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In Conversation with:

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P R O C E E D I N G S

MR. LEE: Thank you. If you don't know or recognize our next two guests, you should at least pretend to. Or you may have registered for the wrong conference. Either way, we're glad you're with us.

H. Rodgin Cohen is Senior Chairman of Sullivan & Cromwell LLP, having served as Chairman from 2000 to 2009. The primary focus of Mr. Cohen's practice is regulatory enforcement acquisition and securities law matters for U.S. and non U.S. banking and other financial institutions. And their trade associations and corporate governance matters for a wide variety of organizations.

Mr. Cohen advises the financial services industry on the full range of regulatory, merger, and acquisition governance, compliance, and enforcement matters, including multi-agency investigations relating to compliance with any money laundering and sanctions issues. He has been donned the trauma surgeon of Wall Street and the Viceroy of all Western capitalism. That's a compliment, that's not a --

Jelena McWilliams arrived in the U.S. on her

18th birthday with $500 in her pocket.

SPEAKER 1: That's what you start with?

MR. LEE: That's how you started your --

SPEAKER 1: She's like German emeritus and --

MR. LEE: Jelena and I are good friends. Oh, sorry, were good friends.

Since arriving in the U.S. on her 18th birthday with $500 in her pocket, Ms. McWilliams graduated with highest honors from UC Berkeley, and earned her law degree from UC Berkeley School of Law. She practiced corporate and securities law at Morrison & Foerster in Palo Alto, California, and Hogan & Hartson in DC. From 2007 to 2010 Ms. McWilliams served as an attorney at the Federal Reserve Board of Governors and the Division of Consumer and Community Affairs. From there Ms. McWilliams worked in the United States Senate for six years as Chief Counsel and Deputy Staff Director with the Senate Committee on Banking, Housing, and Urban Affairs. I had the privilege of working with her for two those years, where I learned that it's Jelena, not Jelena or Elaina or any other variety.

MS. McWILLIAMS: They can call me Rog.

MR. LEE: She's very good on her feet. Ms. McWilliams was Executive Vice President, Chief Legal Officer and Corporate Secretary for Fifth Third Bank in Cincinnati, Ohio. At Fifth Third Bank she served as a member of the Executive Management Team and on numerous committees. In June, 2018 she was sworn in as the 21st Chairman of the FDIC, where she's serving a six-year term on the Board of Directors, and is designated as Chairman for a term of five years. Jelena's brought joy and dedication and hard work to each of these roles.

Please join me in welcoming Chair McWilliams and Rog Cohen.

MR. COHEN: Thank you very much, Mike. I'd like just to add to his introduction of the Chairman with one statistic. I think Jelena has the highest first impression quotation of anybody I have ever met. And by that I mean the first time somebody goes to meet her and comes back and reports, it's always the same response. Wow, is she impressive. And frankly, when you get to the second impression, it's just as good.

MS. McWILLIAMS: It takes three.

MR. COHEN: Well, that's why you don't have the third meeting, right?

So I thought we might begin with the late breaking news. There were two announcements of significance, at least, yesterday by the FDIC. The first one was a proposed rulemaking to deal with what is known as the Madden Decision. At the risk of editorializing, the proposal would return the law to the way it was written and interpreted by the Supreme Court.

And the second matter yesterday was the FDIC's approval of the Bank aspect of the SunTrust/BB&T merger. So probably everybody's read the releases. I'd be interested in what color and observations you would have as well.

MS. McWILLIAMS: I have no color and observations on those two. All joking aside. So on Madden and the interest rate quotability, it's important that we uphold the sanctity of the contract, and that has been the precedence by the Supreme Court cases for a hundred years. And the fact that we had one court decide otherwise created the dichotomy and disparity in our financial regulatory framework. And frankly, we need to ensure that banks are able to function.

Secondary market is important in being able to sell loans, it is an important function for banks to basically manage their risk as well.

And so it was important for us to opine and seek comments on how to proceed going forward. So we issued a Notice of Proposed Rulemaking on that. We have had the guidance in place for 20 plus years, and so we’re looking to both codify our guidance as is appropriate, and also provide an opportunity to the public to comment and allow us to shape policy based on the data that’s available to you and sometimes not available to us.

And on the merger, I think I see the two CEOs, you know, your staff did good jobs and you did fulfilling the statutory requirements. And as I like to say, you made it very difficult to decline you. So.

MR. COHEN: So one other editorial comment. If you don’t think regulatory leadership makes a difference, think about the NPR yesterday on Madden and the comparable one, or I guess Tuesday by the FDIC and yesterday by the Controller. I get them reversed. In any event, if you go back and look at the regulatory sort of quasi silence at the time Madden was working its way through the courts, it really does make a difference.

Let me turn next to the Community Reinvestment Act. I suspect there would be something close to unanimity among both the community groups and the banks that this is a statute and regulation which really needs modernization because the whole banking industry has changed.

Could you discuss whether you see CRA reform as a high priority for yourself and for the other agencies, to the extent you've discussed it with them, and any prognosis as to what could happen?

MS. McWILLIAMS: So what did the Controller say this morning? Here is where we are. The agencies have been engaged in the Prudential banking agencies, the FED, OCC and the FDIC, have been engaged in multi-agency effort, joint agency effort on coming out with a proposal for how to reshape our regulatory framework with respect to the Community Reinvestment Act.

And we generally agree on several things. One is that with banks shifting more to the digital delivery channels and having some things that only have digital delivery channels. How do we look at the assessment area and, you know, branches are still important, there still people like us who go to branches, millennials don't, but branches are still important. And so right now the way we look at the deposit taking activities is all based on the branch location. But if you look at the digital delivery channels, it's not so much about the branch location, it's about where the consumer is located and wherever you send your notices and what address you have on file.

So we need to reassess both what an assessment area looks like and also to provide more certainty to institutions that are looking to, you know, invest in their communities, how to do it. And the formula shouldn't change. Meaning it shouldn't matter what kind of a rating you are or what kind of rating you have or where you are in the CRA cycle, you know, whether you're in the first three-year cycle or the second three-year cycle of a seven year investment. That investment should qualify and there should be certainty to you as a bank so that you know when you're looking at your spreadsheets, that when you go into the CRA exam you know whether or not you have met the requirements or exceeded them. You know, banks generally want to be outstanding, some are satisfactory. But generally banks are doing a very good job complying with the CRA requirements. Where we can do better is certainty in addressing some of the changes in the delivery channels that we have.

I am still optimistic that we can get an interagency NPR now. I'm inclined to, if the Fed doesn't go with us, I'm inclined to join the MDAC, I'm sorry, the OCC, because I do think there is a benefit in having something out there for you to comment on and, you know, I'm going to give a shout out to Mike Calhoon. But, you know, it's important for us to get feedback from the folks who are in this space, from bankers as well and just understand how should we reshape the framework moving forward. It hasn't been touched, really, since 1995. You know, it became law in 1977 and then we did some revisions, the agencies did, in 1995. So many things have changed since then. And I think you deserve an opportunity, to the U.S. public, to comment and provide your feedback on how to change the framework. Because in the end you're the partitioners on the ground, whether you're on the community side or you're on the banking side. And you know the best how these investments have been done and the lending, etcetera, etcetera, and how difficult it has been for you to figure out are communities getting enough, are you doing enough. And so if we can provide that certainty for you I'm willing to go, you know, somewhat out on a limb and propose frankly something that may not be perfect but it's going to at least open up the conversation and give you an opportunity to comment.

MR. COHEN: So I'll turn to an issue where you don't have to worry about interagency cooperation, it's your own, and that's broker deposits. And you have moved for the first time maybe since the beginning of that era, to address this issue. But once again, I think the question relates to the changes in the way banking products and services are delivered, and the types of products and services. And there is, as I assume everybody knows, the proposal out there. Could you talk a bit about what you see as your objectives with this proposed regulation and where you see it going?

MS. McWILLIAMS: Yeah. So broker deposits, in my view, the rulemaking we have in place, the rules we have in place, they have been around for at least 20 years. And we did some tweaks here and there but nothing significant enough. And frankly, they fall, for my intents and purposes as the Chairman of the FDIC, they fall in the category of rules that we absolutely have to revisit. Now I don’t know what the end outcome of that is going to be, but rules are too complicated, the delivery channels and how banks are collecting deposits and aggregating deposits has changed in those 20 years dramatically. And frankly, we need to address the changes in the marketplace because we’re just way behind. And there’s also uncertainty because we have relied on general counsel’s opinion, we generally don’t issue general counsel’s opinion. So it’s a little bit of a hodgepodge of things how we have been looking at broker deposits.

We do have, you know, different segments of what broker deposits generally end up being, you know, we look at sweeps and the prepaid cards etcetera. But we're going to be coming out with a proposal pretty soon, I'm hoping by the end of the year, on again giving you an opportunity to provide your feedback and tell us how you're looking at deposits and whether the notion of a broker deposit being hot money, hot money, hot money, as we have traditionally been approaching them is still valid, and if not, how the framework that we have should be changed.

MR. COHEN: Thank you. So let me turn to a different issue, which is perhaps at the forefront I think for the banking industry. And that is the relationship with technology, and more specifically with the so-called Fintech companies, which is a very broad term. What do we have, what should we have? Do we have partners, competitors, something in between?

And I would suggest this issue is becoming even more of an imperative to be addressed by the industry and the regulators because now we see Fintech moving beyond loans. I mean banks have always competed with non-banks for loans. But they've never had to compete all that much for deposit and payment services, and that's where the Fintech movement seems to be going.

So how do you see this as evolving, what is the FDIC's role, what are your personal views on where it should go?

MS. McWILLIAMS: So I tell generally people my personal views play no role in our policymaking. And here's why. We have congressional statutes that are guiding our work, and we have to do what Congress tells us to do. We have some regulatory discretion in that work but we have to be judicious about the exercise of the regulatory discretion.

So when you look at technology and the developments that have happened in the banking industry beyond banks, I think that Fintechs are both competitors and partners in this space. I think they started out as competitors, and banks, especially small banks, have kind of wizened up and became partners with Fintechs, realizing that the delivery channels and the agility of the technology companies to provide some of the banking services, when teaming up with the bank, is more than the bank can do on their own. And so there's a plus, plus relationship there that frankly can be very symbiotic.

But I think we need to take a step back and ask why has so much of financial services, offerings, and products and just general delivery channels, developed outside of the banks. In the end, banks have been on the forefront of innovation for so long. And what happened I think, partly due to the financial crises and partly due to just the regulatory risk aversion in general. We have I think created an environment where a lot of banks are concerned about innovating. And so you'll innovate a little bit but you won't go all far out because it takes a lot of money. And so if you go to a regulatory agency and you say hey, we just spent $500,000, and that's a good case, you know, that's a small amount, or a million dollars thinking about this prototype or this product we are going to offer, can you give us some feedback as to whether or not you're going to be comfortable with us offering this. We're not going to tell you yes or not, it's just not how the regulatory agencies are, right. And so you're going to be reluctant to now plunge in $10 million into development of that product when you know that, you know, six months later we can come after you for a you debt violation on your disclosures, that you just didn’t think about at the time.

And so it’s important for us to create an environment where banks are encouraged to innovate. And whether that means that they partner up with the Fintechs and they offer innovating solutions, digital platforms, and technology based on what the Fintechs are providing, or the banks develop that within their eco system, either way, I’m okay with that.

But I do think there’s an opportunity for us on the regulatory side to do a little bit more. So we’re looking to do a couple of things. I went to San Francisco and Silicon Valley and I met with about 24, 25 Fintechs. And they all partner up with banks. And I said “What are you hearing from the banks when you go to partner up with them about us, about the regulators, and where are you seeing some of the obstacles in your ability to partner up with banks? And by the way, how did you even think about your business model? What was it that banks weren’t doing that prompted you to think about offering this?” And so we know that the use of alternative data has been something the banks have been not as eager, again for sound underwriting purposes, to adopt as much as the technology companies have been. So we're coming out with a joint interagency guidance on the use of alternative data and how to look for consumer protection issues if you are using alternative data.

We're also going to come out with an interagency guidance on the artificial intelligence and machine learning. And we'll try to give you as much as we can, at least if not the rules of the road, then the framework as to how we are looking at all of this. And then we can think beyond that what does innovation mean and what else regulators have to do?

We're also creating the Office of Innovation of the FDIC. And the purpose of this office is really to look into these issues and figure out how can banks partner up with Fintechs, and where are the regulatory obstacles. Because in the end it's fine if some of this is developing on technology and customer products, consumer products for developing outside of the banks, what you don't want to do is create a regulatory arbitrage when, and obstacles to banks to do that. You want to create a level playing field. And if you more regulations on banks that are in this phase than you have on technology companies, you don't have a level playing field. And so we need to remove the obstacles and barriers to innovation at banks and figure out, you know, if we give you the roadmap, or at least the framework, can you take that and run, and can you effectively compete. Because in the end society and consumers benefit from competition.

MR. COHEN: So let me deal with what is maybe an offshoot, and that was the Facebook announcement of Libra. And that has really created a lot of focus, maybe for the first time, at least widely, on what is a cryptocurrency from a legal or regulatory perspective. Is it a security, is it a deposit, is it something else, something novel? But beyond the legal issue, which as everyone heard, Jelena is more than qualified to discuss, what about the appropriate regulatory oversight, and what about the implications for the country as a whole?

MS. McWILLIAMS: Without endorsing or denying what's happening in that space, I think we need to be open minded while careful. And walking that fine line, I think from a regulatory perspective, is important. Obviously some kind of a cryto aspect is developing in many different jurisdictions, right? And, you know, in addition to stable coins and cryptocurrency, you know, there are now discussions by central banks what the role for central banks in this space. You know, the FDIC is not a central bank but I do think that there’s a broader policy discussion that we need to engage in. And we’re currently engaging in it in Washington, the different regulatory agencies. We need to as a country make a decision, do we see more benefit than downside to getting involved in this space? And if we see more benefit than downsize, then the regulatory policy framework needs to be subject to decide is it the commodities, is it the securities, is an asset, or is it the deposit, right?

And once we come to that, we kind of go down that waterfall, we will know who needs to regulate it and how. And whether at not at that point in time there’s a place for the FDIC. I do think that we should be at least thinking through the issues that are facing folks who are involved in this space. And I don't think it should be an automatic no.

MR. COHEN: Just to continue for a moment, in the interagency discussions are the intelligence agencies part of that discussion?

MS. McWILLIAMS: I think they're always part of discussion even when you don't know they're a part of the discussion.

MR. COHEN: All right, sorry.

MS. McWILLIAMS: Yeah, sorry guys. Yes, yes, yes. So we're talking to the intelligence and law enforcement agencies on a number of different issues on an interagency basis. We're also talking to them a bit about BSA and AML compliance and the regimes we have currently in place. Because I think that's another area that's ripe for revisiting. We have technological advances now that we didn't have in the past and in that space if we can do more. So we have engaged with law enforcement and intelligence in a number of different agencies to understand exactly how do they process information, analyze information, and gather information once banks file SARs. So we're talking to them in that space as well as in just the space of cryptocurrency.

The truth of the matter is you want to regulate things appropriately, and I think a healthy regulatory framework and a healthy regulatory system is like a seesaw. You balance out the need for protections while allowing enough room for innovation and progress to take place. And that seesaw is very kind of a careful balance. And I think with respect to crypto assets you want to make sure that you know what the seesaw looks what, what the potential for abuse is. Right now what you're seeing with a lot of the cryptocurrencies in assets, you know, they're quite often used in transactions that you necessarily wouldn't consider legitimate for the purpose of just general banking services. And that's something that we need to be cognizant of and work with law enforcement to understand exactly if we were to endorse cryptocurrency framework, regulatory framework, how are we going to tackle those issues?

MR. COHEN: Let me turn to an issue which you touched on earlier, which is the necessity for a review of what is this incredible web of bank regulations. And inevitably you mentioned it in terms of CRA, it hadn't really been touched for decades. The CRA hasn't been touched, broker deposits hasn't been touched. Where do you see this whole process because it could just consume you so there's got to be some focus. So where do you see this all coming out. And I'll ask specifically because it is top of mind for a number of banks and that is the Reg O issue with principle shareholder and related persons.

MS. McWILLIAMS: See how he very skillfully asked me about the regulation that belongs to another agency. So let me try to force the Fed's hand. No, I'm kidding. When I joined the FDIC, I can only speak for my regulations. When I joined the FDIC I basically gave staff a list. I said I want you to figure out, number one, which rules have not been updated at all in 10 plus years. And then take a look 10, 20, believe it or not 30 years. We have had regulations in place that have not been meaningfully updated. And I said then give me the list and then tell me which of these regulations have the most impact. So I'm looking for the most impact, doesn't matter if it was 12 years ago that we revised it or 20 years ago, but if the regulation is extremely impactful on the marketplace and the regulatory entities we should tackle that one first.

So we’re going through that list for us. And I do think the regulatory agencies frankly have a duty to update regulations. You know, you’re outside counsel to a number of folks in the room. The bottom line is I used to work in a law firm as well. You try as an outside counsel, as an inside counsel, at your entities, you try to give advice to the management, to the executive team, on how to do something. And you have an executive team that generally wants to do the right thing. You have the general counsel who wants the executive team to do the right thing. And yet the regulations are not always up to date. Actually they’re seldom up to date. And that’s a problem.

So I do think that we need to be very cognizant of the need if we’re going to maintain the dominance of the United States finance system, we need to be agile on the regulatory side, we need to be agile in our delivery and, frankly, the willingness to revisit the regulations that have been in place for a long time.

And at some point you just have to have a backbone to say “Hey, listen, some people are going to hate it, some people are going to like it, nobody’s probably going to love it, but you know what, it’s the right thing to do and we’re going to go out and just open it up for comments.” And I think that’s the only thing that’s fair to do in our regulatory system. And now that I have this opportunity I’m going to take that risk.

MR. COHEN: So, Jelena, without putting you on the spot, I won’t on Reg O, but that illustrates the point because it’s the Fed’s regulation but both the controller and you have the responsibility for the banks for which you’re the primary regulator.

So as you try, and without focusing on that one in particular, how do you see this going forward since so many of these do have the interagency aspect to them?

MS. McWILLIAMS: So generally the way this works, and I could write you a novel about this, it’s going to be like a John Grisham detective story. Generally the way it works is the agency, all three banking regulatory agencies have jurisdiction over a regulation. Usually the agency that has the primary jurisdiction would drive the process, and we would do an interagency rulemaking. Now if it's something like the CRA, Congress just gave the CRA authorities to all three agencies, it doesn't matter who actually holds the pen. But usually the person that holds the pen, the agency that holds the pen is the agency to which that regulation belongs.

We have multiple venues through which we can actually work together to change regulations. You should be pleased to hear that there's a high level of cooperation right now among the agencies. And, you know, I was with the Fed 12 years ago and I don't think it was as high as it is now. So Joseph Otting, Randy Quarles and I have weekly calls. We talk every week, we have a list of things we're trying to get done. We talk about our priorities at each of the agencies and how we plan on moving forward. We kind of go down that list and figure out what needs to be done.

For the purposes of the interagency rulemakings, the process just takes forever. So without disclosing too much, you know, we have a list of things we would like to accomplish on an interagency basis, but it just takes an extraordinary amount of time. I think if you were to come from private industry to the agencies and try to move forward the joint rulemaking, it would just be, I think you would be abysmally disappointed at how long it takes.

MR. COHEN: Well I was holding my breath when you said you were writing a novel because what immediately flashed into my mind was Animal Farm not --

MS. McWILLIAMS: So long as you didn't say 1984.

MR. COHEN: I was thinking that too, but I didn't want to say that one.

MS. McWILLIAMS: I'll take the pigs and human over 1984, yes.

MR. COHEN: Right. Those humans at least. Another issue which has been very much in the headlines at long last perhaps, is the demise of LIBOR. And that's not a regulation but it is an issue for the banking industry as a whole. Are there views that you have formed on this, do you have an idea where you think the industry should be going?

MS. McWILLIAMS: Yes. So a couple things there. We still have banks that are originating mortgages and loans based on LIBOR. And it's a little bit of a pickle, right? Because you don't have a rate that has been officially endorsed, you have several competing rates that you can rely on, but LIBOR is still the predominate rate. And as you're looking to phase out LIBOR and, you know, there are deadlines for that as well, and there are committees looking to come up with a SOFR and whether the SOFER makes sense. I don't want to endorse a single rate, the FDIC is not going to endorse a single rate. But I do think we need to be cognizant of the market aspect of LIBOR versus, you know, known market aspects of SOFR and what does that mean for the marketplace? Because you want agility in that rate so that the rate can move with the market as the market moves.

And so I am open minded about, you know, what that rate should look like. But again, I think it's primarily, I think the Fed took the lead. See it's so easy when you can blame the Feds. I told Vice Chairman Quarles, I'm like "I don't care when we testify so long as you and Otting are there." Thank you for that laughter, thank you.

The truth of the matter is that we do need to be both open minded and frankly, a little bit more agile in how we're going to structure this rate and how quickly we can deliver something to the marketplace, because we still have banks originating loans based on LIBOR.

MR. COHEN: So not that Jelena ever needs to be taken off the hook, but when she said it's so easy to blame the Fed, she was talking about regulation, not monetary policy.

MS. McWILLIAMS: Oh, yeah, no, no, no, no. I know which waters not to wade in.

MR. COHEN: So we talked at the very beginning, because of the BB&T/SunTrust announcement yesterday, about consolidation, or at least touched on it. But interestingly enough, not only on that transaction but on the First Horizon/Iberia transaction, both sets of mergers really emphasize the importance of scale. And that makes, I think, everyone wonder, well if you need to be X hundred billion or X 10s of billions to achieve scale, and I'm not going to ask because nobody knows the answer as to what is the optimal size. But if scale is so important, what does that say about the future of the 5,000 plus banks who by any definition don't have "scale," and what can be done to help them too because they're the backbone of so much of American banking.

MS. McWILLIAMS: No, absolutely. So the economies of scale is probably one of the biggest advantages a company can have. If you have the market share and the ability to execute, and if you can price your offerings and services based on the broader area of those services and offerings, while in a small area you of course have a per product or per service or per, you know, name it for item advantage.

And the economies of scale basically don't work to the advantage of the smaller banks. But this is I think there are three things we can do. One is that we can take a look at technology, right? So up until now it was really difficult to reach, up until now, up until a few years, it was really difficult to reach customers. And you either had to take them from another bank, which is very expensive, so I get your flyers for, you know, open up a new account with us $300, $250. Or you can basically acquire a bank and acquire their portfolio and the customer base with you.

I think we're now in the space where with some of the digital platforms, you can actually reach customers that you didn't think were potential customers for you. And so we do need to encourage technology and the adoption of technology and the development of technology at banks and allow banks to think creatively about reaching customers. Whether it is through a small dollar offering or through products and services are going to bring some of the unbanked or underbanked or people who have fallen out of the banking fold but once were members of the, you know, had banking accounts. So I think technology is huge there.

I think that we need to take a look at frankly regulatory burdens. If the regulatory burdens are holding back some of the entities from being able to offer products and services and evolve and grow, then we need to take a look at that. And then ask the next question, is that regulation absolutely necessary. And if it is necessary, keep it but find a way for it to work so that there's not unnecessary impediment or obstacle in place. And if it's not necessary, then why don't we take a look at it and figure out how can we deal with that issue in a different manner.

And then I think the third thing to look at is just generally what we anticipate that the banking sector is going to look like 10 years from now, 20 years from now, right? And are people going to be, are your customers going to be going to, you know, to your digital platforms and never go into a branch, you know, what's the role of cash anymore in this society, right? And how do we underwrite mortgages and what are we offering to customers?

And I think as we look at all of that we need to be cognizant that, you know, there's a role for small banks to play in this landscape. And so what we're doing, at least for the purpose of the small banks, is taking a look at every regulation that effects them and seeing if there is a way to, you know, take them out of the BOSL framework. Small banks would not be part of the BOSL framework, it was meant for larger, internationally connected banks, not small banks. And then taking a look at how can we remove some of the barriers to growth that they have. But, you know, consolidation is happening. It's to some extent inevitable, and as banks of all sizes face pressures from non-banks, credit unions, technology companies and from the overseas as well, I just think we need to be as regular, as cognizant of kind of the winds that they are facing on their journey.

MR. COHEN: Thank you. I would encourage other questioners, hopefully the ipad is working because I only have two. But let me start with the first of those because we really would like to hear from you. And the first really follows right along with your answer.

While encouraging community banks to partner with Fintechs, arguably necessary for their survival, are there any dangers of large well-funded Fintechs taking advantage of the charter to the detriment of banks of even soundness?

MS. McWILLIAMS: Yes, absolutely, of course, yeah. And it is something that we're cognizant of. And frankly, so I think this person is asking two questions, one directly and one indirectly.

And the direct question is, you know, are we concerned about the debt companies getting into this space and partnering up with a bank to offer products and services that are traditionally banking products and services but now the tech company is the one actually doing it, right? And it's something that we are frankly looking at and making sure we understand what the connection is.

This is what I tell to the tech companies that have come to the FDIC, and this brings me to the second component of this question, which I think is about the ILCs, the Industrial Loan Corporations. This is what I tell the tech companies coming in and asking "Hey, should we partner up with a bank, should we, you know, get a banking charter or should be become an ILC, like what's your recommendation?" We usually don't give them recommendations, it's based on whatever their business model is. But here's the bottom line. If a tech company wants to be regulated like a bank, they're welcome to come on over. And so when people tell me, are you concerned, you know, about, I won't name companies because I've learned not to do that. But if you're concerned about, you know, this very, very large company that mines data all the time having, you know, a banking presence, I'm like sure, if they want to be regulated like a bank, come on over, you know, we certainly, I have 6,000 people, we can hire 6,000 more and we can regulate the heck out of you.

So I do think it's important that we are cognizant you want innovation to happen but you don't want to create loopholes and create frankly, cracks in the system that entities that shouldn't be taking advantage of or are taking advantage of.

MR. COHEN: So again, the only other, there are two questions and then a reminder that you have to be out by 1:30, and you will.

The next question was, could you comment on your views regarding innovation in regulation. This goes beyond mine, which is just what is old and needs to be changed, but what should be new, and what progress and innovation do you expect in 2020?

MS. McWILLIAMS: So I don't necessarily look just at 2020, I look at, you know, my mandate is five years, as Mike mentioned, and so I'm here until 2023. And I think about beyond that. So what are banks of the future going to look like? You know, is that ATM where you go to get cash, person is then going to be an ATM but then it's going to dispense, you know, sow latte with your 200 in cash, you know. And what is that cash going to look like. Is it going to be little coins, without naming coins. And so the question is, you know, what is this future of banking going to look like and what do we need to do on the regulatory side to be, again, agile enough.

The biggest problem we have on the regulatory side is that we make regulations based on the past events. So we look at the financial crisis and we say well, you know, X caused the financial crisis and we're going to address X. But the next crisis, you know, there are some lessons that repeat themselves, but most often they actually don't necessarily repeat themselves verbatim, right? So you need to kind of figure out what it is that you're looking for forward, you know, where do you see the risk and how do you want manage that risk. You want to allow banks to be able to evolve. You know, banks have been around a long time, they have a point of service to the communities that they serve, they provide many benefits, they're businesses, they're for-profit businesses. And so you have to create this equilibrium where you take all of that into account but you allow them to innovate. When frankly that also means that regulators have to innovate and change.

And so we have currently, we've created a Supervision Modernization Subcommittee to our Community Bank Advisory Committee at the FDIC. And the purpose of that committee is basically to tell us how should we restructure our supervisory and regulatory regime. What is an examiner of the future going to look like? And by the way I think it's going to be a data scientist, it's not going to be your, you know, your good old five feet of loan document review person that sits in your office, you know. It's going to be somebody who understands your algorithms. And we need to create that so when we send you examiners that come to your bank and you're thinking about advancing your platforms and your offerings, that our examiners can communicate appropriately with your staff.

And so we're also looking at terms of innovation, how can consumer protection evolve in that space, right? So now you have algorithms and, you know, folks are telling you that algorithms have a potential that, depending on the input of putting out stuff, that could potentially be in violation of consumer protection laws. And so thinking through all of those issues, I just think we just need to be really open minded, and on the regulatory side we need to admit we just don't have all the answers. And we don't. And we can't regulate everything as if it were done in the past century. And so having some flexibility doesn't mean it's deregulatory, doesn't mean that we are undermining the safe and sound consumer protection, but being open minded to the developments that are happening and just making sure that we're not in the way of innovation.

Because in the end, why do we do what we do, you know? You satisfy the safe and soundness on the regulatory side, you satisfy the consumer protection, you know, regulations, but in the end you do what you do because you offer banking products and services to your communities, right? We do what we do because we want to be able to say you're offering them in a manner that's safe and sound with adequate consumer protection.

But in the end it's the customer that matters the most. And you're not going to have that customer if that customer is not getting the digital offerings that they're getting from non-banks. You're not going to have that customer if you don't treat them well. And we're going to a more difficult task if you end up in that position.

And so there's a mutually beneficial environment here where I think we need to be a little bit more flexible in allowing you to innovate in how you move forward and not just being, you know, the agency, the regulator of no, but more so regulator of how.

MR. COHEN: So I'm really not hiding behind the iPad, it's a difficult question that come on the new one.

MS. McWILLIAMS: Probably Sam Whittle, probably see to that. Yeah, yeah, yeah. Thanks, Sam.

MR. COHEN: That's right, we did discuss this one.

MS. McWILLIAMS: It’s either Sam or Mitch. Where’s Mitch? Mitch is the other one, I’m not sure if you’re sending any quirky questions over here.

MR. COHEN: So the question is, is the 2 percent target right for the DIF?

MS. McWILLIAMS: Oh, that’s a Greg Baer question. I know exactly who sent that. It’s Greg or John.

Here’s the bottom line. Based on the failed bank data, so this is a 2 percent reserve ratio for the deposit insurance fund, and so we’re all asking you to pay and, you know, we’re working towards 2 percent, we’re currently at 1.41 percent. If there are any small banks here you should have gotten the credits for the surcharge we imposed. And if you’re not nodding, you’re probably a big bank. And so as we’re looking at the 2 percent, right, that number was base. I asked exactly that question when I walked into the FDIC. And it wasn’t that I said it because I didn’t think it was right or not, I just wanted to learn what went into the 2 percent, how did we come up with 2, and why not 2.5 or 1.5. And so they walked me, our staff, our economist, walked me through the data analysis. We looked at the failed bank data and we looked where the Deposit Insurance Fund has been historically, since it was funded, you know, where has it been in comparison to the deposit base and how did we weather each crisis, you know. 2008 and ’09, 2009 and ’10, the DIF was broke. You know, I talk to foreign regulators all the time and, you know, they think we have this absolutely superb system and, you know, America’s a wealthy country. I’m like, yeah, we were broke in DIF in 2009.

So as we look at that, that’s how they came up, once they analyzed the data they came up with 2 percent. And take that, Baer, where are you? All right. Thank you.

MR. COHEN: So I’m just going to end this by going back to what I said at the beginning about first impressions, and now second and third and fifth. We really appreciate, Jelena, your candor, your transparency, and your innovation. It’s fantastic having you there.

MS. McWILLIAMS: Well thank you. So you can’t invite me again because that would be the third impression. All right. Thank you all very much. Thank you.

MR. COHEN: Thank you.

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