



June 14, 2019

By Electronic Submission (pilotprogram@occ.treas.gov)

Office of Innovation
Office of the Comptroller of the Currency
400 7th Street, S.W.
Washington, D.C. 20219

Re: OCC Innovation Pilot Program Proposal

The Securities Industry and Financial Markets Association (SIFMA)¹ appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (the OCC) proposal to create an Innovation Pilot Program (the Pilot Program).² SIFMA has urged policymakers to develop mechanisms for innovation, such as the proposed Pilot Program, as valuable regulatory frameworks for fostering the use of emerging technologies to develop new business models, products and services.³

We applaud the OCC for issuing this proposal. Whether established entities or new entrants to the market, U.S. financial firms face regulatory risk and constraints in bringing innovative financial services and technologies to market, which in turn hampers their ability to provide innovation's benefits to consumers and investors. Moreover, because the current U.S. regulatory framework for addressing innovation is largely entity-based rather than activities-

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² <https://www.occ.treas.gov/topics/responsible-innovation/occ-innovation-pilot-program.pdf>

³ <https://www.sifma.org/wp-content/uploads/2018/04/SIFMA-EO-Fintech-White-Paper.pdf>

based, consumers and investors face innovation's risks unevenly, based in large measure on whether innovative activities take place inside or outside of the regulatory perimeter rather than on the nature of the activities themselves.

In addition to lacking a formalized mechanism – with clear parameters and therefore transparent and predictable risks – for fostering innovation, the U.S. regulatory environment is particularly complex and challenging due to the fragmentation in the regulatory oversight of financial services firms. While the U.S. has historically led the world in innovation in financial services, regulatory fragmentation coupled with lack of regulatory certainty puts the U.S. at risk of relinquishing this leadership role.

Mechanisms for innovation, such as the Pilot Program, are valuable vehicles for regulators and supervisors to help financial services firms overcome these challenges as they work to turn emerging technologies into the next generation of services that benefit consumers. Financial market participants may use these programs to pilot new technologies, which may better serve their consumers and investors, while providing regulators with appropriate visibility into these pilot offerings through data sharing programs, such as those proposed by the OCC.

As the U.S. Treasury noted in its July 2018 report, *A Financial System That Creates Economic Opportunities - Nonbank Financials, Fintech, and Innovation*, “A regulatory environment with largely binary outcomes — either approval or disapproval — may lack appropriate flexibility for dealing with innovations and often results in extensive delays, after which the innovation has become obsolete.”⁴ To help address this problem, the U.S. Treasury recommended that federal and state financial regulators establish a unified solution that “coordinates and expedites regulatory relief under applicable laws and regulations to permit meaningful experimentation for innovative products, services, and processes.”

While we appreciate the OCC's proposal to create a Pilot Program that will foster financial services innovation, we would like to highlight several concerns with the proposal that could impede both firms' overall participation in the Pilot Program and the value that participants would derive from participation. Our concerns and recommendations focus on: (i) the scope of

⁴ https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf

the Pilot Program regulatory relief; (ii) ensuring that the Pilot Program is a special tool, not a checkpoint that all innovation must pass through; (iii) effective coordination among regulators (iv) the level of public disclosures around Pilot Program participation; (v) information security around the program; (vi) the scope of technology initiatives eligible for of Pilot Program participation; and (vii) and the importance of machine-readable rulebooks. We have also attached our previously released recommendations for sandbox programs, which provide additional perspective on key features that can make these programs most effective as forums for industry innovation.

Scope of Pilot Program Relief

One area of concern is around the scope of the Pilot Program relief. As currently proposed, the scope of regulatory relief provided to Pilot Program participants is narrowly defined, with the proposal noting that the Pilot Program would provide “no statutory or regulatory waivers”. While firms understand that participation in sandboxes does not exempt them from a broad range of regulatory and client obligations, an innovation pilot program needs to provide meaningful regulatory relief for firms to support their participation and experimentation.

A sandbox environment is intended for projects which are not ready for full scale production implementation, and as such are working through issues on coding and/or design that may be noncompliant with applicable law until resolved, or that touch on gray areas in the law, but via the sandbox environment the firm would have the opportunity to identify and correct such errors and/or clarify ambiguities prior to launching the project at a larger scale commercially. Relief from strict regulatory compliance is a vital prerequisite to draw firms into the test environment, precisely so that those areas of noncompliance may be identified and remediated and avoid harm to the consumers.

Without offering this regulatory relief, the regulatory uncertainty associated with participating in the Pilot Program could, by itself, deter banks from participating. Similarly, the lack of meaningful regulatory relief could limit the opportunity the program provides for firms to experiment and innovate.

Industry innovation should not be constrained to participation in the Pilot Program

While the development of the Pilot Program can offer a useful new tool for firms to support innovation, it is essential that participation in the program not become a checkpoint or hurdle that broader innovation needs to pass through before being implemented. While there may be particular programs, products, or initiatives that would benefit from participation in the Pilot program or other sandbox initiatives, there will be a much broader range of technology driven innovations which will take place during the normal course of business. It is essential that the development of the Pilot Program not turn it into another regulatory "checkpoint" to navigate when piloting a product. This is especially the case for those firms who have onsite supervision, though smaller banks without onsite supervision may benefit from the closer OCC interaction. Instead, the design and implementation of the program should focus on ensuring that it serves as a special tool for the right kinds of initiatives within a larger regulatory approach that supports innovation occurring more broadly within the industry.

Coordination among regulators

SIFMA acknowledges the challenges of establishing a single U.S. Federal regulatory sandbox, given U.S. regulatory fragmentation. We nonetheless emphasize that regulatory coordination is critical to the success of any innovation program. The value of a single regulator's sandbox will be determined in large part by the extent of coordination with other regulators and supervisors at both the Federal and state level. While we are encouraged to see that the OCC's proposal highlights the importance of regulatory coordination at both the Federal and state levels, the details of this collaboration will need to be expanded, confirmed, and made clear for program participants for the Pilot Program to be most effective.

As policymakers develop sandbox programs, SIFMA continues to believe that the Financial Stability Oversight Council (FSOC) (and/or through a focused subgroup such as an FSOC Fintech Committee⁵) could provide a venue to help the relevant regulators coordinate sandbox programs and design and implement the relevant regulatory relief necessary for firms to make the most effective use of these programs.

⁵ <https://www.sifma.org/wp-content/uploads/2018/04/SIFMA-EO-Fintech-White-Paper.pdf>

However, on a project by project basis, the OCC should only coordinate with other regulators upon the participating bank's request. Such coordination may unnecessarily delay the implementation of new technology, though in other cases firms may request coordination so their pilot program can align review from multiple relevant regulators.

Transparency of Pilot Program Participation

We would also like to urge caution around the scope of the publication of information on Pilot Program participants and their experiences. We appreciate the OCC's proposal calling for the program to "maintain the confidentiality of proprietary information, including the identification of participating entities," as outlined in the proposal. Similarly, in SIFMA's sandbox principles, we highlighted the importance of confidentiality, noting that "regulators should keep the application and related correspondence strictly confidential." Maintaining this confidentiality is of the utmost importance – disclosure of confidential information on a proposed product or service could severely hamper participating firms' ability to innovate.

However, we recognize the value in developing and publishing publicly the Pilot Program's best practices. We would urge the OCC to balance the need for confidentiality with the value in developing public best practices by, among other things, consulting with firms on the timing, content, and level of detail in public statements related to products in the Pilot Program.

We would additionally encourage the OCC to release publicly legal and policy decisions made through the Pilot Program that, when applied generally, would clarify legal or regulatory requirements and foster innovation. For example, if a bank in the program received a legal interpretation that aided launch of a pilot, that interpretation should be made public. Of course, any disclosures of this kind would need to be anonymized, and potentially be released only after a delay for competitive concerns. These releases should also reflect dialogue and consultation with the participating bank whose activities in the program spurred the new interpretation.

Balancing the value of supporting innovation through the release of generalized information on Pilot Program activity and anonymized information of legal and policy decisions that result from pilots with the critical importance of confidentiality will be essential. We strongly recommend that the OCC work with participating firms as they develop any public statements based on their experiences in the pilot program.

Importance of Information Security

Information security controls for the Pilot Program will be critically important. Although the proposal does not mention this issue, ensuring that information on the activities being carried out through the program and the information surrounding pilots and their applications is protected is essential. In addition to the confidentiality controls around disclosure of information discussed above, developing the right information security program is a key part of protecting program participants and their proprietary technical information, business plans, and other sensitive information. This protection and attention to information security will likely need to extend beyond formal program participants to cover the application process as well.

We encourage the OCC to work with the industry on developing the proper technical specifications to ensure that the necessary information security and cybersecurity controls are included in the architecture of the sandbox. Protecting participant information must be a fundamental starting point for the program.

Scope for Program Participation beyond new product development

We also encourage the OCC to use the Pilot Program as a forum for industry technology innovation projects wider than just the development of new products. For example, the program should aid both new product development as well as innovative regulatory compliance programs. In particular, the Pilot Program could be used to support the growing body of work to develop FinTech applications for regulatory compliance, often referred to as "reg tech." Allowing these initiatives would allow financial institutions to work with the OCC to develop innovative reg tech solutions that can be introduced for testing and experimentation and could substantially assist with the efficiency of both the OCC's and the firm's compliance and surveillance processes and operations.

Reg tech initiatives may also be an area where the OCC can explore how to support participation by new entrants who are not planning on offering banking services themselves but are instead aiming to make aspects of regulatory compliance more efficient for OCC regulated entities. Finding ways for these firms to take advantage of the pilot program can help make sure that their technology innovations can be applied to make firms' supervision, controls, and regulatory compliance more effective.

Machine Readable Rulebooks

Alongside consideration of how its Pilot Program can support industry innovation, we encourage the OCC to join the work underway across the regulatory community to develop machine-readable rules (and rulebooks) and a taxonomy of tags for rules. For example, FINRA has a project underway to develop such a rulebook for use by members and third-party vendors, which follows an example set by UK regulators⁶. A machine-readable rulebook, with a common taxonomy, can help with developing better search capabilities and in creating automated programs that can greatly assist compliance and supervision functions.

Broad Scope of Eligible Initiatives

As the OCC develops policies to screen potential participants in the Pilot Program, we recommend that these policies be technology agnostic and use broad criteria for eligible types of programs and technologies. While eligibility criteria are important to vet program participants to ensure they are able to effectively take advantage of the Pilot Program and its mission to support responsible innovation, they should not serve as a vehicle for making value judgments around competing technological approaches.

SIFMA Recommendations for Sandboxes

SIFMA previously developed the attached recommendations for a single Federal regulatory sandbox which were submitted to the U.S. Department of the Treasury on April 6, 2018, titled *Promoting Innovation in Financial Services*.⁷ These guidelines were intended to provide a framework for a single U.S. sandbox based on what has worked well in other jurisdictions.⁸ For example, internationally, the UK Financial Conduct Authority's sandbox program provides a valuable model for regulators in how to effectively structure a sandbox.⁹

⁶ https://www.finra.org/sites/default/files/SPNotice-7-30_Lab49_Comments.pdf

⁷ <https://www.sifma.org/wp-content/uploads/2018/04/SIFMA-EO-Fintech-White-Paper.pdf>

⁸ The attached sandbox recommendations are also available at <https://www.sifma.org/wp-content/uploads/2018/05/Fintech-Sandbox-Submission-May-14-2018.pdf>

⁹ <https://www.fca.org.uk/firms/regulatory-sandbox>

SIFMA's attached recommendations lay out in greater detail some of the key elements which we feel are important for the success of a product sandbox.¹⁰ At a high level, key factors include:

- (i) Developing the right scope of regulatory relief to be offered with the certainty necessary that it can be relied upon by the recipient to operate without undue regulatory or litigation risk;
- (ii) A broad definition of eligibility criteria;
- (iii) A well-documented application process aligned with the goals of the sandbox and the regulators' objectives to support innovation while addressing consumer and market protection considerations;
- (iv) Opportunities for extensions to the original time allotted for sandbox participation; and
- (v) Clearly defined sandbox exit criteria and/or how to mainstream a product or service out of the sandbox.

While we are encouraged to see that the OCC's Pilot Program incorporates many of these considerations in its proposed approach to application and participation, we believe some of these areas merit additional clarity and certainty.

As the OCC moves forward with the development of the Pilot Program, SIFMA would be happy to have a further discussion on our views on what makes a sandbox most effective and successful, including those items above, and the sandbox features and program management elements which we feel the OCC should consider as it prepares the launch this program. Please feel free to reach out to Charles De Simone (cdesimone@sifma.org or 212-313-1262) at SIFMA if you would like to discuss further.

Sincerely,



Charles De Simone
Vice President
SIFMA

¹⁰ The attached sandbox recommendations are also available at <https://www.sifma.org/wp-content/uploads/2018/05/Fintech-Sandbox-Submission-May-14-2018.pdf>



FINTECH REGULATORY SANDBOX PROPOSAL

May 14, 2018

SIFMA Fintech Regulatory Sandbox Proposal Supplemental Submission to U.S. Department of Treasury¹

Issue to be Addressed

- Currently in the United States, firms of all kinds—whether they are regulated financial institutions or technology companies, established firms or new entrants—face significant regulatory risks and constraints when seeking to engage in contained, in-market experiments involving innovative financial services and technologies.
- These risks and constraints weigh on U.S. financial services innovation, even where market participants are well positioned to address potential concerns about consumer and market protection. U.S. regulatory fragmentation, as documented by GAO,² makes navigating this environment more complex and difficult.
- The regulatory environment acts as a brake on financial innovation practices that have made the United States the home of the world’s leading technology companies.
- At the same time, newcomers outside the United States—particularly in Asia and Europe—are quickly moving forward in financial innovation. Other jurisdictions, including the UK, Singapore, and Mexico, are encouraging financial technology innovation by offering regulatory “sandboxes” which facilitate limited experiments supervised by regulators, to the benefit of consumers and innovation. The United States is falling behind from a competitive standpoint.

¹ This submission supplements the report submitted by SIFMA to the U.S. Department of Treasury on April 6, 2018 titled *Promoting Innovation in Financial Services*. That report includes additional recommendations relating to the FSOC’s role in financial innovation, among other topics. In that Report, we recommended that an FSOC Fintech Subcommittee should “foster the creation of a single U.S. regulatory ‘sandbox’ — a space where a company may experiment by making its latest innovations available to a limited number of participants while providing regulators with appropriate visibility into the experiment. A sandbox should have clear rules, subject to notice and comment, that all participants must follow, and all relevant regulators should participate and coordinate to promote regulatory certainty, efficiency, and shared learning.” [Here](#) at page 11. This document is meant to provide additional detail on this recommendation.

² United States Government Accountability Office, Report to Congressional Requesters: Additional Steps by Regulators Could Better Protect Consumers and Aid Regulatory Oversight (Mar. 2018) at 40, available at <https://www.gao.gov/assets/700/690803.pdf>.

Purpose of the Fintech Sandbox	• Creation of a single fintech regulatory sandbox would promote vigorous and competitive U.S. financial markets.³ For these purposes, a regulatory “sandbox” is an environment that, through selective application of otherwise potentially restrictive regulations, would promote financial technology, product, and services innovation while protecting core customer, financial system, and regulatory interests. • The fintech regulatory sandbox would be designed to facilitate small-scale market testing of innovative financial technology, products, tools or services (or component elements thereof), subject to time limits and constraints to protect customers and markets.
Established by FSOC; Membership by Broad Coalition of Federal and State Regulators	• The Financial Stability Oversight Council (FSOC), through a Fintech Subcommittee, would establish and oversee the fintech regulatory sandbox and would be responsible for coordinating among its applicable constituent regulators as well as interfacing with international regulators to coordinate interactions with their sandbox regimes (e.g., the UK). • To provide the necessary certainty to eligible participants, the FSOC (and/or the FSOC Fintech Subcommittee), in addition to coordinating among its core members, should seek to consult with key federal and state financial regulators, including state attorneys general, state banking regulators, and state securities regulators.

³ The establishment and operation of a Fintech regulatory sandbox as described in this submission is well within FSOC’s authority and, indeed, is well aligned with the FSOC’s mandate to facilitate coordination among FSOC members and other Federal and State agencies, to recommend general supervisory priorities and principles reflecting the outcome of discussions among member agencies, to provide a forum for the discussion and analysis of emerging market developments and financial regulatory issues and the resolution of jurisdictional disputes among members. See section 112 of the Dodd Frank Act, setting out the FSOC’s authority and responsibilities. The fintech regulatory sandbox would also be consistent with the principle of activities-based regulation, as described in more detail in SIFMA’s submission to Treasury referenced in footnote 1 above.

Relief Available

- As part of an application to participate in the fintech regulatory sandbox, eligible participants would specify the likely regulatory relief needed to offer their innovated financial product or services to a test market.
- FSOC (and/or the FSOC Fintech Committee) would coordinate with relevant U.S. federal and state regulators to design and implement regulatory relief as necessary to facilitate the proposed activity, based upon the relevant regulators' authority.
- Depending upon the products and/or services to be tested, key areas for regulatory relief could include: registration requirements; activity limitations; capital, liquidity or other applicable financial soundness requirements; safety and soundness and other prudential regulatory considerations; third-party vendor risk management requirements; track record requirements; or other regulatory relief as agreed to as part of an application.
- The relief should be subject to reasonable conditions designed to address core consumer protection and technology safeguards, for example: (1) meeting the application and entry criteria set forth below; (2) time limitations for the experiment; and (3) clear disclosures to participating consumers regarding the parameters of the regulatory relief, responsibilities of the participating firms, and consumer safeguards in place.
- In coordinating among participating regulators, FSOC should seek to ensure that the relief is designed to provide sufficient certainty so that it can be relied upon by the recipient to operate without undue regulatory or litigation risk.

Eligible Participants	• Financial institution, technology firms, and others—whether currently subject to federal prudential or market regulation or not—that seek to provide innovative financial technologies, products, tools, or services that may be subject to regulation. The fintech regulatory sandbox should be available both to established firms and new entrants, individually or in partnerships. • All eligible participants (whether individually or as partnerships) would need to apply for admission to the fintech regulatory sandbox and receive approval accompanied by regulatory relief specific to its circumstances.
Application and Entry Criteria	• An application for entry into the fintech regulatory sandbox should demonstrate the applicant's need for access to the sandbox, the innovative nature of the technology to be tested, and the ability of the applicant (whether individually or as a partnership) to conduct the test while addressing consumer and market protection considerations. • The application should: ○ Describe the benefits and innovative value of the innovative technology, product, tool, or service to U.S. consumers and the financial system; ○ Demonstrate that the technology, product, tool, or service is ready to be tested on a limited basis to actual users; ○ Describe how the applicant plans to conduct a meaningful test of its technology, product, tool, or service while protecting customers and the safety and soundness of the industry; ○ Clearly define test scenarios and expected outcomes, including limits to initial customer base and geography of product or service launch; ○ Describe regulatory relief needed based upon the parameters of the proposed test;

	○ Demonstrate that the applicant has adequate financial and other resources to carry out the proposed test for the period requested and launch and support the product or service if testing is successful; ○ Assess potential risks (including systemic risks) and describe measures in place to mitigate those risks; and ○ Set forth the requested duration of the proposed test in the fintech regulatory sandbox and the applicant's proposed off-ramp from the fintech regulatory sandbox. ● Given the sensitive business and other information to be included in the application, regulators should keep the application and related correspondence strictly confidential.
Ongoing Firm and Regulator Obligations; Exit from the Fintech Regulatory Sandbox	● A participating firm or partnership would provide updates to the FSOC (or the Fintech Subcommittee) regarding its progress against the plan set out in its application as well as evaluations against the originally approved time period and off-ramp strategy. ● If requested by a participating firm or partnership, the FSOC (or the Fintech Subcommittee) would determine whether an extension of the previously approved time period and accompanying regulatory relief is warranted. ● Exit scenarios could include: (1) termination of the experiment (abandonment); (2) a qualified approval (conditional progress to production if specific changes are made); or (3) regulatory approval for moving to full-scale production of the product, service, technology or tool.