October 9, 2024

Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
4051 Basel, Switzerland

Re: Principles for the sound management of third-party risk; Basel Committee on Banking Supervision; ISBN 978-92-9259-774-0 (July 2024)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on the consultative document ("Proposal" or "guidelines")[2] cited above, issued by the Basel Committee on Banking Supervision ("Committee") of the Bank for International Settlements ("BIS"). The Proposal seeks to promote a principles-based approach to third-party risk management ("TPRM") and thereby improve banks' resilience and their ability to manage risk.

When conducted responsibly, banks' use of third-party services can benefit the public by reducing the cost and improving the convenience and availability of banking services, and can enable smaller banks to provide services that otherwise would be infeasible for them to provide in-house. Even when conducted responsibly, however, the proliferation of these partnerships poses very serious challenges to regulators as more core banking functions are sourced outside the regulatory perimeter, and the potential for systemic risk increases if problems emerge at a very large third-party provider or one that serves many, or large, banks, which is inevitable as fintechs continue to grow.

In some cases, bank partnerships with third parties can amount to little more than renting out the bank's access to national payment systems or deposit insurance to generate revenue from unscrupulous, unregulated actors who have a casual attitude toward compliance with banking laws and regulations, and whose business models appear to be built on deceiving customers. National supervisors can and must do more to address the risks posed by these partnerships, so that banks can benefit from these arrangements without endangering themselves, the public or financial stability.

Better Markets commends the Committee for seeking public comment on this Proposal. That said, supervisory guidance is too frail a reed with which to constrain the powerful economic incentives driving the proliferation of bank partnerships with third parties. As discussed in more

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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] *Principles for the Sound Management of Third-Party Risk*; Basel Committee on Banking Supervision; ISBN 978-92-9259-774-0 (July 2024), https://www.bis.org/bcbs/publ/d577.pdf.

detail below, Better Markets recommends that the document address the importance of national supervisors' having in place clear and enforceable regulatory standards to address third-party risk; that it address the importance of supervisors' using their authority to enforce such standards, including examining banks' third-party partners as appropriate; and that it address supervisors' use of their authorities to implement periodic data collection regarding third-party arrangements.

BACKGROUND

Like most other companies, banks routinely employ services provided by a variety of outside professionals and businesses. Responsible use by banks of outside services can benefit the public by reducing the cost of banking services and providing small banks a way to offer products that they might not otherwise be able to offer. A growing number of banks, however, are essentially delegating important parts of their lending, deposits, or payments activities to third-party providers, especially nonbank firms that deploy information technology in new ways to offer financial services (financial technology firms or "fintechs").

Banking products within the broad categories of deposits, payments, and loans provided to customers through bank partnerships with third parties include deposits, peer-to-peer payments, debit cards, contactless payments, transactions conducted on national payment rails such as (in the U.S.) Automated Clearing House transactions, wire transfers, and loans.[3] Other key functions performed by third parties in these arrangements can include complaint handling, customer identification and due diligence, preparing or making disclosures, monitoring transactions, maintaining customer account ledgers, preparing marketing materials, or directly communicating with customers.[4]

Powerful economic incentives can be expected to drive continued bank-fintech partnerships in the future. As McKinsey and Company wrote in 2021:

> The many fintechs established every year need banking partners to provide access to bank accounts, payments, and lending. Big technology companies and other nonbanking players can build and offer financial services but are unable to "become" banks themselves in the United States and many other markets where the regulatory bar for doing so is high. That leaves banking as a service as the only means for fintechs to offer customers embedded finance.[5]

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[3] *Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses*; OCC Docket ID OCC-2024-0014; FDIC RIN 3064-ZA43; Federal Reserve Docket No. OP-1836; 89 Fed. Reg. 61577 (July 31, 2024); https://www.govinfo.gov/content/pkg/FR-2024-07-31/pdf/2024-16838.pdf.

[4] *Id.* at 61581.

[5] McKinsey & Company, *What the embedded-finance and banking-as-a-service trends mean for financial services*, (Mar. 1, 2021), https://www.mckinsey.com/industries/financial-services/our-insights/banking-matters/what-the-embedded-finance-and-banking-as-a-service-trends-mean-for-financial-services.

Given the financial incentives for fintechs to offer banking services to the public without being regulated in the normal course of business as a bank, and banks' access to insured deposits and national payments systems, it is not surprising that bank-fintech partnerships are becoming increasingly prevalent.

Increasing reliance by banks on fintechs to provide banking services is a matter of concern for a number of reasons. Broadly speaking, and most fundamentally, national frameworks of banking laws and regulations are predicated on the societal importance of safe-and-sound banking systems that support economic growth, comply with consumer protection laws, and safeguard the financial system from being used for illicit purposes. Fintech partners of banks are outside the perimeter of day-to-day bank regulation and may treat their legal obligations less seriously, compromising the achievement of these societal goals. They are also typically less stable financially than banks, and the bankruptcy of a fintech can adversely affect partner banks as well as a host of retail customers who may have been deceived into believing their funds were as safe as they would be in a bank.

The track record of fintechs does not provide comfort with respect to these concerns. In the U.S., for example, the Federal Deposit Insurance Corporation ("FDIC") has issued a number of advisory letters to fintech firms and fintech-related entities, demanding that these entities cease making false and misleading claims about federal deposit insurance.[6] The letters cited language from the fintechs' own websites. Details varied, but common themes included language either implying or flatly stating, incorrectly, that the fintech is FDIC-insured, that customer funds would be protected even if the fintech fails, or that the FDIC insures cryptocurrencies.

The U.S. has also been host to a number of high-profile fintech bankruptcies, including that of Voyager Digital Holdings, Inc. in July 2022,[7] FTX Trading, Ltd, and its affiliated companies in November 2022,[8] and most recently of Synapse Financial Technologies, Inc. in April 2024.[9] These bankruptcies have focused public attention on the risks to retail customers who place funds with fintechs in the belief that their funds are protected, based on various assurances made by fintechs' about their arrangements with partner banks.

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6 *See, e.g.*, Federal Deposit Insurance Corporation, *FDIC Demands Three Companies Cease Making False or Misleading Representations about Deposit Insurance* (Mar. 19, 2024), https://www.fdic.gov/news/press-releases/2024/pr24016.html. More such letters can be found by searching FDIC press releases or entering terms such as "misleading claims" in the search tool on the agency's website.

7 *See Voyager Digital Holdings, Inc. et al.* (Case No. 22-10943 (MEW), Bankr. S.D.N.Y) (Mar. 11, 2023), https://www.nysb.uscourts.gov/sites/default/files/opinions/312840_1170_opinion.pdf.

8 *See* UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, *In re: FTX TRADING LTD., et al., Disclosure Statement* (May 7, 2024), https://media.ra.kroll.com/ftx/plananddisclosurestatement/docs/FTX%20Disclosure%20Statement.pdf.

9 *See* Jelena McWilliams, *In re Synapse Financial Technologies, Inc.*, CHAPTER 11 TRUSTEE'S THIRD STATUS REPORT (June 21, 2024) https://www.cravath.com/a/web/TuPGwDdX7zyWeATdGJCkc/9cXbw9/9890-287-06_20_2024-pacer287-main-document-012731-00001-central-district-of-california.pdf.

In the Synapse bankruptcy, many fintech account holders have not received distributions because accurate records of the individual interests of those account holders in omnibus deposit accounts, placed in partner banks with the accounts titled in the name of Synapse, have thus far not been reconstructed. Moreover, there is a shortfall in the range of $65 million to $95 million,[10] apparently reflecting an unexplained gap between the amount of end-user funds Synapse's records indicate were deposited at partner banks and the smaller amount of funds that those banks' records indicate they received.[11]

In the July 2022 Voyager bankruptcy, the bankruptcy judge approved a reorganization plan in March 2023.[12] The approved plan was intended by Voyager to maximize its ability to make distributions to account holders in crypto rather than cash.[13] Moreover, the judge explained that since there were not enough assets to satisfy all claims in full, no customer would get a full recovery of his or her funds.[14] In fact, Voyager had incorrectly represented that its account holders' funds were protected by FDIC insurance.[15]

Regarding the November 2022 bankruptcy of FTX, in August 2024, the U.S. District Court for the Southern District of New York ordered FTX to pay $12.7 billion in monetary relief to FTX customers and victims of FTX's fraud. The court noted that while FTX had claimed that customer assets were held in custody by FTX and that FTX segregated customer assets from its own assets, in fact, customer funds were commingled and misappropriated.[16]

Massive scandals involving nonbank providers of financial services are not unique to the U.S. The events surrounding the June 2022, insolvency of Wirecard, a German payments firm that owned a bank as a subsidiary, included accusations of company executives engaging in money laundering and accounting fraud, including approximately $2.3 billion in funds on the company's books that were found to be missing or never existed. According to Reuters, the head of Germany's financial regulatory authority called the accounting scandal at Wirecard, "a massive criminal

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[10] CHAPTER 11 TRUSTEE'S EIGHTH QUARTERLY BANKRUPTCY REPORT (Synapse Financial Tech. Inc.) (Bankr. C.D. Cal. 2024), BLOOMBERG LAW at 6 (Aug. 30, 2024) https://www.bloomberglaw.com/public/desktop/document/SynapseFinancialTechnologiesIncDocketNo124bk10646BankrCDCalApr222/4?doc_id=X5I2AJIDBR29DABK91SV3KGRVT0.

[11] *Id.* Exhibit B at 2.

[12] Voyager Digital Holdings, Inc. et al. (Case No. 22-10943 (MEW), Bankr. S.D.N.Y.) (Mar. 11, 2023), https://www.nysb.uscourts.gov/sites/default/files/opinions/312840_1170_opinion.pdf.

[13] *Id.* at 5.

[14] *Id.* at 49.

[15] Federal Trade Commission, FTC Business Blog, *Set phasers to false: FTC challenges crypto company Voyager's bogus "FDIC insured" claim* (Oct. 12, 2023), https://www.ftc.gov/business-guidance/blog/2023/10/set-phasers-false-ftc-challenges-crypto-company-voyagers-bogus-fdic-insured-claim.

[16] Press Release, Commodity Futures Trading Commission, *CFTC Obtains $12.7 Billion Judgment Against FTX and Alameda* (Aug. 8, 2024), https://www.cftc.gov/PressRoom/PressReleases/8938-24.

act."[17] Moreover, the same Reuters report indicated that the German government had considered bailing out Wirecard three days before its failure—a telling indication that problems at nonbank fintech partners can present concerns to policymakers about systemic risk.

In response to the increase in bank-fintech partnerships, and observed instances of unsafe and unsound third-party risk management practices and violations of laws and regulations associated with these arrangements, financial regulators have issued a number of significant reports and guidance documents related to third-party risk in recent years. These include, in addition to the Committee's Proposal, a 2022 study by the U.S. Treasury;[18] the Financial Stability Board's 2023 report on enhancing third-party risk management and oversight;[19] the U.S. federal banking agencies' 2023 guidance on third-party risk management;[20] and a recent joint statement by those agencies focused specifically on banks' deposit gathering arrangements with third parties.[21]

These issuances, collectively, reflect regulators' understanding that the proliferation of bank fintech partnerships is a development of fundamental importance. The sourcing by banks of core banking functions to unregulated third parties could compromise the achievement of important policy objectives for the safety and soundness of banks, the protection of consumers, and the prevention of the use of the financial system for illicit purposes. Given the speed with which social media can transmit concerns, if a debacle such as the Synapse bankruptcy were to occur with a fintech that had grown much larger in size, or that served large banks or many banks, the result could be panic retail withdrawals from fintechs and widespread fintech insolvencies, with potential systemic risk implications to the extent these firms were closely integrated with banks.

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17 For the information in this paragraph and additional information about Wirecard, see *Timeline: The rise and fall of Wirecard, a German tech champion*, REUTERS (Mar. 16, 2021), https://www.reuters.com/article/technology/timeline-the-rise-and-fall-of-wirecard-a-german-tech-champion-idUSKBN2B811J/.

18 U.S. Department of the Treasury, *Assessing the Impact of New Entrant Non-bank Firms on Competition in Consumer Finance Markets, Report to the White House Competition Council* 28 (Nov. 2022), https://home.treasury.gov/system/files/136/Assessing-the-Impact-of-New-Entrant-Nonbank-Firms.pdf.

19 Financial Stability Board, *Final report on enhancing third-party risk management and oversight– a toolkit for financial institutions and financial authorities* (Dec. 2023), www.fsb.org/wp-content/uploads/P041223-1.pdf.

20 *See* Federal Reserve Board of Governors, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, *Interagency Guidance on Third-Party Relationships: Risk Management*, 88 Fed. Reg. 111, June 9, 2023 at 37921, https://www.govinfo.gov/content/pkg/FR-2023-06-09/pdf/2023-12340.pdf.

21 Federal Reserve Board of Governors, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, *Joint Statement on Banks' Arrangements with Third Parties to Deliver Bank Deposit Products and Services* (July 25, 2024), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20240725c1.pdf.

In short, the Proposal is timely and important. Better Markets recommends three specific areas in which the document should be strengthened, as described in detail below, following a brief summary of the proposal.

SUMMARY OF THE PROPOSAL

The Proposal notes that ongoing developments in information technology have led to rapid adoption of new approaches to the provision of banking services, and have increased banks' dependency on third-party service providers ("TPSPs").[22] It notes that using third parties to perform activities on behalf of a bank may decrease the bank's control over the conduct of those activities and may introduce risks, but that nonetheless, whether activities are performed by a third party or by the bank, banks are required to operate in a safe and sound manner and in compliance with applicable laws and regulations.[23] It then presents a conceptual framework for managing third-party risk, centered around 12 principles. The 12 principles, paraphrased for the sake of brevity, are as follows:

- Principle 1: The board of directors has ultimate responsibility for the oversight of all TPSP arrangements and should approve a clear strategy for TPSP arrangements;

- Principle 2: The board of directors should ensure that management implements the policies and processes of the third-party risk management framework;

- Principle 3: Banks should perform a comprehensive risk assessment both before entering into and throughout a TPSP arrangement;

- Principle 4: Banks should conduct appropriate due diligence on a prospective TPSP prior to entering into an arrangement;

- Principle 5: TPSP arrangements should be governed by legally binding written contracts that clearly describe rights and obligations, responsibilities and expectations of all parties;

- Principle 6: Banks should dedicate sufficient resources to support a smooth transition of a new TPSP arrangement;

- Principle 7: Banks should monitor over time the performance, risks and criticality of TPSP arrangements and respond to issues as appropriate;

- Principle 8: Banks should maintain robust business continuity management to ensure their ability to operate in case of a TPSP service disruption;

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22 *Principles for the Sound Management of Third-Party Risk*, *supra* note 2 at 1.

23 *Id.* at 4.

- Principle 9: Banks should maintain exit plans for planned termination and exit strategies for unplanned termination of TPSP arrangements;

- Principle 10: Supervisors should consider third-party risk management as an integral part of ongoing assessment of banks;

- Principle 11: Supervisors should analyze the available information to identify potential systemic risks posed by the concentration of one or multiple TPSPs in the banking sector; and

- Principle 12: Supervisors should promote coordination and dialogue across sectors and borders to monitor systemic risks posed by critical TPSPs that provide services to banks.

The Proposal's discussion of the importance of banks' contracts with their TPSPs is useful and noteworthy. The Proposal states:

> Banks' contracts governing critical TPSP arrangements should at a minimum include … rights for banks to receive accurate, comprehensive and timely information … including but not limited to information on incidents and material changes to the services of TPSPs or their supply chains; rights of banks to access, audit and obtain relevant information from key nth parties; rights of supervisory authorities to access, audit and obtain relevant information from key nth parties as permitted under applicable laws and regulations within the respective jurisdictions.[24]

Better Markets also took note of the Proposal's discussion of the role of supervisors. In providing further context to principle 10, the Proposal states that supervisors should consider how a bank's third-party risk management supports its operational resilience; that supervisors' evaluations should consider the entire third-party life cycle (described in the Proposal as risk assessment, due diligence, contracting, monitoring and, as applicable, termination); and that supervisory emphasis should be placed on how banks integrate TPSP arrangements within their overall risk management processes.[25]

Regarding the identification by supervisors of systemic risk, the Proposal states that, "Concentration of services provided by TPSPs combined with lack of substitutability of TPSPs is relevant to the identification of systemic risks."[26] To support supervisors' ability to identify systemic risks, the Proposal states that supervisors should be able to obtain information regarding banks' TPSP arrangements, and that supervisors could use information such as registers of TPSP

24 *Id.* at 12.

25 *Id.* at 16.

26 *Id.*

arrangements, maps of interconnections and interdependencies, recovery and resolution plans, and incident reports involving TPSPs.[27]

SUMMARY OF COMMENTS

Better Markets commends the Committee for seeking public comment on this Proposal. We broadly agree with the substance of the Proposal's 12 principles for the management of third-party risk. That said, however, supervisory guidance is a frail reed with which to constrain the powerful economic incentives driving the proliferation of bank partnerships with third parties. Accordingly, we recommend that the document address the importance of national supervisors having in place clear regulatory standards to address third-party risk; the enforcement of such standards; and data collection regarding selected TPSP arrangements. More specifically, Better Markets recommends:

- The guidelines should state that national supervisors should codify in regulation, to the extent permitted by the laws in their respective jurisdictions, specific enforceable standards for banks' management of third-party risk.

- The guidelines should state that national supervisors should use the authorities available to them under the laws of their respective jurisdictions to examine, and as appropriate take enforcement actions against, third-party firms that provide core banking services in contractual arrangements with banks.

- The guidelines should state that national supervisors should use the authorities available to them under the laws of their respective jurisdictions to require banks to identify, in periodic publicly available financial reports, any third-party providers of material amounts of deposit-taking, payments, or lending conducted on behalf of the bank.

These comments are discussed in more detail below.

COMMENTS

I. THE GUIDELINES SHOULD STATE THAT NATIONAL SUPERVISORS SHOULD CODIFY IN REGULATION, TO THE EXTENT PERMITTED BY THE LAWS IN THEIR RESPECTIVE JURISDICTIONS, SPECIFIC ENFORCEABLE STANDARDS FOR BANKS' MANAGEMENT OF THIRD-PARTY RISK.

The guidelines lay out a broad, principles-based framework for banks' management of third-party risk, a framework that occupies the realm of supervisory guidance rather than regulation. Supervisory guidance alone, however, is an insufficient tool with which to constrain the powerful economic incentives driving the growth of bank partnerships with third-party firms, including notably with fintechs. Without clear, legally enforceable guardrails, incentives for

[27] *Id.*

revenue growth will incentivize too many banks to, in effect, rent out their access to national payment systems and deposit insurance to unregulated actors, in ways that violate laws, harm consumers, and threaten the stability of individual banks and the financial system.

Accordingly, Better Markets recommends that these guidelines include language emphasizing the importance of national supervisors' having clear and enforceable standards within their respective jurisdictions to address deficiencies in the management of third-party risks. In identifying the boundary between what supervisory expectations merit being codified in regulation, and what can be left to the constructive ambiguity of the supervisory process, there is no single right answer. Nonetheless, certain elements of the Proposal and other existing guidance appear so fundamental that they warrant being codified in regulation. These include:

(i) for banks that have material third-party arrangements, an obligation for the bank to have and adhere to written policies designed to ensure that significant activities of third parties on behalf of the bank are conducted in compliance with laws and regulations and consistent with the safety and soundness of the bank;

(ii) an obligation that contracts that banks enter into with TPSPs for core banking functions must specify the obligations of the third party and the banking organization to comply with applicable laws and regulations;

(iii) an obligation that such contracts must provide the banking organization with the right to receive accurate, comprehensive, and timely information about the activities the TPSP conducts on the bank's behalf, including but not limited to information on compliance with laws and regulations and on incidents and material changes to the services of TPSPs or their supply chains, and that they must provide the banking organization with the right to audit and require timely remediation if issues arise; and

(iv) an obligation that such contracts must explicitly inform the third party (or require the third party to agree) that the performance of activities by third parties for the banking organization is subject to regulatory examination and oversight, and provide for appropriate retention of, and access by the bank regulatory agency to, all relevant documentation and other materials.

Each of these four obligations is consistent with the principles set forth in this Proposal and with other recent supervisory guidance. Obligation (i) is consistent with, and aligns well with, Principles 1 and 2 of the Proposal, and with the overarching principle that the bank is accountable for actions third parties undertake on its behalf, and that the bank's board of directors has ultimate responsibility for ensuring an appropriate third-party risk strategy exists and is faithfully implemented by management. Obligations (ii) through (iv) are consistent with the Proposal's Principle 5 and its accompanying discussion regarding what should be covered by bank-TPSP contracts. In obligation (iv), the requirement for the TPSP to agree to regulatory examination and

oversight and provide documents and other information may be appropriate given the specific legal authorities of the national supervisor.[28]

II. THE GUIDELINES SHOULD STATE THAT NATIONAL SUPERVISORS SHOULD USE THE AUTHORITIES AVAILABLE TO THEM UNDER THE LAWS OF THEIR RESPECTIVE JURISDICTIONS TO EXAMINE, AND AS APPROPRIATE TAKE ENFORCEMENT ACTIONS AGAINST, THIRD-PARTY FIRMS THAT PROVIDE CORE BANKING SERVICES IN CONTRACTUAL ARRANGEMENTS WITH BANKS.

In these guidelines, the Committee is providing generic, principles-based advice not just to banks, but to supervisors. Its advice to supervisors includes safe and uncontroversial recommendations such as applying the guidelines proportionally, making third-party risk management an integral part of the overall risk assessment, and placing emphasis on how banks integrate TPSP arrangements within their overall risk management processes. Better Markets recommends that the guidelines should also advise supervisors to make effective use of their available authorities to hold both partner banks and third parties accountable for legal violations or unsound practices associated with third-party arrangements to provide banking services.

The ability of supervisors to examine third-party providers is particularly important and the guidance should address this topic. In some jurisdictions (e.g., the United States), supervisors have explicit statutory authority to examine and take enforcement actions against third-party entities acting on the bank's behalf.[29] Such examination authority may be particularly important when a third party serves large banks or many banks, and issues of systemic risk come into play. As suggested in Comment 1 above, the guidance should note that in a jurisdiction where the supervisors lack examination authority over banks' third-party partners, it may be advisable for supervisors to require the bank to require the third party to agree to be subject to supervisory examination and enforcement as a condition of entering into a contract to perform a core banking function on behalf of a bank—and that if such agreement cannot be reached, the bank may not enter into the contract.

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[28] *See also Interagency Guidance on Third-Party Relationships: Risk Management, supra* note 20 at 37929 for the overarching principle of bank accountability, and at 37932 and 37934 for the rights and obligations that should be included in TPSP contracts. The discussion of contracts there is similar to the discussion in the Committee's Proposal.

[29] *See* 12 U.S.C. 1464(d)(7)(D) for savings associations and 12 U.S.C. 1867(c)(1) for banks.

III. THE GUIDELINES SHOULD STATE THAT NATIONAL SUPERVISORS SHOULD USE THE AUTHORITIES AVAILABLE TO THEM UNDER THE LAWS OF THEIR RESPECTIVE JURISDICTIONS TO REQUIRE BANKS TO IDENTIFY, IN PERIODIC PUBLICLY AVAILABLE FINANCIAL REPORTS, ANY THIRD-PARTY PROVIDERS OF MATERIAL AMOUNTS OF DEPOSIT-TAKING, PAYMENTS, OR LENDING CONDUCTED ON BEHALF OF THE BANK.

Given the proliferation of arrangements in which fintechs provide core banking services on behalf of partner banks, there would be considerable benefits to bank regulators and the public if data on these arrangements were publicly available in an electronic and readily accessible format. From a consumer's perspective, simply knowing which entity he or she is dealing with, and in what capacity, may be helpful in knowing where to go for help in the event a problem arises. From a regulatory perspective, consumer complaints lodged against a third-party provider and tabulated in some public forum could be readily cross-checked to identify partner banks and facilitate the consumer protection supervision process. If an operational or financial problem emerged at a third-party provider, such data would enable the rapid identification of banks that may be affected. Data on bank partnerships with third parties also could facilitate the identification of potential systemic risks in situations where the third-party partners with large banks or with many banks.

The guidelines already recommend that supervisors make use of available data, such as "registers of TPSP arrangements," and "maps of interconnections and interdependencies" to identify potential systemic risks. In some jurisdictions, such registers or maps may not exist. Most jurisdictions, however, likely have some provision for regular, standardized financial reports from banks to their regulators. In the U.S., for example, the regular quarterly reports filed by banks with their regulators include not only financial data, but a list of internet addresses and trade names under which the bank does business.[30]

Accordingly, Better Markets recommends that the guidelines should note that many national supervisors may already have the authority to require banks to report material third-party arrangements that provide banking services, and that it should recommend that supervisors use this authority if practicable. Reportable arrangements might include, for example, third parties that perform material amounts of deposit-taking, payments, or lending on behalf of the reporting bank.

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[30] Federal Financial Institution Examination Council, Consolidated Reports of Condition and Income, Schedule RC-M (Memoranda), question 8, https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202409_f.pdf. There are three versions of these quarterly reports for banks of different sizes; all three versions require banks to report this information.

CONCLUSION

We hope these comments are helpful for the finalization of this Proposal.

Sincerely,

Shayna M. Olesiuk
Director of Banking Policy
solesiuk@bettermarkets.org

Better Markets, Inc.
2000 Pennsylvania Avenue, NW
Suite 4008
Washington, DC 20006
(202) 618-6464
http://www.bettermarkets.org