



July 9, 2021

Ann E. Misback, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington D.C. 20551

Regarding: Proposed Guidelines for Evaluating Account and Service Requests;  
Docket No. OP-1747

Dear Ms. Misback:

The Community Bankers Association of Illinois (“CBAI”), which proudly represents nearly 300 Illinois community banks, appreciates the opportunity to provide our observations and recommendations regarding the Board of Governors of the Federal Reserve System’s (“Board” or “Federal Reserve” or “Fed”) proposed guidelines for evaluating requests for accounts and services at Federal Reserve Banks (“Proposal”). CBAI believes the Board’s analysis of the proposed evaluation guidelines should be guided by the policy goals stated in the Proposal of, “(1) ensuring the safety and soundness of the banking system, (2) effectively implementing monetary policy, (3) promoting financial stability, (4) protecting consumers, and (5) promoting a safe, efficient, inclusive, and innovative payments system.”

CBAI acknowledges that the proposed guidelines are intended to “ensure that Reserve Banks

**CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high-quality products. CBAI members hold more than \$70 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit [www.cbai.com](http://www.cbai.com).**

evaluate a transparent and consistent set of factors when reviewing [these] requests.” We also understand that “the payments landscape is evolving rapidly,” there is an “uptick in novel charter types,” and the Board is “receiving an increasing number of inquiries and requests for access to accounts and services from novel institutions.” We agree that “a structured, transparent, and detailed framework would help foster a consistent evaluation of access requests, from both a risk and policy perspective, across all twelve Reserve Banks ... [to] mitigate the risk that an individual decision by Reserve Banks could create a de facto System policy for a particular business model or risk profile,” but **CBAI urges great caution going forward to prevent undermining the current regulated financial ecosystem.**

The Proposal’s access guidelines that the Federal Reserve will consider are justifiably comprehensive and appropriately centered on a foundation of risk management and mitigation.

- Each institution must be legally eligible for an account or services and must have a well-founded, clear, transparent, and enforceable legal basis for its operations.
- Provision for an account and services should not present or create undue credit, operational, settlement, cyber or other risks to the Reserve Bank.
- Provision for an account and services should not present or create undue credit, liquidity, operational, settlement, cyber or other risks to the overall payment system.
- Provision for an account and services should not present undue risks to the stability of the U.S. financial system.
- Provision for an account and services should not present undue risks to the overall economy by facilitating activities such as money laundering, terrorism financing, fraud, cybercrimes, or other illicit activity.
- Provision for an account and services should not adversely affect the Federal Reserve’s ability to implement monetary policy.

To ensure the guidelines are followed and the goals are achieved, and given the non-traditional nature of these novel institutions, **CBAI urges the Federal Reserve to pay particular attention to ensure that these institutions maintain robust levels of capital and liquidity and follow strict consumer privacy, BSA/ALM, and cybersecurity guidelines.**

## **CBAI’s Overriding Concerns**

CBAI has significant concerns with an increasing number and type of non-traditional institutions that want to gain a competitive advantage over community banks via a back-door entry into

banking. These institutions include but are not limited to financial technology firms (Fintechs), industrial loan companies (ILCs), certain state-chartered institutions (Wyoming's SPDI charters), the OCC's Special Purpose National Bank (SPNB) charters, uninsured depository institutions (UDIs), pass-through investment entities (PTIEs), neobanks, and others (collectively "Novel Charters"). These Novel Charters perform some but not all the essential banking functions which entitle a financial institution to be called a bank (i.e., taking FDIC-insured deposits, making loans and processing payments). The necessity of performing all of these functions should be a requirement in the Federal Reserve's determination of an institution's legal eligibility for a Fed account and access to services. \*

The motivation of these Novel Charters being called a bank is obvious. The term *bank* lends credibility and connotes strength and stability. Other benefits to the Novel Charters include offering low-cost deposits, access to FDIC insurance, access to Discount Window borrowings, and a more direct access to the payments system with reduced operating costs. Performing only some but not all banking functions, however, allows Novel Charters to gain a competitive advantage over actual, full-service, fully regulated, legitimate banks because these other institutions are not subject to a complete, necessary, and costly regulatory compliance regime (i.e., safety and soundness, consumer protection, GLBA data security, BSA/AML/sanctions, and the Community Reinvestment Act, to name a few).

Some of these Novel Charters create a toxic mix of commerce and financial activity which CBAI has consistently opposed. When large commercial and technology companies gain entry into financial services, their concentrations of power and influence can present serious privacy concerns and undermine financial stability and the economy. For this reason, the Federal Reserve should be additionally cautious about approving accounts and access to services for Novel Charters.

Unfortunately, many people are not aware of the important differences between actual, full service, fully regulated, legitimate banks and those who just want to benefit from being called a bank. The institutions which are only pretending to be banks rely on people being uninformed and leveraging the benefit of the term bank to their advantage. This is wrong, misleading, and potentially harms consumers and small businesses. Community banks have the right to be called

\* Permitted exceptions should include appropriately regulated entities whose purpose is to work together with, provide services to, and cooperatively act on behalf of actual, full service, fully regulated, legitimate banks.

banks because they perform all the required functions, they are subject to the full suite of laws, rules, and regulations, they are regularly examined for compliance, they are subject to enforcement actions, and for well over a century they have earned the trust of their customers and communities.

There are many examples, domestic and international, of the abuse of the term bank. Legitimate banks must be diligent in protecting the term that accurately describes them. Prudential regulators, who are responsible for the safety and soundness of the banks they regulate, must support this important effort by not eroding the value of the term bank in rulemaking and must investigate and swiftly punish those that would misuse that important description and call themselves banks when they are not.

CBAI believes a disservice will be done to community banks, the financial system, consumers, small businesses, our economy and American taxpayers if the Federal Reserve should not uphold the strictest guidelines for eligibility for an account and services. **CBAI urges the Federal Reserve to not blur the distinction between actual, full-service, fully regulated, legitimate banks and Novel Charters which are trying to gain all the competitive benefits of being a bank, without assuming all the required responsibilities, and prohibit Novel Charters from being eligible for opening an account and directly accessing the services of the Federal Reserve.**

## **Responsible Innovation**

CBAI appreciates the need for innovation to satisfy consumer and small business demands and to be competitive with the rest of the world in providing financial services. CBAI is active in other financial modernization efforts, namely faster payments, by supporting the earliest possible launch of the FedNow Service with robust functionality and interoperability, and the modernization of the Community Reinvestment Act which should be extended to include many other financial service providers for compliance.

CBAI disagrees with the belief held by some that restricting access to the Federal Reserve is protectionism, being anti-competitive, or against innovation. Community banks not only compete vigorously among themselves, but also with the largest banks, credit unions, commercial and consumer finance companies, payment services, check cashing services, and a host of others. If all competitors are being appropriately and consistently regulated and examined for compliance, and the playing field is otherwise level, community bankers do not fear

competition. However, if Novel Charters are subject to a lesser regulatory regime, they will have a competitive advantage which discriminates against the community banks. Policymakers, and the prudential regulators who are charged with protecting the safety and soundness of the banks they regulate, must prevent such discrimination.

CBAI believes providing Novel Charters with access to Fed accounts and its services may possibly help to accomplish one of the Fed's policy goals (i.e., potentially a more inclusive and innovative payments system) but we believe it will be at the expense of other goals which require ensuring safety and soundness, promoting financial stability, implementing monetary policy, a safe and efficient payments system, and protecting consumers. **CBAI urges the Fed to not attempt to fulfill part of a policy goal at the expense of others and to support responsible innovation among the many thousands of actual, full service, fully regulated, legitimate banks who are already explicitly eligible for a Federal Reserve account and have direct access to the Fed's services.**

## **Limitations of the Proposal**

The goal of this Proposal is to adopt guidelines for evaluating applications and CBAI acknowledges certain ambiguities exist that require clarification about eligibility for a Federal Reserve account and access to its services. CBAI respectfully disagrees with the limitation in the Proposal for the Fed to consider clarifying the interpretation of legal eligibility to some point "in the future." This determination of eligibility is central to deciding who can and cannot have a Fed account and access to services. Not making that determination now, while deciding on other policy and evaluation guidelines, is the regulatory equivalent to putting the cart before the horse. **CBAI urges the Federal Reserve to clarify the eligibility determination now, consistent with the Board's policy goals and access guidelines, which should lead to a determination that Novel Charters are not eligible for a Federal Reserve account and cannot have direct access to the Fed's services.**

The approval of an application for Federal Reserve accounts and services is a decision that the Fed must have the authority to approve or deny, based on eligibility and sound analysis, and as stated in the Proposal "to make clear that legal eligibility does not bestow the right to obtain an account and services." The Federal Reserve must also have the ability to periodically review an institution that has previously been approved if the risk profile or business model changes sufficiently to threaten the Fed's policy goals or violate the approval guidelines.

The Proposal accurately recognizes that there exists the possibility that the actions of one of the Federal Reserve Banks “could create a de facto System policy for a particular business model or risk profile.” A decision today by one of the Fed Banks to approve an application for a Novel Charter could establish such a precedent which may likely conflict with the Fed’s decision to limit Novel Charters to accounts and access to services resulting from newly established guidelines from this public comment and evaluation process. To prevent this situation from occurring, **CBAI urges the Federal Reserve to institute a system-wide moratorium on granting Fed accounts and direct access to services to Novel Charters until the conclusion of this regulatory process.**

**In addition, CBAI urges the Fed to make certain that the approved and strict standards are not merely guidelines but actual requirements that each of the Federal Reserve Banks must follow for approving an application for an account and direct access to services.**

**Finally, CBAI urges the Fed to establish an audit process for ensuring consistency in the review, approval, and ongoing examination throughout the system’s Federal Reserve Banks to ensure compliance.**

## **Conclusion**

The Federal Reserve should begin this regulatory process by focusing on determining which institutions are legally entitled to apply for an account and services. CBAI believes that Novel Charters do not satisfy the definition of a bank because they do not offer all the required banking services, they are not subject to all of the appropriate laws, rules and regulations, and they may not be supervised by all the appropriate federal regulators at both the institution and the holding company level. These Novel Charters are not banks in the appropriate sense of the term and thus should not have the right to be eligible to make application for a Fed account and services.

If an institution is a bank, using the above definition, then it can apply, and that application can be considered for approval using the principals stated above which are consistent with fulfilling the Fed’s policy goals. These requirements will provide transparency, clarity, and consistency especially at the outset, by specifically denying Novel Charters the ability to apply for an account with or give them access to services of the Federal Reserve. These requirements will also support the strong faith that consumers, small businesses and communities currently have in the safety and stability of our financial system and their community banks.

Board of Governors of the Federal Reserve System  
July 9, 2021  
Page 7

Thank you for considering our thoughts and recommendations on this important matter. If you have any questions or require any additional information, please contact me at [davids@cbai.com](mailto:davids@cbai.com) or (847) 909-8341.

Sincerely,

/s/

David G. Schroeder  
Senior Vice President  
Federal Governmental Relations