

DAVID SCHWEIKERT
6TH DISTRICT, ARIZONA

WASHINGTON, DC OFFICE:
1205 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2190
FAX: (202) 225-0096

ARIZONA OFFICE:
10603 NORTH HAYDEN ROAD
SUITE 108
SCOTTSDALE, AZ 85260
(480) 946-2411
FAX: (480) 946-2446



COMMITTEE ON
SMALL BUSINESS

COMMITTEE ON
SCIENCE, SPACE, AND
TECHNOLOGY

Congress of the United States
House of Representatives
Washington, DC 20515-0306

The Honorable Thomas J. Curry
Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219

Dear Comptroller Curry,

In recent years, digital currencies and their underlying technologies—variously described as cryptocurrencies, open blockchain networks, and distributed ledger technology—have expanded their presence in the financial ecosystem. These technologies are young, but their early applications presage a very bright future for financial inclusion and financial innovation. In particular, open blockchain networks can today facilitate critical services such as value transfer directly between users. The global proliferation of smart mobile devices may, when combined with open blockchain networks, provide banking and financial services to those who are underserved by the existing financial sector. Similarly, decentralized computing platforms have displayed both the promise and the challenges inherent in automating the performance of financial agreements via so-called smart-contracts.

The World Economic Forum has indicated that these technologies have “the potential to become a game changer for small businesses.”¹ The Financial Stability Oversight Council (“FSOC”) has noted that “[b]y eliminating the need for some transactions to flow through trusted third parties, distributed ledgers could reduce concentrated risk exposures to those firms and infrastructures” and “could reduce the counterparty and operational risks which arise when financial assets are exchanged.”²

While these new technologies promise substantial gains in efficiency and consumer well-being, they also generate complex regulatory questions. The FSOC has indicated that these technologies “pose certain risks and uncertainties which market participants and financial regulators will need to monitor” and stressed that the global and cross-jurisdictional nature of these Internet-driven

¹ World Economic Forum, The Future of FinTech: A Paradigm Shift in Small Business Finance, http://www3.weforum.org/docs/IP/2015/FS/GAC15_The_Future_of_FinTech_Paradigm_Shift_Small_Business_Finance_report_2015.pdf

² FSOC 2016 Annual Report, <https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf>

technologies necessitates “a considerable degree of coordination among regulators . . . to effectively identify and address risks.”

We appreciate that the OCC has made public comments on the role these new technologies may play in the financial system and its long term evolution, calling digital currencies “potentially revolutionary in their impact.” We also appreciate your recognition of the need for regulatory flexibility, noting that the “current regulatory regime, which is rooted in 20th century concepts and approaches, will need to change and adapt in order to remain relevant into the 21st century.”³

However, we note that the scope of this commitment to fostering regulatory flexibility has been, at times, narrowly specified: “We are making certain that *institutions with federal charters* have a regulatory framework that is receptive to responsible innovation along with the supervision that supports it.”⁴

We note that much of the development of open blockchain infrastructure, digital currencies, as well as the development of consumer-facing applications built upon these networks does not originate within institutions that are already federally chartered. Moreover, firms within these sectors may only engage or wish to engage in *some* of the core banking activities described in the National Bank Act.

The OCC has suggested that it is open to offering a national charter to fintech firms, including a “limited charter.”⁵ The fintech industry has responded positively to this possibility and several firms have called for the development of such a charter in comments responding to the OCC’s innovation white paper. We note that several of these comments come from marketplace lenders or their advocates, while others originate with digital currency and blockchain groups or firms. We also note that these two groups generally have different needs from a limited charter. Digital currency firms, in particular, do not seek to engage in lending or deposit-taking, but instead seek to identify the regulator with the ability to preempt state money transmission law and access to the payment system.

³ Remarks by Thomas J. Curry Comptroller of the Currency Before the Institute of International Bankers Washington, D.C. March 2, 2015, <http://www.occ.treas.gov/news-issuances/speeches/2015/pub-speech-2015-32.pdf>.

⁴ Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective, <http://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf>.

⁵ “Throughout our 150-plus years, the OCC has been willing to let the national bank charter adapt to our nation’s changing economic needs. I think our white paper on innovation will continue that tradition, opening the door to change without neglecting risk management.” Remarks By Thomas J. Curry Comptroller of the Currency Before the Harvard Kennedy School’s New Directions in Regulation Seminar March 31, 2016 Cambridge, Massachusetts <http://www.occ.treas.gov/news-issuances/speeches/2016/pub-speech-2016-39.pdf>

As Congress contemplates its position in overseeing and facilitating the safe development and implementation of these new and open networks for financial innovation, it is essential that we better understand the way the OCC is approaching these emergent tools. We would appreciate your views on the following issues:

A limited purpose national charter for or available to digital currency firms

Is the OCC actively looking at creating a new limited purpose charter for any non-bank financial services firms? How is the OCC approaching the question of offering a specific limited purpose charter for digital currency firms or a charter that would be available to these firms among others. We note that several commentators have called for a reduced-risk charter that would only offer access to the payments system and afford chartered firms preemption of state money transmission law.⁶ What does the OCC believe would be the chief impediments to adopting this approach? What questions would need to be addressed, and what is the OCC's strategy for seeking answers to these questions or more information from the open blockchain and digital currency industry and technologists?

International competitiveness and flexible regulation

Several open blockchain advocates and firms have contrasted the regulatory framework here in the U.S. with the approach taken in other countries.⁷ We are particularly concerned with the suggestion that the U.S. may lose its competitive edge in these technologies because of two areas where international approaches differ from the approach in the U.S.: (1) the standards-based rather than rules-based approach to regulation found in the U.K. and Singapore and (2) the unified regulatory landscape afforded non-bank money services businesses across the EU member nations thanks to license passporting. What steps has the OCC taken to investigate its potential role in providing a more flexible and uniform approach to the regulation of non-bank financial services as well as open blockchain firms here in the U.S.? What steps has the OCC taken or does the OCC intend to take to coordinate with AML/CTF authorities (e.g. FinCEN, OFAC, and FATF) as well as State banking regulators to develop these flexible and uniform approaches?

Facilitating relationships between national banks and open blockchain firms

Digital Currency firms have reported difficulties in obtaining and maintaining banking relationships necessary to conduct business.⁸ Is the OCC taking steps to ensure that national

⁶ See, e.g., Coin Center, Comments to the Office of the Comptroller of the Currency on Supporting Responsible Innovation, <http://coincenter.org/entry/comments-to-the-office-of-the-comptroller-of-the-currency-on-supporting-responsible-innovation>; Coinbase, Re: Coinbase Response to OCC's Innovation Initiative <https://www.occ.gov/topics/bank-operations/innovation/comment-coinbase-letter.pdf>

⁷ See, e.g., Coin Center, Comments to the Office of the Comptroller of the Currency on Supporting Responsible Innovation, <http://coincenter.org/entry/comments-to-the-office-of-the-comptroller-of-the-currency-on-supporting-responsible-innovation>; Circle, Comments on Supporting Responsible Innovation In The Federal Banking System: An OCC Perspective <https://www.occ.gov/topics/bank-operations/innovation/comment-circle-financial.pdf>

⁸ Pratin Vallabhaneni, David Fauvre, and Andrew Shipe, *Overcoming Obstacles to Banking Virtual Currency Businesses*, <http://coincenter.org/entry/overcoming-obstacles-to-banking-virtual-currency-businesses>

banks are aware of the ability to safely bank compliant digital currency firms without encountering undue regulatory risks?

We appreciate the information you can provide on the OCC's role in facilitating American competitiveness and safe consumer use of these new and emerging technologies.

A handwritten signature in blue ink, reading "David Schweikert". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

David Schweikert
Member of Congress