October 30, 2024

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Via E-Mail

Re: Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses (Docket No. OP–1836; Docket ID OCC–2024–0014; RIN 3064-ZA43)

Dear Sir/Madam,

Betterment LLC and its affiliate MTG LLC d/b/a Betterment Securities ("Betterment Securities", and collectively, "Betterment") appreciate the opportunity to respond to this request for information (this "RFI") by the Office of the Comptroller of the Currency ("OCC"), Department of the Treasury, the Board of Governors of the Federal Reserve System (the "Fed"), and the Federal Deposit Insurance Corporation ("FDIC", and collectively, the "Agencies") on a broad range of topics involving arrangements between banks and financial technology ("fintech") companies. Betterment is committed to advocating for responsible innovation in financial services and supports the Agencies' goal to advance sound banking practices. We respectfully submit that our own business demonstrates the benefits of bank-fintech arrangements involving fintechs that are themselves subject to considerable regulation. In these partnerships between banks and regulated fintechs, innovation and competition can flourish, while important protections remain in place. We applaud the FDIC's recent proposed rulemaking on

Recordkeeping for Custodial Accounts (the "FDIC Proposal")[1], which exempts broker-dealers and registered investment advisers because these entities are already subject to considerable recordkeeping requirements that mitigate the concerns the FDIC Proposal seeks to address. We urge the Agencies to apply similar principles in any rulemaking arising from this RFI, while recognizing the important benefits fintechs provide to consumers and the broader financial ecosystem.

I. Betterment

Betterment is an automated, easy-to-use saving and investing platform that supports customers in all stages of their wealth-building journeys. Betterment pioneered the use of technology to provide investment advisory services over the internet to retail investors and is sometimes referred to as a "robo advisor" or "digital investment adviser". This service model lowered costs and expanded access to sophisticated advisory services that were previously only available to affluent investors. Through our online website and mobile application, Betterment helps clients identify savings goals, select managed investing portfolios composed primarily of exchange-traded funds ("ETFs"), use retirement planning tools, and participate in its cash management offering ("Cash Reserve") whereby client funds are placed at participating program banks ("Program Banks").

Betterment LLC is an investment adviser registered with the Securities Exchange Commission ("SEC") and offers its investment management services through a wrap fee program with its affiliate, Betterment Securities, a broker-dealer registered with the SEC and the Financial Industry Regulatory Authority ("FINRA") and a member of the Securities Investor Protection Corporation ("SIPC"). Betterment currently manages over $50 billion on behalf of nearly 1 million clients, with a median age of around 40.

II. Comments on the RFI

Betterment welcomes the opportunity to engage with several of the many questions raised in the RFI.

A. Benefits of Bank-Fintech Arrangements for Consumers

There are numerous benefits that bank-fintech arrangements offer individual consumers. These include user-friendly interfaces and broader reach to underserved groups, particularly consumers in the early stages of their savings and investing journeys. Consumers also benefit from enhanced competition among a wide range of financial providers seeking to provide the best experiences on the most appealing terms. That said, some of the core services provided by fintechs are not novel. For example, broker-dealers and registered investment advisers have long partnered with banks to provide cash management offerings to their clients.

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[1] Recordkeeping for Custodial Accounts, 89 Fed. Reg. 80135 (proposed October 2, 2024) (to be codified at 12 C.F.R. pt. 375), *available at* https://www.fdic.gov/system/files/2024-09/fr-npr-on-requirements-for-custodial-deposit-accounts.pdf

Betterment

Betterment's Cash Reserve is an example of a fintech cash management offering that brings the benefits of this model to a broader audience through a digital interface. Through Cash Reserve, Betterment LLC allocates client deposits to interest-bearing, FDIC-insured deposit accounts at Program Banks. Clients' funds earn a variable interest rate and are eligible for up to $2 million of FDIC insurance (or $4 million of FDIC insurance for joint accounts) once the funds reach one or more Program Banks (up to $250,000 for each insurable capacity—e.g., individual or joint—at each Program Bank).[2] Betterment Securities, the broker-dealer, fulfills specific regulatory requirements associated with Betterment's offerings. With respect to Cash Reserve, Betterment Securities (i) conducts identity verification to comply with AML/KYC obligations; (ii) facilitates money movements; (iii) performs recordkeeping; and (iv) serves as custodian for client assets.

Cash Reserve offers a competitive yield that is often substantially higher than that offered by legacy banks on savings accounts. As of the date of this letter, clients receive a 4.50% annual percentage yield ("APY")[3] variable rate on their funds held in Cash Reserve. By comparison, the national average savings account interest rate as of October 21, 2024 was just 0.58% APY, according to Bankrate's survey of over 500 banks and financial institutions.[4] Narrowing the comparison to just the major national banks, the average savings account interest rate is just 0.01% APY as of October 24, 2024.[5] Cash Reserve offers a higher interest rate because Betterment often can obtain a higher total cost of funds from banks by negotiating for predictable and consistent amounts of deposit capacity. As a result, the Cash Reserve program is able to pass more interest along to clients.

Customers also benefit from bank-fintech partnerships through technology-forward and easy-to-use experiences that allow investors to manage their cash along with other investing assets. Fintechs like Betterment use technology in a variety of ways to engage and communicate with their clients, including through mobile and web experiences that surface key information to consumers at the most relevant time. Legacy cash management offerings and more traditional savings accounts often are less innovative and user friendly, and as a result may be less effective than fintechs at encouraging positive saving behavior.

Cash management offerings like Cash Reserve also benefit the banks that enter into such partnerships. By negotiating their preferred capacity for deposits, banks benefit from control and predictability. In addition, partner banks incur far lower acquisition costs for such deposits than

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[2] As of October 30, 2024, Betterment had 16 participating Program Banks. See "Cash Reserve Holdings" available at www.betterment.com/cash-portfolio.

[3] The APY on the deposit balances in Cash Reserve Cash Reserve is 4.50% and represents the weighted average of the APY on deposit balances at the Program Banks and is current as of October 28, 2024.

[4] Goldberg, Matthew, "What is the average interest rate for savings accounts?" (October 24, 2024), *available at* https://www.bankrate.com/banking/savings/average-savings-interest-rates/

[5] *Id.*

attracting each customer individually, and the ongoing costs of servicing these clients is ultimately borne by fintechs like Betterment. Fintech cash management programs, together with other brokered deposits arrangements, also reduce concentration risk in the banking industry by providing an opportunity for smaller regional banks[6] to access customer deposits and compete with national banks for customer deposits.[7]

Lastly, fintech cash management offerings like Cash Reserve can provide deposit stability during periods of stress in the broader financial system. For example, Betterment's internal deposit and withdrawal flow analytics show that during the bank failures of Silicon Valley Bank and Signature in March 2023, Cash Reserve deposit and withdrawal activity remained remarkably consistent with prior and future periods. Our analysis points to several likely contributing factors. First, by offering Cash Reserve through multiple Program Banks, clients are diversified against the risk of any individual bank's failure. Second, the higher amount of potential FDIC coverage offered by Cash Reserve reduced the likelihood that Betterment customers had uninsured deposits at risk in the event of a bank failure. And third, Betterment maintained – and actually raised – its APY rates during the spring of 2023.

B. Regulated Fintech Companies Mitigate Risk

Not all fintech providers are similarly situated with respect to regulatory oversight and many of the risks highlighted by the RFI do not equally apply to regulated fintechs. Any regulatory approach that ignores such distinctions would needlessly burden fintechs that are already subject to significant regulation that specifically mitigates the risks identified by the RFI. As an example of an alternative approach, we commend the FDIC's recognition of the considerable oversight to which broker-dealers and registered investment advisers are subject in the separate, but related FDIC Proposal.[8]

Betterment's Cash Reserve offering is an example of a bank-fintech arrangement that is subject to oversight by multiple regulatory bodies, specifically the SEC and FINRA. As an RIA, Betterment LLC's digital advisory services, including with respect to Cash Reserve, are subject to the fiduciary requirements of the Advisers Act. Additionally, the SEC imposes stringent communication and disclosure requirements on RIAs. Betterment Securities, Betterment LLC's affiliated registered broker-dealer, performs funds transfers and recordkeeping subject to the requirements of the Customer Protection Rule 15c3-3 (the "Customer Protection Rule").[9] Betterment Securities is required by law to segregate customer assets from its own, to

[6] As of October 30, 2024, 9 of the 16 participating Program Banks in the Cash Reserve program are regional banks.

[7] The benefits of bank-fintech arrangements for small banks are reciprocal. *See "The New Venture Capitalists: How Community Banks Are Fueling The Growth Of Fintech" (January 23, 2023) available at* *https://www.forbes.com/sites/ronshevlin/2023/01/23/the-new-venture-capitalists-how-banks-are-fueling-the-growth-of-enterprise-fintech/*

[8] 89 Fed. Reg. 80135.

[9] 17 CFR § 240.15c3-3.

record-keep and custody client assets for the benefit of its customers, to set aside net capital reserve based on ratios specified in the Customer Protection Rule, and to have policies and procedures in place to maintain a clear deposit and transaction system of record. While we agree that the RFI raises important concerns about recordkeeping for omnibus accounts for unregulated entities,[10] these concerns are simply inapplicable to a regulated fintech offering like Cash Reserve. Unnecessarily broad regulation of bank-fintech arrangements has the potential to further complicate the regulatory regime in which regulated fintechs operate and to increase compliance costs without achieving any incremental benefits.

Separately, we are supportive of efforts like the Agencies' 2023 Interagency Guidance on third-party relationship risk management (the "2023 Agencies Guidance") that seek to provide transparent guidance to banks (and, by extension, their partners) on structuring bank-fintech arrangements.[11] Relatedly, and although not the primary focus of this comment, Betterment offers a white-labeled checking product through its affiliate, Betterment Financial LLC ("BFI"), in an exclusive partnership with an insured depository institution ("IDI"). BFI provides a software interface for customers to access fully-disclosed individual checking accounts with the IDI, where the IDI is responsible for fulfilling core bank functions including identity verification and recordkeeping. Betterment and BFI appreciate the clarity offered by the Agencies in the 2023 Agencies Guidance, as we seek to ensure robust governance processes and positive customer outcomes through our partnership with our partner IDI.

III. Conclusion

Betterment appreciates the opportunity to comment on the RFI. Banks and consumers alike can realize significant benefits from bank-fintech arrangements, but not all of these arrangements are the same. We respectfully encourage the Agencies to deeply consider how regulated fintechs already mitigate some of the risks identified in the RFI before introducing overly broad regulations that might serve to create inconsistencies, discourage innovation, and hamper healthy competition.

Sincerely,

Megan Fitzgerald
Director, Legal

Victoria Stringfellow
Legal Counsel

[10] 89 Fed. Reg. 61577 at 11.

[11] Interagency Guidance on Third-Party Relationships: Risk Management, 88 Fed. Reg. 37920 (June 6, 2023), *available at* https://occ.gov/news-issuances/news-releases/2023/nr-ia-2023-53a.pdf.