

October 5, 2021

The Honorable Sherrod Brown
Chair
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Brown and Ranking Member Toomey:

We, the undersigned scholars who study financial regulation, write to express our support for the nomination of Professor Saule T. Omarova to serve as the Comptroller of the Currency. Our ranks include members of both parties, former financial industry executives, and former senior financial regulators. We believe Professor Omarova has the right combination of expertise, wisdom, independence, and courage to be an outstanding Comptroller.

Professor Omarova is the Beth and Marc Goldberg Professor of Law at Cornell Law School. She was previously the George R. Ward Associate Professor of Law at the University of North Carolina School of Law. Prior to embarking on an academic career, Professor Omarova practiced banking law at the top banking law firm, Davis, Polk & Wardwell LLP, and then worked in the Treasury Department during the George W. Bush administration as Special Advisor for Regulatory Policy to the Under Secretary for Domestic Finance, Randal K. Quarles.

Professor Omarova is a lawyer's lawyer. She is widely acknowledged to be one of the leading scholars of financial regulation in the world. There are few other scholars—or attorneys—who can match the depth of Professor Omarova's technical knowledge about American banking regulation or have her breadth of policy knowledge.

This is reflected in her scholarship, which has plumbed the detailed inner workings of federal financial regulatory agencies, including the Office of the Comptroller of the Currency (the "OCC"). For example, her diligently researched scholarship has shown how the OCC left the national banking system vulnerable to the 2008 financial crisis by enabling national banks to get into the risky derivatives business not through formal rulemaking, but through a series of opinion letters, each of which was boot-strapped on the previous one.¹ Similarly, she has shown how Federal Reserve Board (the "Fed") contributed to the increase of risk in the banking system through opinion letters that undermined the Federal Reserve Act's limitations on banks' transactions with their non-bank affiliates.² This is scholarship that could only have been undertaken by someone with an intimate knowledge of how bank regulation actually operates

¹ Saule T. Omarova, *The Quiet Metamorphosis: How Derivatives Changed the "Business of Banking,"* 63 MIAMI L. REV. 1041 (2009).

² Saule T. Omarova, *From Gramm-Leach-Bliley to Dodd-Frank: The Unfulfilled Promise of Section 23A of the Federal Reserve Act,* 89 N.C. L. REV. 1683 (2011).

on the ground. Through these works, moreover, Professor Omarova evinced deep respect for the statutory constraints that Congress placed on federal banking regulators.

Throughout her career, Professor Omarova has emphasized the importance of preserving financial stability, maintaining the safety and soundness of our banking system, and assuring responsible and ethical treatment of customers and communities. She is also a strong supporter of a “level playing field” that would ensure consistent regulatory treatment for all institutions that engage in the business of banking. She has opposed efforts by technology firms to engage in the banking business on terms that are different from those governing traditional bank holding companies.

Professor Omarova is cast from a different mold than previous Comptrollers. She would be the first female Comptroller, the first Asian-American and non-white Comptroller, and the first immigrant Comptroller. Moreover, unlike many previous Comptrollers, Professor Omarova is neither a bank lobbyist nor a current bank lawyer. She does not come from a practice representing clients. Not only is she refreshingly independent and unconflicted—something bank lobbyists find threatening—but she comes to the job with a uniquely deep appreciation for the opportunities made possible by the US financial system.

Professor Omarova grew up in a society lacking free markets—Soviet Kazakhstan. Similar to FDIC Chair Jelena McWilliams, she knows first-hand what it is like to live in communities that lack adequate banking services, a problem shared by many rural and urban communities in the United States. Her interest in bank regulation reflects her understanding of how important a vibrant, fair, competitive, and accessible banking system is for ensuring opportunities for both consumers and businesses.

She also knows what it is like to live in a society that lacks rule of law protections, and this experience has given her a deep personal commitment to the faithful and predictable interpretation and principled implementation of the statutes governing the banking industry. At the same time, she is keenly aware of the diversity of institutions in the US banking system and the need for regulatory flexibility to account for institutional circumstances—particularly for community banks and community development institutions—in lieu of one-size-fits-all rules.

Certain industry associations have unfairly accused Professor Omarova of holding “radical” views based on academic writings imagining an alternative structure for a financial system involving direct retail deposits at the Fed accessed through a central bank’s digital currency. Such claims are a deliberate misrepresentation of Professor Omarova and her work. We know Professor Omarova as a careful, cautious, and thoughtful scholar whose conclusions are based on evidence, not ideology.

Her supposedly controversial scholarship—dealing with issues that are entirely outside of the OCC’s regulatory ambit—is actually part of a venerable academic tradition of intellectual thought “exercises” (as she herself terms it) that explore the achievements and shortcomings

of the U.S. financial system by considering the trade-offs involved in alternative potential systems in order to “understand ... how far we are prepared to go, and what choices await us on that path.”³ Moreover, it is hard to see her academic articles evaluating such proposals as “radical” and unjustified when the Fed is studying the issue of a central bank digital currency⁴ and numerous other countries are pursuing central bank digital currency projects.⁵

Professor Omarova is a superbly qualified nominee who is ready to hit the ground running on day one at the OCC. She would bring a highly-informed perspective and a prudent and steady hand to the OCC at a time of substantial transformation in the institutional landscape of financial institutions.

For these reasons, we believe that Professor Omarova would make an outstanding Comptroller of the Currency, and we urge you to support her nomination.

Sincerely,

Anat R. Admati
[Chaired] Professor of Finance and Economics
Stanford Graduate School of Business

Hilary J. Allen
Professor of Law
American University Washington College of Law

Abbye Atkinson
Class of 1965 Assistant Professor of Law
University of California Berkeley, School of Law

Tom Baker
William Maul Measey Professor of Law
University of Pennsylvania

³ Saule T. Omarova, *The People’s Ledger: How to Democratize Money and Finance the Economy*, VAND. L. REV. (forthcoming 2021), available at <https://ssrn.com/abstract=3715735>.

⁴ Jonnelle Marte, *Fed to release paper on central bank digital currency soon, Powell Says*, REUTERS, Sept. 22, 2021, at <https://reut.rs/3A0Eq3f>.

⁵ The Atlantic Council, Central Bank Digital Currency Tracker, at <https://www.atlanticcouncil.org/cbdctracker/>.

Susan Block-Lieb
Cooper Family Professor in Urban Legal Issues
Fordham Law School

Andrea Boyack
Norman R. Pozez Chair of Business and Transactional Law
Washburn University School of Law

William Bratton
Nicholas F. Gallicchio Professor of Law Emeritus
University of Pennsylvania Carey Law School
de la Cruz/Mentschikoff Chair in Law & Economics and Senior Lecturer
University of Miami School of Law

Ray Brescia
Hon. Harold R. Tyler Chair in Law & Technology
Albany Law School

Lissa Broome
Burton Craige Distinguished Professor
University of North Carolina School of Law

Mark E. Budnitz
Bobby Lee Cook Professor of Law Emeritus
Georgia State University College of Law

Felix Chang
Professor and Associate Dean of Faculty and Research
University of Cincinnati College of Law

Dana Chasin
Principal
20/20 Vision, and
Member, IMFR Advisory Council
Albany Law School

John C. Coffee, Jr.
Adolf Berle Professor of Law
Columbia University Law School

Madison Condon
Associate Professor
Boston University School of Law

Prentiss Cox
Professor of Law
University of Minnesota Law School

Susan L. DeJarnatt
Professor of Law
Temple University Beasley School of Law

Christine Desan
Leo Gottlieb Professor of Law
Harvard Law School

Onnig H. Dombalagian
Professor of Law
Tulane Law School

Benjamin Edwards
Associate Professor of Law
University of Nevada, Las Vegas

Kurt Eggert
Professor of Law
Chapman University Fowler School of Law

Kathleen Engel
Research Professor of Law
Suffolk University

Adam Feibelman
Sumter Davis Marks Professor of Law
Tulane Law School

Brian D. Feinstein
Assistant Professor
The Wharton School

Linda E. Fisher
Professor of Law
Seton Hall Law School

Gina-Gail S. Fletcher
Professor of Law
Duke University School of Law

Pamela Foohey
Professor of Law
Benjamin N. Cardozo School of Law, Yeshiva University

Anna Gelpern
Anne Fleming Research Professor and Professor of Law
Georgetown University Law Center

Jeff Gentes
George W. and Sadella D. Crawford Visiting Clinical Lecturer in Law
Yale Law School

Jonathan Glater
Professor of Law
University of California Berkeley, School of Law

Rohan Grey
Assistant Professor of Law
Willamette University College of Law

Celeste Hammond
Professor of Law
University of Illinois Chicago

Annie H. Harper
Associate Research Scientist in Psychiatry
Yale University

Cassandra Jones Havard
Professor of Law
University of Baltimore School of Law

Claire Hill
Professor and James L. Krusemark Chair in Law
University of Minnesota Law School

Robert C. Hockett
Edward Cornell Professor of Law
Cornell Law School

Edward Janger
David M. Barse Professor of Law and
Associate Dean for Faculty Research and Scholarship
Brooklyn Law School

Dalié Jiménez
Professor of Law
University of California, Irvine School of Law

Simon Johnson
Professor
MIT Sloan School

Kathryn Judge
Harvey J. Goldschmid Professor of Law
Columbia Law School

Roberta S. Karmel
Professor
Brooklyn Law School

Jeremy Kress
Assistant Professor of Business Law
University of Michigan Ross School of Business

Prasad Krishnamurthy
Professor of Law
University of California Berkeley, School of Law

James Kwak
Jesse Root Professor of Law
University of Connecticut School of Law

Irene E. Leech
Associate Professor, Consumer Studies
Virginia Tech

Adam J. Levitin
Anne Fleming Research Professor and Professor of Law
Georgetown University Law Center

Da Lin
Assistant Professor of Law
University of Richmond School of Law

Ann Meredith Lipton
Associate Professor
Tulane University

Angela Littwin
Ronald D. Krist Professor of Law
University of Texas School of Law

Michael P. Malloy, Ph.D.
Distinguished Professor of Law
University of the Pacific McGeorge School of Law

Cathy Lesser Mansfield
Senior Instructor in Law
Case Western Reserve University School of Law

Patricia A. McCoy
Professor of Law
Boston College

Brett McDonnell
Dorsey & Whitney Chair in Law
University of Minnesota Law School

Lev Menand
Lecturer in Law
Columbia Law School

Ted Mermin
Executive Director, Center for Consumer Law and Economic Justice
University of California Berkeley, School of Law

Christopher K. Odinet
Professor of Law
Michael & Brenda Sandler Fellow in Corporate Law
The University of Iowa College of Law

Frank Partnoy
Adrian A. Kragen Professor of Law
University of California Berkeley, School of Law

Christopher Peterson
John J. Flynn Endowed Professor of Law
University of Utah

Paul Pfeleiderer
Professor of Finance
Stanford University

Morgan Ricks
Professor of Law
Vanderbilt University Law School

Heidi Mandanis Schooner
Professor of Law
Columbus School of Law, The Catholic University of America

Daniel Schwarcz
Fredrikson & Byron Professor of Law
University of Minnesota Law School

Norman I. Silber
Professor of Law
Maurice A. Deane School of Law, Hofstra University

Joseph Sommer
Retired
formerly Federal Reserve Bank of New York

Jennifer Taub
Professor of Law
Western New England University School of Law

Zephyr Teachout
Associate Professor of Law
Fordham Law School

Rory Van Loo
Professor of Law
Boston University School of Law

David Webber
Professor of Law
Boston University School of Law

Alan White
Professor of Law
CUNY Law School

Lauren E. Willis
Associate Dean for Research and Professor of Law
LMU Loyola Law School Los Angeles

Arthur E. Wilmarth, Jr.
Professor Emeritus of Law
George Washington University Law School

Catherine Lee Wilson
Associate Professor of Law
University of Nebraska-Lincoln College of Law