December 22, 2020

Office of the Comptroller of the Currency
400 7th Street, SW.
Suite 3E-218
Washington, DC 20219

Attention: Comment Processing

Re: Fair Access to Financial Services
Docket ID OCC-2020-0042

I am a senior fellow in business and economics at the Pacific Research Institute (PRI). The mission of PRI is to champion freedom, opportunity, and personal responsibility for all individuals by advancing free-market policy solutions. Since its founding in 1979, PRI has remained steadfast to the vision of a free and civil society where individuals can achieve their full potential.

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The Office of the Comptroller of the Currency (OCC) has issued a Notice of Proposed Rulemaking (NPRM) referred to as "Fair Access to Bank Services, Capital and Credit". The stated purpose of the rule is to ensure that national banks and federal savings associations provide access to financial services to all customers without discrimination.

This proposed rule is an important clarification given the growing politicization of business and financial decisions. The rule will help ensure that the banking sector performs its vital role of providing the credit services that are essential for fostering an economic environment conducive to growth and prosperity.

It should go without saying, that banks should not discriminate against potential creditworthy borrowers and/or clients who are operating in legal industries. Yet, thanks in part to the growth in ESG, there is a growing tendency for this disconcerting discrimination to occur.

ESG – Environmental, Social, and Governance investing and management – imposes operational criteria for investors and businesses.

As applied to investors, ESG screens out companies based on pre-specified criteria. However, these investment criteria will vary widely. Some ESG funds actively invest in companies that meet specific environmental or social criteria. These funds will only invest in clean tech companies for instance, or only in companies where sufficient numbers of women are in

leadership positions. Other ESG funds will be, for all intents and purposes, broad-based funds that simply reject targeted investments, such as oil, gun, and tobacco companies.

As applied to businesses, ESG criteria imposes operational guidelines that compliant companies are supposed to follow. For some ESG proponents the criteria include paying a sufficient minimum wage, for others it includes minimizing a company's greenhouse gas emissions.

By following these criteria, companies and investors are supposed to be able to "do well while also doing good". Whether applied to investors or companies, ESG raises troubling issues.

There is not one consistent definition of what constitutes an ESG-compliant investment or activity. Consequently, one organization's ESG star (e.g., a company that pays a minimum wage of $15 per hour) can be another's laggard (e.g., if that same company has not reduced its carbon footprint). As a result, firms and organizations that rate companies based on their commitment to ESG will often contradict one another. The varied ESG definitions make it difficult to meaningfully quantify the impact of ESG on financial performance.

ESG also suffers from a fundamental contradiction, which is relevant to the proposed OCC rule. ESG proponents, who are often from outside of the organization, pressure companies and investors to implement ESG strategies.[1] These same advocates also claim that ESG programs and investing will enhance profits.[2] But, these two claims are contradictory.

In all other parts of the business, businesses and investors do not need outside entities to force them to engage in actions that will enhance their profits. This is the responsibility of the business' leadership. If business leaders fail to enhance profits, then they will often be replaced with leaders who will. It logically follows that profit maximizing firms and investors will implement ESG programs and strategies when these programs will enhance profits. Importantly, no additional advocacy or pressure is required. This means that the only reason why ESG advocacy is necessary is because the program or strategy does not enhance profits.

The problems created by this inherent contradiction with respect to ESG programs is applicable to the OCC's proposed rule. Banks are pressured by the same broader ESG activists to forgo serving politically disfavored industries such as energy companies, gun manufacturers, or private prisons. However, if these industries are unprofitable, no pressure to discriminate against them is required.

For instance, banks did not discriminate against video stores as its lending to this industry slowly dried up. Evaluating the business fundamentals of individual loan applications clearly demonstrated that the business model was no longer relevant. The same logic applies to these disfavored industries. If their business model was unsound, as many activists claim, then no pressure to discriminate against them would be required – banks would naturally shift their loan

[1] Mattson-Teig B "Private Equity RE Funds Feel Pressure from Investors to Create ESG Policies" National Real Estate Investor, March 4, 2020. Accessed December 18, 2020: https://www.nreionline.com/investment/private-equity-re-funds-feel-pressure-investors-create-esg-policies.

[2] See for example, Spellman GK and Nicholas DO "ESG Matters" ISS, January 9, 2020. Accessed December 16, 2020: https://www.issgovernance.com/library/esg-matters/.

portfolios toward other more profitable industries. Pressure to discriminate against these industries is only required because these industries are economically viable. Therefore, the issue is no longer whether these industries are financially sound, the issue is the political desires of the ESG activists targeting these industries. Caving-in to these pressures will create large economic costs in three areas.

First, when the pressure from ESG activists directs banks to discriminate against entire industries, these institutions are making lending decisions based on political correctness rather than economic fundamentals. When lending decisions are predicated on political considerations rather than financial soundness, failures typically follow.

For example, taxpayers lost $2.6 billion when the government directed investment capital to 19 politically favored, but failed, green energy companies.[3] These losses were incurred because political considerations rather than financial soundness guided the lending decisions of the federal government. The same risks to the broader U.S. economy will arise if policies do not actively block a similar politicization of banks' lending decisions. In short, allowing the political trends of the day to discriminate against entire industries will ultimately harm our future growth and prosperity.

It is important to note that not allowing the political fashions of the day to deny credit to entire industries does not mean that banks should not consider political or legal risks when making individual loan decisions. Where relevant, political and/or legal risks can be pertinent. However, such considerations should be evaluated through a typical unbiased loan approval process, not through a blanket discrimination against a legal industry.

Second, using political justifications to deny viable companies banking services imposes financial and economic harms directly on these industries. If widely blackballed by the banking industry, then the operations of these industries will be negatively impacted. These negative impacts will include job and income losses that, through the economic multiplier process, will extend beyond the disfavored industry. These direct economic impacts will impose unnecessary harms on families and businesses.

Third, by using the banks to discriminate against disfavored industries, ESG activists are circumventing the political process. The purpose of the legislative process is to allow the representatives of the people to make important policy decisions. Typically, activists are pushing banks to discriminate against disfavored industries because there are important policy questions that must be decided. These decisions will meaningfully impact fundamental policies such as what the appropriate response to global climate change should be, whether additional Second Amendment restrictions should be imposed, or whether state and local governments should have the option to use private prisons.

Deciding these issues through either the state legislatures or Congress creates an open process where all pertinent issues can be considered. If done well, adjudicating these issues through the

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[3] Osgouei P "19 Green Energy Companies Have Failed at Taxpayer Expense" Heritage Foundation. Accessed December 18, 2020: https://www.myheritage.org/news/19-green-energy-companies-have-failed-at-taxpayer-expense/.

legislative process creates the opportunity to establish a balanced solution that is acceptable to a majority of voters. Not only is it inappropriate for individuals to use the banking system to bypass the appropriate legislative process, doing so obstructs our ability to sustainably resolve important policy questions. By ensuring that bank lending decisions are based on economic fundamentals rather than political considerations, the proposed rule will protect the economy from the potential costs created by a politicized lending system.

Additionally, the proposed rule alleviates the "reputation risks" that encourage banks to adhere to the demands of activists in the first place. Activists often threaten banks with adverse public relations in order to force their political desires on to the financial institution. Establishing a rule that banks are not allowed to discriminate against an entire industry insulates the banks from these reputation risks. The activists would no longer be able to blame the banks, and would consequently be encouraged to adjudicate these issues in the political branches where they belong.

A fundamental value of our federal banking regulations should be ensuring that national banks and federal savings associations provide access to financial services without discriminating against any customer. The proposed rule advances this goal and is, consequently, an important change that should be implemented.

Thank you for the opportunity to comment on this important issue.

Sincerely,

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