ELECTRONIC TRANSACTIONS ASSOCIATION

1620 L Street NW
Suite 1020
Washington, DC 20036

www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

October 26, 2017

VIA ELECTRONIC SUBMISSION

Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland

Re: Comments on Implications of Fintech Developments for Banks and Bank Supervisors – Consultative Document

The Electronic Transactions Association ("ETA") submits these comments in response to the Basel Committee on Banking Supervision request for information ("RFI") about the Implications of Fintech Developments for Banks and Bank Supervisors. Thank you for the opportunity to comment on this important issue.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include financial institutions, mobile payment service providers, mobile wallet providers and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives.

GENERAL COMMENTS

Over the past decade, financial institutions and financial technology ("fintech") companies have transformed the financial landscape through the introduction of new technologies that expand financial offerings for borrowers, lower costs, improve financial and risk management, and increase transaction security. Considering the tangible benefits of such technological advancements, ETA urges policymakers to remain thoughtful and forward-thinking in how to best support industry's on-going efforts to provide opportunities for all consumers and small businesses to access and benefit from innovative financial products and services. Efforts by policymakers to regulate financial products and services should be done collaboratively with industry participants and with careful consideration.

ETA and its members support an inclusive financial system that provides high quality, secure, and affordable financial services for the broadest possible set of consumers and small businesses. ETA member companies touch, enrich, and improve the lives of underserved communities while making the global flow of commerce possible. ETA member companies strive to continually enhance the electronic payments and financial ecosystem so that it is accessible for all consumers, while ensuring their transactions can be completed securely, efficiently, and ubiquitously. A key driver to achieving such an ecosystem is the development of new technologies that allow the underserved to access financial products and services. ETA encourages policymakers to support

1620 L Street NW
Suite 1020
Washington, DC 20036
www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

these goals through policies that support innovation and the use of technology in financial products and services.

SPECIFIC ETA RESPONSES

BASEL Recommendation 1:

Banks and bank supervisors should consider how they balance ensuring the safety and soundness of the banking system with minimizing the risk of inadvertently inhibiting beneficial innovation in the financial sector. Such a balanced approach would promote the safety and soundness of banks, financial stability, consumer protection and compliance with applicable laws and regulations, including anti-money laundering and countering financing of terrorism (AML/CFT) regulations, without unnecessarily hampering beneficial innovations in financial services, including those aimed at financial inclusion.

ETA Comments:

ETA agrees with this recommendation. A balanced approach is a key principle to promoting innovation and growth in the fintech space. While it is paramount to support safety and soundness, financial stability, consumer protection, and compliance with applicable laws and regulations, this should be balanced against unnecessary hampering of beneficial innovations in financial services. ETA is committed to working with regulators to provide a positive regulatory environment that allows for and supports innovation for fintech companies and financial institutions.

Timeliness is an important component to consider when attempting to creating a positive regulatory environment for innovation. Attempting to regulate before a market is mature can stifle innovation. Prescriptive standards and rules, developed well before many of the technologies in use today were even considered possible, could potentially create unnecessary barriers for innovation. ETA agrees that “Banking standards and expectations should be sufficiently flexible to accommodate new innovations…”[1] Regulators should base regulations and guidance on actual data from the market. Regulating before gaining a true understanding of the market can lead to misguided rules and unintended consequences including stifling of innovation. In an effort to ensure that flexibility is realized, ETA encourages policy makers to work with industry to understand where flexibility can provide growth.

Financial Inclusion

Fintech innovations hold potential benefits for all users of financial services, including expanding access to financial services, reaching under-served consumers, providing access to credit to consumers and small businesses, reducing transaction costs, simplifying products, providing greater convenience and efficiency.

[1] Basel Committee on Banking Supervision, *Sound Practices: Implications of Fintech Developments for Banks and Bank Supervisors*, p. 24 (August 2017).

ETA member fintech companies, including member financial institutions, use technology to address the financial needs of underserved customers including the following efforts:[2]

- *Financial Literacy & Readiness Programs* – Empower consumers to take control of their finances and prepare for the future.

- *Mobile Banking Services & Innovations in ADA Compliance* – Provide financial independence and security for those demographic groups that lack easy access to physical financial institution branches, such as consumers in rural areas, the elderly, or persons with disabilities.

- *Mobile Payments* – Provide an exciting alternative to cash and checks that allow consumers to pay for goods and services in an efficient, cost-effective, and secure manner.

- *Peer-2-Peer Payments* – Enable consumers to send money to each other via mobile applications.

- *Expanded Internet Access* – Expands affordable access to the internet in underserved communities domestically and abroad by improving infrastructure and reducing costs so that more people can connect to the web-based world.

- *Online Small Business Lending* – Expands access to credit for small businesses seeking capital to grow their businesses.

- *Prepaid Products* – Provide cost-effective, convenient, and innovative payment options for millions of consumers, including those that may not have access to traditional financial accounts.

- *Interactive, Automated Tellers* – Transform traditional financial institution branches by making them economically sustainable in previously underserved communities.

Fintech is building an inclusive financial system that addresses the needs of "underserved" consumers by providing increased access to ATMs for persons with disabilities, helping the elderly or rural population deposit checks remotely, assisting parents in sending funds instantly to their children, or helping small businesses get loans. Products and services like prepaid cards, mobile banking, peer-2-peer payments, electronic payment systems, expanded access to the internet, and alternative lending sources for small businesses address the needs of underserved consumers by providing the following benefits:

- *Access* – Allowing consumers to access funds and financial services wherever and whenever needed.

[2] See Electronic Transactions Association, *How FinTech is Addressing the Financial Needs of the Underserved, Vol II* (Sept. 2017).

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW
Suite 1020
Washington, DC 20036
www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

- *Affordability* – Ensuring consumers have the ability to select from various affordable products and services. Technology is increasing competition and driving down the cost of goods and services, which makes products more affordable, and thus accessible to more consumers.

- *Convenience* – Providing consumers with multiple payment options that save time and money.

- *Security* – Protecting consumer funds from physical and electronic fraud or theft.

- *Control and Financial Management* – Helping consumers gain better control over their finances through financial literacy and various financial management tools.

BASEL Recommendation 3:

Banks should ensure they have effective IT and other risk management processes that address the risks of the new technologies and implement the effective control environments needed to properly support key innovations.

ETA Comments:

Consumer Access to Data

Efforts by policymakers to regulate access to consumer data for their use in financial products and services should be done collaboratively with industry and consumers and with careful consideration. Financial institutions and fintech companies can leverage consumer-permissioned financial data in a manner that has protects consumer data while ensuring industry has the flexibility to develop new products and services. ETA believes that the industry is best-positioned to continue the evolution in this market. As such, ETA strongly encourages policymakers to be sensitive to the risk that applying a uniform regulatory framework to all financial products and services, as opposed to all entities providing a specific financial product or service, without any appreciation of differences in products and services and consumer needs, will likely stifle creativity and innovation in the market.

ETA and its members understand that access to financial data is an important issue that concerns consumers, traditional financial institutions, and fintech companies, including data aggregators and 3rd party application providers. There is an increased convergence between these groups and the need to preserve consumer access, choice, and control, while taking appropriate steps to safeguard consumer data, which has long been given special status and been accorded special protections. Consumers already benefit from financial innovations that rely on direct access to their financial data when provided in a secure and compliant manner.

Over the past several years, ETA members, including financial institutions and other fintech companies, have developed new, innovative products and services that help consumers manage their financial lives, expand financial offerings, lower costs, improve financial management, and increase transaction security. These developments have resulted in many benefits for consumers including:

- Consumer convenience.
- Protecting consumers from fraud.
- Empowering consumers to understand and control their financial lives, make useful decisions, monitor spending and debt, and set and achieve savings goals.
- Helping consumers communicate effectively with their financial service providers.
- Helping consumers solve financial problems in timely ways.

These benefits extend across a diverse and growing universe of financial products and services, including personal financial management software, online lending platforms, mobile wallets, and fraud and identity theft systems, to name just a few. In many cases, permissioned access to consumer and financial institution data is crucial to the success of these new products and services. The many benefits of innovation should not come at the expense of consumer protection. In this regard, the question of access to data must not override important issues such as data security, control, transparency, and disclosure.

Rather than issue prescriptive requirements on this matter, regulators should encourage industry to take the lead in developing solutions that preserve industry flexibility while providing appropriate consumer protections. In this regard, the financial services industry, including ETA members, have demonstrated a robust and sustained commitment to ensuring consumer access to information, the protection of customer information, and the integrity of financial systems and networks.

More generally, as technology and innovation continue to shape how information is created, accessed, stored, and disposed of, regulation must remain technology agnostic. Only then can regulations be adaptable and not impose rigid rules that have the effect of unnecessarily restraining innovation or imposing unnecessary costs or burdens on industry. If policymakers, for example, were to mandate a specific requirement specific to a particular technology (such as new forms of data aggregation), rather than focus on the underlying risks of any technology (such as data security), there would be a significant risk that any such requirement would quickly become outdated, all while imposing significant costs on industry to conform their existing practices to the mandated approach. For these reasons, any efforts by policymakers to move forward in this area should be done collaboratively with industry and consumers and with careful consideration.

BASEL Recommendation 4:

Banks should ensure they have appropriate processes for due diligence, risk management and ongoing monitoring of any operation outsourced to a third party, including fintech firms. Contracts should outline the responsibilities of each party, agreed service levels and audit rights. Banks should maintain controls for outsourced services to the same standard as the operations conducted within the bank itself.

ETA Comments:

ETA agrees that operations outsourced to a third party, such as a fintech company, should have the liabilities outlined via contractual agreement. This model is consistent with and encourages the flexibility needed by both parties to customize their agreements to adjust for services rendered, liability shifting, service levels, audit rights, different business models, and supervisory expectations.

In addition to individual ongoing monitoring of third parties by banks, regulators should consider ways to address the significant burden and fragmented state of supervision of third party fintech companies. Many large third parties are monitored by hundreds of different financial institutions with significant redundancy. The current system is extremely burdensome on small players. Regulators should consider addressing ways for how financial institutions can work together to monitor third party fintech companies and in so doing, share compliance costs across the industry. For example, regulators could provide a means for financial institutions to share information about monitoring third parties with each other and regulators instead of each carrying the incredible load of individual monitoring.

BASEL Recommendation 5:

Bank supervisors should cooperate with other public authorities responsible for oversight of regulatory functions related to fintech, such as conduct authorities, data protection authorities, competition authorities and financial intelligence units, with the objective of, where appropriate, developing standards and regulatory oversight of the provision of banking services, whether or not the service is provided by a bank or fintech firms.

ETA Comments:

ETA supports banking supervisors cooperating with each other to minimize redundant or conflicting regulations and guidance. Banking supervisors should strive for regulatory harmony, which lead to policies that support innovation and the use of technology in financial products and services.

BASEL Recommendation 6:

Given the current and potential global growth of fintech companies, international cooperation between supervisors is essential. Supervisors should coordinate supervisory activities for cross-border fintech operations, where appropriate.

ETA Comments:

ETA agrees. Global cooperation and coordination is especially important where products or entities are specifically built to ease cross-border friction. For example, the payments market is a place where financial institutions and other fintech companies are helping to make it easier for consumers and business to send money, receive money, or accept payment quickly, safely, and cheaply.

1620 L Street NW
Suite 1020
Washington, DC 20036
www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

Regulatory harmony is a key component to innovation whether domestically or internationally. ETA supports open dialogue and coordination between supervisors in the fintech space to promote a positive regulatory framework for innovation. Coordination can help to encourage global growth and remove duplicative or contradictory requirements between regulators.

BASEL Recommendation 7:

Bank supervisors should assess their current staffing and training models to ensure that the knowledge, skills and tools of their staff remain relevant and effective in supervising new technologies and innovative business models. Supervisors should also consider whether additional specialized skills are needed to complement existing expertise.

ETA Comments:

ETA believes this recommendation is critical component to ensuring that supervisors and can effectively respond to financial innovation. Financial institutions and fintech companies cannot successfully implement and adopt financial innovations without being aware of the promises and risks of emerging technologies, and regulators cannot successfully govern such institutions without a similar understanding.

As regulators hire new and train existing staff in new technologies and innovative business models, they should ensure that staff knowledge covers developments both inside and outside the regulated banking or broker-dealer sector. Fintech companies outside these sectors are often the first to adopt such technologies, and regulators that study only their own regulated sector may be too late in recognizing, understanding, and, when appropriate, responding (or choosing not to respond) to any risks created by the latest financial innovations.

BASEL Recommendation 8:

Supervisors should consider investigating and exploring the potential of new technologies to improve their methods and processes. Information on policies and practices should be shared among supervisors.

ETA Comments:

Over the past few years, we have seen data breaches affect U.S. government agencies such as the FDIC, SEC, and OPM in addition to the breaches in the private sector. ETA believes it is important for supervisors to follow the latest data security and protection guidance similar to what financial institutions are required to follow. As is the case with all sensitive information, bad actors who seek to obtain it will do so through the weakest link. Ensuring that sensitive data is secure, supervisors should consider investing in and using new technologies and implementing the latest and best practices for data security.

In addition to data security issues, when used correctly, supervisory technology can greatly reduce the cost and time for examinations and produce a clearer picture of compliance by financial institutions and other fintech companies.

ETA ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW
Suite 1020
Washington, DC 20036
www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

BASEL Recommendation 9:

Supervisors should review their current regulatory, supervisory and licensing frameworks in light of new and evolving risks arising from innovative products and business models. Within applicable statutory authorities and jurisdictions, supervisors should consider whether these frameworks are sufficiently proportionate and adaptive to appropriately balance ensuring safety and soundness and consumer protection expectations with mitigating the risk of inadvertently raising barriers to entry for new firms or new business models.

ETA Comments:

ETA agrees that supervisors should review the current regulatory, supervisory and licensing frameworks in light of new and evolving risks arising from innovative products and business models. There is a challenge when applying old rules or regulations to new players or new products contemplated by existing financial institutions and other fintech companies. Many regulators are eyeing the deployment of new products and services and are examining ways to regulate them. Many times, the tools in their toolbox are existing laws, which can create new challenges as many of the existing laws were written before the new products and services existed.

To ensure that rules and regulations keep up with technological changes, ETA endorses a review of current regulatory, supervisory, and licensing frameworks considering new and innovative products and business models. To ensure that the regulatory framework keeps up with existing products, a 5-year lookback on regulations by regulators should be done. This will help with modernization of regulations on a regular basis. One example of a supervisor using lookbacks in practice is the National Credit Union Administration ("NCUA"). NCUA reviews all of its existing regulations every three years. The NCUA's Office of General Counsel maintains a rolling review schedule that identifies one-third of NCUA's existing regulations for review each year and provides notice to the public of those regulations under review so the public may have an opportunity to comment. While 3-years may be too often for most supervisors, a 5-year lookback can be used by regulators to keep up with innovation.

BASEL Recommendation 10:

Supervisors should learn from each other's approaches and practices, and consider whether it would be appropriate to implement similar approaches or practices.

ETA Comments:

ETA supports open dialogue and learning between regulators as an opportunity to learn and adopt new practice to streamline supervision and examination. Regulatory harmony is a key component to innovation whether domestically or internationally. ETA supports open dialogue and coordination between supervisors to promote a positive regulatory framework for innovation. Coordination can help to encourage global growth and remove duplicative or contradictory requirements between regulators.

ELECTRONIC TRANSACTIONS ASSOCIATION

1620 L Street NW
Suite 1020
Washington, DC 20036

www.electran.org
T 800.695.5509
T 202.828.2635
F 202.828.2639

*   *   *

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully submitted,

PJ Hoffman, Director of Regulatory Affairs
Electronic Transactions Association
1620 L Street NW, Suite 1020
Washington, DC 20036
(202) 677-7417
PJHoffman@electran.org