October 30, 2024

Via Electronic Submission

Chief Counsel's Office, Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, D.C. 20219

Federal Deposit Insurance Corporation
Attention: James P. Sheesley, Assistant Executive Secretary
550 17th Street NW
Washington, D.C. 20429

Federal Reserve Board of Governors
Attn: Ann E. Misback, Secretary of the Board
Mailstop M-4775
2001 C Street NW
Washington, D.C. 20551

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

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC") appreciates the opportunity to provide comments to the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), and the Federal Deposit Insurance Corporation ("FDIC" and collectively, the "Agencies") in response to the request for information ("RFI") on bank-fintech arrangements.[1] The Agencies are seeking information about the nature, benefits, risks, and risk management efforts regarding these partnerships.

PNC, one of the largest diversified financial institutions in the United States, serves the holistic needs of our consumer, small business, and corporate and institutional clients of all sizes. PNC supports entrepreneurs and their businesses, from sole proprietors to major corporations, with the view that innovation and entrepreneurship are keys to a healthy, vibrant, and modern society—

[1] Agencies, Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses, 89 Fed. Reg. 61577 (Jul. 31, 2024).

these activities boost the economy by introducing innovative technologies, products, and services and help increase competition. PNC, with billions in annual technology investments, leads the way in providing financial solutions for all businesses, including fintechs.

PNC believes that bank-fintech partnerships, when managed and supervised properly, have introduced valuable innovations to customers and the overall banking system. However, different types of fintech partnerships present very different risks that require different levels of oversight, and we are concerned the RFI does not sufficiently recognize the outsized risk presented by deposit-taking partnerships. Some fintechs in these partnerships are encroaching on the essence of what it means to be a bank—the unique ability to take deposits—without being subject to the oversight appropriate for such a core activity.[2] These nonbanks are taking on large parts of that singular banking activity: whether by accepting and dispensing deposits, being the sole face of the deposit-taking relationship for the customer, or maintaining deposit data, and they do so with little or no direct regulatory supervision and minimal risk of regulatory enforcement.

Deposit-taking fintech partnerships pose substantial risks, as we have recently witnessed with the Synapse failure, that threaten trust in the banking system. We do not believe that these heightened risks can be effectively managed just by increasing regulation and supervision of the bank partner or through enhanced third-party risk management by banks. Instead, the banking agencies should exercise their existing legal authorities and return to their past practices of directly regulating and examining fintechs in deposit-taking partnerships.

I. Deposit-Taking is the Defining Characteristic of Banking

The RFI identifies three categories bank-fintech partnerships: deposit-taking, payment (including card issuance and digital wallet capabilities), and lending. We agree that fintech partnerships generally involve one or more of these three activities, which track what OCC calls the "core banking functions" of "receiving deposits, paying checks, and lending money."[3] Yet while these three activities all are "core," they are not all equal. Deposit-taking has a unique role in banking, and deposit-taking fintech partnerships deserve special attention.

Only banks can take deposits. Nonbanks can lend money and regularly do so subject to state licensing and usury requirements. Nonbanks can also engage in payment activity as state-licensed money transmitters or payment processors.

Deposits are different. For nearly a century, Congress has permitted fintechs and other nonbanks to engage in payment and lending activities, but it has reserved deposit-taking for banks or entities examined like banks. Section 21 of the Glass–Steagall Act prohibits any person or entity

[2] Like the RFI, we use "bank" in this letter to refer broadly to federally chartered or state-chartered banks, whether or not they meet the more limited definition of "bank" in the Bank Holding Company Act. *See* 12 U.S.C. § 1841(c)(1).

[3] *E.g.*, 12 C.F.R. § 5.20(e).

from "engag[ing], to any extent whatever...in the business of receiving deposits," unless that person or entity either:

- Is chartered to accept deposits and subject to examination and regulation under federal or state laws;
- Is "permitted by" federal laws or state laws to "engage in such business" and is subject to "examination and regulation," or
- Submits to "periodic examination by the [federal or state] banking authority" and publishes "periodic reports of its condition," in "the same manner and under the same conditions" as those required for chartered banks.[4]

These criteria condition deposit-taking to bank charters or bank-like examination. Congress has made clear that nonbanks may not participate in the deposit-taking business "to any extent whatever" unless they are examined like banks. Courts have frequently adopted this principle and held that deposit-taking is uniquely assigned to banks. The Supreme Court has said that commercial banks are "*unique* among financial institutions in that they *alone* are permitted by law to accept demand deposits."[5] Circuit courts have reached similar conclusions, noting that deposits and associated withdrawals "define the business of banking."[6] As CFPB Director Rohit Chopra recently summarized, "[w]hen you take demand deposits, you have to live up to certain expectations, and this is why we charter banks."[7]

The special treatment given by Congress and courts to deposit-taking reflects the critical role deposits—and Americans' confidence in deposits—has to a functioning U.S. financial system. People need to know their money is secure and will be available when they need it, while still trusting banks to use those funds in maturity transformation, lending, and similar activities to power economic activity. This requires massive trust in the entities involved in the deposit-taking business, well beyond the trust required in a lender or payment processor, and Congress has decided that bank-like supervision is required to create that trust.

II. Fintechs Engaged in Deposit-Taking Bank Partnerships Frequently Participate in the Business of Receiving Deposits.

The business of "receiving deposits" goes beyond being the final recipient of deposited funds or keeping a deposit liability on an entity's books and records. Some banks that accept

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[4] 12 U.S.C. § 378(a).

[5] *United States v. Philadelphia National Bank*, 374 U.S. 321, 326 (1963) (emphasis added).

[6] See *Gutierrez v. Wells Fargo Bank*, 704 F.3d 712, 723 (9th Cir. 2012) (quoting *Bank of Am. v. City & Cty. of S.F.*, 309 F.3d 551, 563 (9th Cir. 2002) (emphasis added)).

[7] Remarks by CFPB Director Rohit Chopra, FDIC Board of Directors Meeting (Sept. 17, 2024) at https://www.fdic.gov/news/board-matters/2024/board-meeting-2024-09-17-1open.

deposits may sweep them off their balance sheet to other financial institutions, and those banks do not claim to be outside the deposit-taking business despite not storing funds or reflecting a deposit liability. Rather, the "business of receiving deposits" encompasses certain other activities critical to acquire and maintain deposits safely and effectively.

A fintech's role in a deposit-taking partnership typically goes well beyond, as the RFI characterizes it, just "provid[ing] end users with access to deposit products and services."[8] In many cases, the fintech is more involved in the "business" of receiving those deposits than even the partner bank. Fintechs often play a critical role, either directly or through intermediate platform providers, in maintaining the ledger or deposit and transaction system of record.[9] Those fintechs that maintain ledgers are fundamentally involved in the business of receiving deposits because accurate ledgering is fundamental to depositor trust in the banking system. Depositors must have confidence that their underlying deposit records are both accurate and accessible so that their deposits will be available when needed. The recent Synapse failure, where an intermediate platform provider may not have maintained an accurate ledger and consumers lost access to their funds, shows just how fundamental a fintech's activities can be to the business of receiving deposits.

Fintechs in deposit-taking partnerships perform many other core deposit functions beyond maintaining the deposit ledger. The RFI identifies many of these activities, which include "handling end-user complaints, performing customer identification and due diligence, developing and transmitting disclosures, monitoring transactions…maintaining end-user ledgers, performing certain lending-related activities, developing and deploying marketing materials, or communicating with end users."[10] This lengthy list still understates the extent to which fintechs can be intertwined in deposit-taking activity. Depending on the partnership, a fintech might be:

- The only entity in the partnership that has knowledge about the end user customers and thus has functional control over Know Your Customer ("KYC") processes, even if the bank is legally responsible for KYC compliance.
- The effective decider over whether a prospective customer should receive a deposit account or whether and when a transaction may occur on that account. The partner bank may have theoretical veto power over such decisions, but it will often agree to the fintech's decisioning criteria and leave day-to-day decisioning within those criteria to the fintech.
- The sole customer service contact for the customer, such that the customer cannot speak with the bank directly about their accounts. Customers, especially consumers, may not realize a bank is even involved. We share the Agencies' concern that end users "may not be well-informed regarding the type of account relationship that the end user is establishing

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[8] RFI at 61579.

[9] *Id*.

[10] *Id*. at 61581.

through the fintech and may not understand that Federal deposit insurance does not protect them from a nonbank fintech company's failure."[11] End users that are aware of the fintech and not the partner bank in a deposit-taking partnership would certainly conclude that the fintech is deeply involved in taking their deposits.

- Liable to reimburse the partner bank for losses suffered by the bank from fraud on to the account, absent direct fault by the bank.[12] Many partner banks insist on this allocation of liability. Those banks argue that a bank in a deposit-taking partnership is just a "dumb pipe" that is less responsible than the fintech for allowing a fraudulent transaction to occur. This liability arrangement reveals the truth behind many fintech deposit-taking partnerships: it is the fintech that has principal control over the deposit-taking activity.

These characteristics—particularly the control of the customer relationship, marketing, and customer communications—distinguish deposit-taking fintechs from core providers and other traditional bank vendors providing deposit support services. Fintechs that control the customer relationship and provide ledgering, marketing, customer service, and other services to the partner bank often act more like joint venture partners than traditional vendors (hence the commonly used term "partnership"). This may particularly be the case where the bank partner receives a significant revenue share from its deposit-taking relationship with a fintech. Bank joint ventures have long been subject to increased regulatory scrutiny. For example, the OCC often requires national banks entering into joint ventures to agree to certain conditions, such as the joint venture partner conducting only bank-permissible activities and the bank not having open-ended liability.[13] Joint venture partners are also subject to direct enforcement by the Agencies as institution-affiliated parties.[14]

III. The Agencies Should Examine Fintechs in Deposit-Taking Partnerships Directly, As If the Fintechs Were Actual Banks.

A. Limiting examinations to the partner bank cannot sufficiently address the risks of deposit-taking partnerships.

The RFI states that the Agencies are considering "enhancements to existing supervisory guidance" to address the risks in bank-fintech partnerships.[15] The existing supervisory guidance in

[11] RFI at 61582.

[12] *See*, e.g. Synctera, *Friendly Fraud: How Should FinTechs View the Risks?* (Dec. 2022), at https://synctera.com/post/friendly-fraud-how-should-fintechs-view-the-risks ("While the Bank still needs to be made aware of fraud…a FinTech is ultimately responsible for all financial fraud losses.").

[13] *See, e.g.*, OCC Conditional Approval No. 243 at 4 & n.3 (May 9, 1997).

[14] *See* 12 U.S.C. § 1813(u)(3).

[15] RFI at 61577.

place today, such as the Agencies' 2023 Guidance on Third-Party Relationships,[16] establishes a framework under which the Agencies have addressed fintech risks through supervisory and occasionally enforcement pressure on the *partner bank*, and not the fintech. We believe the Agencies' apparent plan to target exclusively banks and not their fintech deposit partners cannot appropriately address the unique risks of deposit-taking fintech partnerships, regardless of any "enhancements" to existing guidance. Instead, the Agencies should examine fintechs directly.[17]

Direct supervision of fintechs is consistent with Congressional intent for deposit-taking partnerships. As discussed above, federal law requires that entities involved in any way in the deposit-taking business either be banks or be examined like banks.[18] Yet direct fintech supervision would be appropriate even if Congress had not mandated it. Fintechs introduce too much risk to deposit-taking partnerships, and deposit-taking is too core to the meaning of "banking," to neglect direct fintech examination.[19]

Without direct supervision of the fintech, the Agency examining a deposit-taking partnership will typically direct questions about the partnership to the partner bank, but the partner bank often lacks knowledge about the specifics of the fintech's activities and technological capabilities, or sometimes even knowledge of the fintech's end users, to answer directly. The bank will instead forward the Agency's question to the fintech, which frequently lacks regulatory

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[16] Agencies, *Interagency Guidance on Third-Party Relationships: Risk Management*, 88 Fed. Reg 37920 (Jun. 9, 2023).

[17] Of course, applying bank-like supervision to a fintech does not make the fintech a bank. Fintechs examined like banks still are not subject to bank prudential requirements such as liquidity standards, nor are they or their affiliates restricted from engaging in commercial activities. Bank-level examination on its own, therefore, is not sufficient to grant those fintechs direct access to payment networks or other government services reserved for banks.

[18] Some fintechs in deposit-taking bank partnerships are also state-licensed money transmitters, which are subject to some level of state oversight. State supervision of money transmitters, however, is far different from state or federal bank examination and is not the "bank-like" examination that would satisfy the Glass-Steagall Act's requirements to take deposits. Oversight is generally less stringent and in any case is focused on very different purposes than ensuring safe and sound deposit-taking. As CFPB Director Chopra has noted, state-licensed money transmitters and similar business are "intended for remittance-like activity and payments-like activity, not for having shadow deposits." Remarks by CFPB Director Rohit Chopra, FDIC Board of Directors Meeting (Sept. 17, 2024) at https://www.fdic.gov/news/board-matters/2024/board-meeting-2024-09-17-1open. *See also* Remarks by Under Secretary for Domestic Finance Nellie Liang, "Modernizing the Regulatory Framework for Domestic Payments," Chicago Payments Symposium (Oct. 9, 2024) (contrasting "comprehensive prudential regulatory framework" for banks with state money transmission regulation system that is "burdensome and inefficient, *and* at the same time does not adequately address risks to consumers and the financial system").

[19] The FDIC's recent proposed rule regarding custodial deposit accounts, while targeted at deposit-taking bank-fintech partnerships, does not change the need for the Agencies to examine fintechs in these partnerships directly. The proposal would place recordkeeping, certification, and internal control requirements on the banks who maintain "custodial accounts with transaction features," but tellingly would place no direct obligations on the partner fintech. Fintechs would have to maintain accurate records and cooperate with the proposed reconciliation requirements applicable to the partner banks, yet the FDIC is not proposing to examine these fintechs to ensure they are taking these steps or pursue enforcement against fintechs who fail to do so.

relations staff or examination experience and may receive the question without sufficient context. The bank will respond to its examination team based on information received from the fintech, but without direct access to the fintech the Agency staff may find it more difficult to ask follow-up questions or otherwise understand the responses in the proper context. The result can be examination by "game of telephone" that degrades the quality of the information received by examiners.

Direct supervision of fintechs in high-risk cases like deposit-taking partnerships addresses the above difficulties. The Agencies would not allow banks to appoint a third-party intermediary through which the Agency must direct all examination inquiries about high-risk activities. Similarly, the Agencies should now allow fintechs to insulate themselves from appropriate regulatory oversight by communicating with the Agencies only through the partner bank.

B. The Agencies have ample authority to examine fintechs in deposit-taking partnerships directly.

The Agencies have examined fintechs directly and taken enforcement action against them before, and they have ample legal authority to do so now. The Agencies have long and consistently maintained that the Bank Service Company Act ("BSCA") provides each banking agency "legal authority to examine functions or operations that a third party performs on a banking organization's behalf."[20] Section 7 of the BSCA states that when a bank "causes" a third party to perform BSCA-authorized services on the bank's behalf, [21] the performance of those services is "subject to regulation and examination by such agency to the same extent as if such services were being performed by the depository institution itself."[22] In deposit-taking partnerships, fintechs perform many authorized services for the partner bank, which the RFI notes can include "record-keeping and access to records, end-user on-boarding, compliance management, transaction monitoring, and complaint handling."[23] Thus the Agencies can supervise the fintech's performance of these services directly, and not just by examining the partner bank.

[20] E.g., Agencies, *Interagency Guidance on Third-Party Relationships: Risk Management*, 88 Fed. Reg. 37920 (Jun. 9, 2023). For more information on the legislative history and legal authority granted by the BSCA, *see generally* James P. Bergin and Paul Lim, *The Bank Service Company Act: The Curious Late Life of an Old Law*, LexisNexis Practical Guidance, available at https://www.lexisnexis.com/community/insights/legal/b/practical-guidance/posts/the-bank-service-company-act-the-curious-late-life-of-an-old-law (2024).

[21] Although the original version of the BSCA authorized only specific set of services, a 1982 amendment greatly expanded the scope of applicable services to include any activity that can be conducted by a state-chartered back or by a bank holding company subsidiary. *See* Garn-St. Germain Depository Institutions *Act* of 1982, Pub. L. No. 97-320; 12 U.S.C. § 1864; Bergin and Lim, *supra*.

[22] 12 U.S.C. § 1867(c).

[23] RFI at 61579.

The BSCA also grants the Agencies enforcement authority against fintechs in deposit-taking partnerships that are engaged in unsafe or unsound practices or violate federal law. The Act empowers the Agencies to "issue … orders" to carry out the purposes of the BSCA, including the Act's goal that services performed for banks be regulated as if they were performed by the banks themselves.[24] Fintechs in deposit-taking partnerships are not subject to bank-like supervision unless they also face bank-like consequences for failure to follow the law or conduct bank-like activities in a safe and sound manner. The Agencies have authority to examine the fintech directly, and take enforcement action when appropriate, to the same extent and with the same rigor as if the bank itself were doing those services.

The Agencies can alternatively ensure they have the requisite examination and enforcement authority by requiring any fintech in a deposit-taking partnership to agree, in its contract with the partner bank, to supervision and enforcement jurisdiction by the bank's primary federal regulator. OCC regulations currently require that third parties agree to OCC supervision when they are the subject of a national bank noncontrolling investment.[25] This requirement applies even when the investment target is engaging in a relatively minor banking activity, so a similar agreement to Agency supervision is especially appropriate where the nonbank is participating in a deposit-taking partnership, which goes to the core of banking and the Agencies' safety and soundness objectives.

Until recently, the Agencies often took action directly against fintechs that violate the law through their bank partnerships. For example, in 2015 the Federal Reserve issued a $2 million civil money penalty and required $24 million in restitution by a fintech in a deposit-taking partnership.[26] The fintech offered a deposit account and debit card product through a partner bank, and the Federal Reserve found that the fintech engaged in deceptive marketing practices and unsafe and unsound practices. The Agencies had previously taken enforcement action against a nonbank that provided marketing and servicing of loan products,[27] a nonbank that conducted residential mortgage recordkeeping services,[28] a core deposit service provider (which provides similar services as an intermediate platform provider described by the RFI),[29] and a subprime credit card

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[24] 12 U.S.C. § 1867(d).

[25] *See* 12 C.F.R. § 5.36(e)(7) (stating that national banks making a minority investment must certify that "enterprise in which the bank is investing agrees to be subject to OCC supervision and examination" (subject to limitations for certain insurance and securities entities)).

[26] *See* Higher One, Consent Order, FRB No. 15-026-E-I, 15-026-CMP-I (Dec. 23, 2015).

[27] *See* Advance America, Cash Advance Centers, Inc., Formal Agreement, FDIC-06-144WA (Aug. 22, 2006).

[28] *See* MERSCORP, Inc., and the Mortgage Electronic Registration Systems, Inc., Consent Order, OCC No. AA-EC-11-20 (Apr. 13, 2011).

[29] *See* Jack Henry & Assoc., Inc. Formal Agreement, OCC No. 2013-81 (Nov. 13, 2013).

marketer.[30] In *each* of these orders, the Agencies cited the BSCA as a source of legal supervision and enforcement authority.[31]

Public banking agency enforcement activity against fintechs appears to have paused, but problematic conduct by fintechs has continued. Yet now when this conduct occurs the Agencies pursue public enforcement only against the partner banks, perhaps in the hope that doing so will deter conduct by the banks' fintech partners. That approach fails to satisfy the BSCA's general intent that nonbanks be treated like banks when providing services to banks. When the Agencies conclude a fintech has joined its partner bank in legal violations or unsafe and unsound practices, they should pursue enforcement against both, as they did until 2015. The Agencies have authority to examine the fintech directly, and take enforcement action when appropriate, to the same extent and with the same rigor as if the bank itself were doing those services.[32]

IV. Supervision of Fintech Partners in Bank Deposit-Taking Partnerships Must Be Frequent and Meaningful Because These Partnerships are Inherently High-Risk.

We agree with Acting OCC Comptroller Michael Hsu's recent statements that banking supervisors should prioritize "risk-based supervision" and "focus supervisory attention where it is needed most." [33] Accordingly, it is insufficient for the Agencies merely to announce that they have supervision and enforcement authority against fintechs in deposit-taking partnerships. The Agencies must exercise that authority proportional to the risk presented by those partnerships.

That risk is considerable. The RFI acknowledges that fintech partnerships risks "may be heightened" when "the fintech company…has a different risk tolerance concerning the specific requirements of the laws and regulations applicable to it."[34] In fact, a fintech in a deposit-taking

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[30] *See* First Bank of Delaware and CompuCredit Corporation, Notice of Charges, FDIC-07-257k (Jun. 16, 2008).

[31] The enforcement orders also assert that the cited nonbank acts as an "institution-affiliated party" ("IAP"), which is separately subject to the Agencies enforcement powers under Section 8 of the Federal Deposit Insurance Act. *See* 12 U.S.C. § 1813(u) (defining institution-affiliate parties to include "any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution"). Fintechs heavily involved in the deposit-taking activities of their partner banks also "participate in" the deposit-taking conduct and thus appear to meet the IAP definition.

[32] The Agencies' supervisory authority under the BSCA extends to a third party's "performance" of activities in support of the partner bank, a scope sufficiently broad for the Agencies to supervise the activities of a third party fintech that are related to deposit-taking. If the Agencies believe their BSCA authority does not permit sufficient oversight, however, they should publicize their concerns and revise prior Agency statements stating that the BSCA does provide this authority. Otherwise, the public might trust their money to deposit-taking fintech partnerships in the possible mistaken belief that the fintechs are subject to federal supervisory oversight.

[33] Michael Hsu, OCC Acting Comptroller, *Evolving Bank Supervision*, Remarks Before the Joint European Banking Authority and European Central Bank International Conference (Sept. 23, 2024).

[34] RFI at 61581.

partnership will virtually *always* have a much higher risk tolerance than a bank, precisely because it is not a bank.

Fintechs are high-risk by nature; most fail even when backed by venture funding,[35] a failure rate that would be unacceptable for regulated banks. Therefore, fintechs are encouraged by their investors to take big risks in the pursuit of outsized returns on their speculative investments. As CFPB Director Chopra recently stated, fintechs have a "'move fast and break things' mentality…that generally emphasizes the tech over the fin," and which in certain circumstances can be "catastrophic."[36]

Because fintechs, unlike banks, do not receive management or other supervisory ratings, the fintechs have little incentive to adopt the risk management practices banks require to maintain satisfactory ratings. Unlike banks, fintechs suffer no regulatory penalty for forsaking compliance and risk management or otherwise taking on outsized risk, so long as they are not caught in a violation of law or those outsized risks do not otherwise materialize. Unsupervised fintechs therefore frequently lack established risk and compliance management frameworks or a strong culture of compliance. Absent bank-level supervision, they have little incentive to implement these programs.

The risks of deposit-taking partnerships are especially high because many fintechs choose partner banks precisely to *avoid* regulation and oversight. Fintechs often seek smaller banks with less than $10 billion in assets for deposit-taking partnerships. They do so not for those banks' technological expertise (in fact, many partner banks need an intermediary platform provider to provide the requisite technology) or for the smaller banks' strong local relationships. Rather, fintechs seek smaller banks to pursue regulatory arbitrage. Banks under $10 billion assets are not subject to interchange caps on debit transactions,[37] and they are generally exempt from CFPB supervision and enforcement.[38] These fintechs thus enjoy uncapped debit interchange revenue while enjoying less consumer protection oversight. As the CEO of one prominent fintech with a small bank partner admitted, the small bank exemption to debit interchanged caps, "birthed the modern fintech industry as we know it today."[39] The co-founder of the fintech penalized by the Federal Reserve for deceptive practices in a deposit-taking partnership (see above) still advises

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[35] *See*, *e.g.*, Tad Simon, *A brighter future for fintechs in 2024?*, Thomson Reuters (Oct. 30, 2023), at https://www.thomsonreuters.com/en-us/posts/corporates/fintechs-future-2024/ (stating that, according to Wall Steet Journal report, "75% of venture-backed fintechs eventually fail").

[36] Remarks of Rohit Chopra at *Banking on the Future: The Net Era of Fintech,* Washington, DC (Jul. 10, 2024).

[37] *See* 12 C.F.R. 235.5(a).

[38] *See* 12 U.S.C. § 5516(c) & (d).

[39] Eric Glyman et al, How the Durbin Amendment sparked fintech innovation, available at https://ramp.com/blog/how-the-durbin-amendment-sparked-fintech-innovation (Jul. 13, 2022).

fintechs searching for partner banks to focus your search on smaller banks that will not go over the [$10 billion] threshold in the short-term."[40] These and many other fintechs are not prioritizing compliance; they are seeking ways around regulation. To halt this regulatory arbitrage, the Agencies should close the $10 billion exemption loophole on debit interchange caps,[41] and they should review other asset-based exemptions in their regulations to ensure those exemptions are not being used by fintechs seeking exempt partner banks for regulatory arbitrage.

While heightened risks exist to some extent in every type of fintech partnership, the risk is highest in deposit-taking partnerships because that activity goes to the core of the business of banking and user confidence in the U.S. banking system. Failures in deposit-taking partnerships are also more likely to pose risk to the Deposit Insurance Fund, further justifying special regulatory attention. For these partnerships, Agency supervision must be more than theoretical. It must be frequent and meaningful, just as if a bank itself engaged in high-risk activities while that bank had (like a fintech) structural and financial incentives in favor of increased risk taking and against strong risk management. That's what Congress intended, and that's what a sound banking system demands.

V. Conclusion

Thank you for the opportunity to comment on the RFI. While all bank-fintech partnerships require appropriate oversight and risk management, deposit-taking partnerships introduce outsized risk because fintechs in these partnerships often engage in the singular banking activity, taking deposits. We encourage the Agencies to use their existing powers to ensure that fintechs heavily involved in deposit-taking partnerships are subject to risk-appropriate bank-like examination and enforcement as Congress intended.

If you have any questions regarding our comments, please do not hesitate to contact me.

Sincerely,

Ursula Pfeil
Deputy General Counsel, Regulatory Affairs
The PNC Financial Services Group, Inc.

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[40] Miles Lasater, *Fintechs: How to Choose a Bank Partner – From a Founder's Perspective* https://venturepatterns.com/blog/startup/fintechs-how-to-choose-a-bank-partner/ (last visited Oct. 28, 2024).

[41] For details on how the Federal Reserve can close this loophole, *see* Comment by Bank Policy Institute, Consumer Bankers Association, and The Clearing House to the Board of Governors re: Debit Card Interchange Fees and Routing, Docket No. R-1818, RIN 7100-AG67 (May 10, 2024).