MILKEN INSTITUTE

November 8, 2019

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding Tech Sprints; Docket No. CFPB-2019-0048

Dear Director Kraninger:

The Milken Institute Center for Financial Markets appreciates the opportunity to provide comments to the Consumer Financial Protection Bureau's (CFPB or the Bureau) request for information (RFI) regarding Tech Sprints.

The Milken Institute[1] is a nonprofit, nonpartisan think tank determined to increase global prosperity by advancing collaborative solutions that widen access to capital, create jobs, and improve health. The Milken Institute Center for Financial Markets (CFM)[2] promotes financial market understanding and works to expand access to capital, strengthen and deepen financial markets, and develop innovative financial solutions to the most pressing global challenges.

Tech Sprints are one of a few emerging tools that regulators can use to engage closely with industry stakeholders to test-drive new ideas and new ways to (i) enhance regulatory oversight and supervision, and (ii) alleviate regulatory compliance challenges. The intent is to leverage technology to create a more responsive, efficient regulatory system, provide the regulator with new tools to monitor its markets more effectively, and provide market participants with greater certainty with respect to regulatory compliance requirements, expectations, and enforcement.

Several international regulators are spearheading Tech Sprints to improve their understanding of how technological advancements can address persistent challenges related to, among other areas:

- Financial inclusion;
- Access to capital;
- Transparency; and
- Regulatory compliance and reporting challenges.

[1] Milken Institute: https://milkeninstitute.org/.
[2] Milken Institute Center for Financial Markets: https://milkeninstitute.org/centers/center-for-financial-markets.

In 2018, we published a report that provided a breakdown of "RegTech," including a profile of several firms and regulatory agencies and how they are using advancements in technology to more efficiently and effectively comply with regulations ("CompTech") and improve the oversight and functioning of financial markets ("SupTech").[3] Subsequent reports have highlighted the number of regulators working on RegTech, SupTech, and other initiatives. For example, the Bank for International Settlements recently examined nearly 40 financial authorities globally on their SupTech[4] strategies in place or under development.[5] Separately, a United Nations Secretary-General's Special Advocate for Inclusive Finance for Development (UNSGSA) report identified more than 20 RegTech initiatives currently taking place globally.[6]

Notwithstanding their promise, Tech Sprints, like regulatory sandboxes, should not be viewed as a silver bullet to solving current regulatory and compliance challenges. As we have noted previously, we are increasingly concerned that regulators are "putting the cart before the horse" in launching innovative regulatory initiatives (e.g., innovation offices, regulatory sandboxes, and Tech Sprints, among other initiatives) before appropriately assessing whether there is a need for such initiatives in the first place or how these initiatives fit into the strategic plans of the regulator. The regulatory race to issue a press release threatens the true potential of these initiatives.

In the case of the CFPB, we welcome the agency's effort to request input before launching a Tech Sprint. We firmly believe that financial technology holds tremendous potential to strengthen consumer protection, systemic safety and soundness, and industry's ability to provide products and services to consumers in a safe, sound, compliant, and commercially viable manner. However, the extent to which Tech Sprints are an effective tool for regulators and financial institutions is still in question due to its relative infancy within a regulator's toolkit.[7]

Given this, we would recommend the CFPB:

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[3] Jackson Mueller and Dan Murphy, "RegTech: Opportunities for More Efficient and Effective Regulatory Supervision and Compliance," Milken Institute (July 11, 2018), http://milkeninstitute.org/reports/regtech-opportunities-more-efficient-and-effective-regulatory-supervision-and-compliance.

[4] The BIS notes that while there are several interpretations of SupTech, for the purposes of the report, the term is more broadly defined as "the use of innovative technology by financial authorities to support their work." By innovative technology, the BIS means the application of big data or artificial intelligence tools used by financial authorities.

[5] Simone di Castri, Stefan Hohl, Arend Kulenkampff and Jermy Prenio, "The SupTech Generations, Financial Stability Institute of the Bank for International Settlements," Bank for International Settlements (October 2019) https://www.bis.org/fsi/publ/insights19.pdf.

[6] "Early Lessons on Regulatory Innovations to Enable Inclusive FinTech: Innovation Offices, Regulatory Sandboxes, and RegTech," UNSGSA (February 2019) https://www.unsgsa.org/files/2915/5016/4448/Early_Lessons_on_Regulatory_Innovations_to_Enable_Inclusive_FinTech.pdf.

[7] Chris Brummer and Daniel Gorfine, "FinTech: Building a 21st-Century Regulator's Toolkit," Milken Institute (October 2014) https://milkeninstitute.org/reports/fintech-building-21st-century-regulators-toolkit.

1. **Designate the Office of Innovation as the office in charge of Tech Sprints**.

The RFI requests any questions about the RFI or submission process be directed to the Office of Fair Lending and Equal Opportunity (OFLEO). We question whether this is the appropriate office to oversee Tech Sprints. Given that the Tech Sprints could—and arguably should—focus on areas outside of this OFLEO's purview, we believe the CFPB's Office of Innovation should manage all aspects of a Tech Sprint moving forward, and collaborate with other departments as applicable.

2. **Explain why the Bureau should consider Tech Sprints.**

Are existing tools inadequate? How do Tech Sprints ultimately align with the strategic direction of the Bureau? The CFPB has several regulatory tools within its toolkit. Given the recent announcement of three new policies intended to promote innovation and facilitate compliance,[8] we are concerned that Tech Sprints could potentially be a duplicative tool in relation to the No-Action Letter (NAL) Policy, Trial Disclosure Program (TDP) Policy, or Compliance Assistance Sandbox (CAS) Policy. Therefore, we recommend the Bureau identify where Tech Sprints would be a valuable addition in comparison to other currently available tools.

3. **Determine whether third parties are more suited to holding Tech Sprints.**

Beyond its existing regulatory toolkit, we also ask the CFPB to examine current efforts offered by third parties and whether the CFPB should be an active participant in those events rather than developing its own Tech Sprints.

A regulator-driven Tech Sprint could raise concerns among outside observers that the CFPB is favoring particular industry stakeholders, or elicit questions as to whether a federal regulator, rather than the private sector, should directly engage in the development of new solutions to compliance and regulatory reporting challenges. These types of concerns could jeopardize the CFPB Tech Sprint right from the beginning.

As such, we recommend that the CFPB reach out to the key organizations to inquire as to whether third-party, private sector Tech Sprints could better address the issues the CFPB might seek to address through this Tool. These organizations include:

- Alliance for Innovative Regulation
- Regtech for Regulators Accelerator
- FinRegLab
- International RegTech Association
- RegTech Council (JWG Group)

[8] "CFPB Issues Policies to Facilitate Compliance and Promote Innovation, Consumer Financial Protection Bureau," Consumer Financial Protection Bureau (September 2019) https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-policies-facilitate-compliance-promote-innovation/.

4. Define the parameters to Tech Sprints.

Will each Tech Sprint offer a rolling admission to interested participants or be invite-only? How will the CFPB determine who can participate in the Tech Sprint to ensure, among other things, (i) substantive expertise, (ii) diversity and inclusion, and (iii) a fair opportunity to participate? These issues become particularly important if ideas that arise during the Tech Sprint opens the door to potential commercial solutions, giving a potential "leg up" to participants relative to non-participants. Also, will the CFPB focus solely on enhancements to existing regulatory reporting regimes, or expand its focus beyond SupTech and CompTech to offer Tech Sprints focused on fair lending, UDAAP issues, and Dodd-Frank Sections 1033 and 1071, for example?

We recommend the Bureau leverage prior submitted comments and discussions to develop a list of problem statements relating to regulations within its purview. We also recommend that the Bureau supplement this list by convening in the near-term several roundtable sessions where industry stakeholders and Bureau officials can frankly discuss current and anticipated compliance challenges that could be well suited to a Tech Sprint. The list of problem statements should resemble what we have seen published by entities such as the Monetary Authority of Singapore.[9] This process should provide the Bureau with substantial information and a deeper understanding of which issues to address through Tech Sprints.

5. Define "success."

One of the biggest challenges Tech Sprints pose is the lack of clarity around how regulators utilizing Tech Sprints define success. Is success measured by the number of people that take part in a Tech Sprint? The outcomes? Whether or not the regulator adopted solutions identified through a Tech Sprint?

How the CFPB measures the success of each Tech Sprint will be invaluable in determining the overall importance and usefulness of Tech Sprints.

6. Determine a process to funnel and act upon information from each Tech Sprint throughout the pertinent divisions of the CFPB.

Before establishing any Tech Sprint, the CFPB must develop an internal process to convey and leverage the findings and analysis gleaned from the process.

In prior publications, we have described measuring successful outcomes from innovative regulatory initiatives by how effectively the regulator acted upon the information received through the initiative. Mere education is not enough; the regulator's goal must be to translate what it learns into the formation and implementation of improved regulatory requirements. For

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[9] "MAS: 100 FinTech Problems to Solve for Singapore," *Fintechnews Singapore* (August 2016) https://fintechnews.sg/3268/fintech/mas-100-fintech-problems-to-solve/.

example, after two Tech Sprints related to digitizing regulatory reporting (DRR), the UK Financial Conduct Authority launched two pilots aimed at identifying areas where DRR could be applied.

7. **Examine regulatory barriers that could mitigate or prevent the success of any Tech Sprint and potential outcomes.**

To what extent do existing procurement or other rules make it challenging, if not impossible, for the CFPB to act quickly on a promising outcome from a Tech Sprint, whether through full-on adoption by the Bureau or making the outcome publicly available to industry?

If existing procurement rules significantly restrict the Bureau's ability to conduct a Tech Sprint or mobilize its outcomes, we recommend lawmakers either:

A. Provide "other transaction authority" and "gift acceptance authority" to federal financial regulatory agencies in relevant reauthorization bills;[10] or

B. Amend H.R.4535 (the Commodity Futures Trading Commission Research and Development Modernization Act) to include prudential financial regulatory bodies beyond just the CFTC.

8. **Explain who owns the intellectual property (IP) from any "winning" solution derived from a Tech Sprint.**

The Bureau should develop and communicate fair and transparent guidelines and policies related to the IP of any promising solution derived from a Tech Sprint. At the outset, the Bureau should make clear its expectations around IP, particularly whether potential solutions will be open source for testing and commercial access. Notably, the Bureau's decisions could dramatically impact the level and candor of stakeholder engagement.

9. **Tackle industry-wide challenges to spur active engagement and knowledge sharing.**

We recommend that any CFPB Tech Sprint focus on an industry-wide challenge to spur information sharing and active dialogue and engagement. If this is not the focus, we are concerned that potential Tech Sprint participants will be reluctant to engage with competitors and divulge potentially proprietary information.

10. **Coordinate with other regulatory agencies.**

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[10] For instance, H.R.4895, the US Commodity Futures Trading Commissions (CFTC) Reauthorization Act of 2019, includes "other transaction authority" and "gift acceptance authority" for the US Commodity Futures Trading Commission.

In developing a Tech Sprint, we recommend the CFPB allow for other federal financial regulators, state regulators, and self-regulatory organizations to partake in the Tech Sprint and provide key takeaways to members of the Financial Stability Oversight Council.

We would also encourage the Bureau to furnish a publicly accessible document covering any Tech Sprint findings and next steps. This would provide all interested governments, industry stakeholders, and other interested persons with a better understanding of the Tech Sprint and its potential impact on any pertinent future rulemaking effort.

The Milken Institute appreciates the opportunity to comment on the Bureau's request for information on Tech Sprints. We look forward to engaging further with you and CFPB staff on our thoughts and recommendations.

Sincerely,

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