a diverse set of banks to provide financial services, but this system is

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19 *See* Better Markets, *Fact Sheet: Ten False Claims About Bank Capital* (July 25, 2023), https://bettermarkets.org/wp-content/uploads/2023/07/Better_Markets_Capital_Fact_Sheet-7.25.23.pdf.

20 *See* Better Markets, Comment Letter, *Advance Notice of Proposed Rulemaking and Request for Comment Regarding Resolution-Related Resource Requirements for Large Banking Organizations* (Jan. 23, 2023), https://bettermarkets.org/wpcontent/uploads/2023/01/Better_Markets_Comment_Letter_Resolution_Related_Resource_Requirements_Large_Banking_Organizations.pdf.

21 *See* Better Markets, *Wall Street Is the New Lake Wobegon With All Banks Again Passing Federal Reserve's Stressless Stress Tests* (June 28, 2023), https://bettermarkets.org/newsroom/wall-street-is-the-new-lake-wobegon-with-all-banks-again-passing-federal-reserves-stressless-stress-tests/.

22 *See* Better Markets, *The Review Process for Bank Mergers and Acquisitions Is Seriously Deficient, Allows Too-Big-to-Fail to Proliferate, and Fails to Protect Consumers* (July 11, 2023), https://bettermarkets.org/wp-content/uploads/2023/07/Better_Markets_Merger_Fact_Sheet-7.11.23.pdf.

currently being undermined by a broken merger process that favors too-big-to-fail banks at the expense of all other banks, community banks in particular. An improved merger review process would boost consumer trust because it would scrutinize proposed mergers more closely and likely reduce the number of mergers, thus supporting a diverse banking industry and greater competition, which should benefit the banking system as well as consumers.

- Appropriately strengthening consumer protection and the Community Reinvestment Act ("CRA"):[23] Consumers, especially low- and moderate-income individuals and minorities, rely on banks to provide fair access to loans and other banking services. Better Markets' analysis of the proposed CRA rule has demonstrated grave deficiencies that will enable banks to continue underserving low- and moderate-income communities, which will also undermine trust.

Clearly, there are numerous ways the OCC could better serve the American people, together with its fellow regulators, to make meaningful policy changes that would earn consumers' trust. Conducting surveys is not one of them.

CONCLUSION

We hope these comments are helpful in guiding the OCC's important and ongoing work to make the banking system more fair, stable, and transparent—and therefore more trustworthy—for the benefit of all Americans.

Sincerely,

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23 *See* Better Markets, Supplement Filing Regarding the Community Reinvestment Act (CRA) Proposed Rule Reviewing Fed Data Demonstrating That the CRA Rule Will Not Work and Redlining Will Continue (Aug. 7, 2023), https://bettermarkets.org/wp-content/uploads/2023/08/Better_Markets_Supplemental_Comment_Letter_CRA.pdf. *See also* Dennis Kelleher & Peter Rappaport, *The Banking Regulators' Proposed Community Reinvestment Act Rule Will Not Work, But Dramatically Improving It Is Not Complicated* (Sept. 18, 2023), https://bettermarkets.org/wp-content/uploads/2023/09/BetterMarkets_CRA_Rule_Will_Not_Work_09-18-2023.pdf.