



January 17, 2016

Comptroller Thomas J. Curry
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Re: Special Purpose National Bank Charters for Fintech Companies

Dear Comptroller Curry:

Financial Innovation Now (FIN)¹ appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) proposal to create a special purpose national bank charter for Fintech companies as outlined in the OCC's white paper, "Exploring Special Purpose National Bank Charters for Fintech Companies" (White Paper).

FIN supports the OCC's efforts to foster innovation and technology. As we noted in our submission to the OCC in May 2016,² FIN shares and supports the OCC's interest in responsible technological innovation and the belief that innovation will benefit all parts of the economy.

We agree with you that "Fintech companies hold great potential to expand financial inclusion, empower consumers, and help families and businesses take more control of their financial matters. Fintechs, while not without some risks, also can potentially deliver these products and services in a safer and more efficient manner."³

We also commend the OCC for the creation of its Office of Innovation. By creating the Office, the OCC acknowledges the need for more dialogue and collaboration between regulators,

¹ Financial Innovation Now is an alliance of technology leaders working to modernize the way consumers and businesses manage money and conduct commerce. We believe that technological transformation will make financial services more accessible, safe and affordable for everyone, and we promote policies that enable these innovations. Our member companies include Amazon, Apple, Google, Intuit and PayPal. For more information regarding FIN's policy priorities and principles, please visit www.financialinnovationnow.org.

² We incorporate by reference those comments, available at <https://financialinnovationnow.org/wp-content/uploads/2016/06/FIN-OCC-Innovation-Framework-Comments.pdf>.

³ Remarks by Thomas J. Curry, Comptroller of the Currency Regarding Special Purpose National Bank Charters for Fintech Companies, Georgetown University Law Center, 3-4 (Dec. 2, 2016).

financial institutions, Fintech companies, and other innovators outside the OCC's direct purview. We look forward to working with the Office to enhance partnerships between financial institutions and Fintech companies and facilitate innovations in financial services that give consumers and businesses greater and more efficient access to financial products and services.

Fintechs are positioned to serve the millions of Americans who lack full access to financial services.

We agree with the OCC that innovation is key to the financial services industry. "New technology makes financial products and services more accessible, easier to use, and much more tailored to individual consumer needs."⁴

In its annual survey on unbanked and underbanked households, the Federal Deposit Insurance Corporation (FDIC) found that nearly 30 percent of U.S. households are either unbanked or underbanked. This equates to over 66 million adults who lack adequate financial services.⁵ Yet, over 75 percent of underbanked and nearly 45 percent of unbanked households have access to smartphones, and those numbers are growing.⁶ This suggests that new financial applications on mobile phones could be one answer to serving the unbanked and underbanked. As the FDIC noted in another report on the topic, "mobile banking helps meet consumer needs in areas where traditional banking is perceived to be weak. It improves the convenience of banking services, consumers' control over finances, and in some cases the affordability of banking services."⁷

Fintech firms are positioned to help fill this need. Fintech companies have created more efficient financial services that are more accessible for a wide range of consumers and small businesses. FIN members, through their products and services, have made consumers' money more readily available to them and provided consumers easy-to-use personal financial management tools that give consumers direct access to all of their financial information in one place, for free. Additionally, FIN members are bringing innovation to small businesses, through online lending platforms, mobile payments technology and mobile payroll technology and inventory management, all of which makes running a small business more efficient and more cost-effective. By way of example, one crowdfunding platform has facilitated 1.8 million small

⁴ White Paper, 1.

⁵ Federal Deposit Insurance Corporation: 2015 FDIC National Survey of Unbanked and Underbanked Households (2016), <https://www.fdic.gov/householdsurvey/2015/2015report.pdf> at 1.

⁶ *Id.* at 25; *Id.* at 58 ("Between 2013 and 2015, smartphone access increased by 30 percent for unbanked households and by 17 percent for underbanked households.").

⁷ FDIC, Opportunities for Mobile Financial Services to Engage Underserved Consumers (May 25, 2016), https://www.fdic.gov/consumers/community/mobile/MFS_Qualitative_Research_Report.pdf at 1.

business loans, 63 percent of which went to minority-owned businesses, compared to 14 percent for traditional retail bank loans.⁸

Financial services regulation must evolve to reflect and promote financial innovation.

Just as more innovation is needed to reach the unbanked and underbanked and to provide safe and efficient banking products to all consumers and businesses, the regulatory landscape must adapt and grow along with changes in technology and customer preferences.

The OCC's decision to issue special purpose bank charters to Fintech companies⁹ is recognition that the current regulatory environment must evolve to provide different options for meeting the financial needs of consumers and small businesses. FIN believes the OCC's decision to issue special purpose charters to Fintech companies can foster responsible innovation, including through partnership with other chartered institutions, and maintain traditional policies separating banking and commerce. While any one FIN member may not seek a special purpose charter, the coalition nonetheless supports the OCC's leadership and vision in driving this regulatory discussion.

The state-by-state licensing model is an appropriate option for many firms, but Fintech firms also should have a choice of a federal option. A federal option can provide uniform regulation regardless of the location of the customer. Such an option may be well suited for Fintechs involved in internet-enabled lending and payment services.

FIN agrees that the special purpose charter should be optional.

We fully agree with the OCC that this charter should be an option, not a requirement, for Fintech companies. Much the same way that a bank may choose a national or state charter, Fintechs should have a similar option of a federal charter or applicable state licenses. The decision on whether to apply for a special purpose bank charter will depend on many different factors, including the type of products or services being sold and the locations the company operates or intends to operate. We encourage the OCC to ensure that the optional nature of the charter remains intact and that Fintechs are not penalized or encouraged to apply for a particular charter, just as banks have a choice of a federal or state charter.

The OCC charter should remain a viable option for Fintechs through tailoring supervisory expectations.

⁸ Usman Ahmed, Thorsten Beck, Christine McDaniel & Simon Schropp, *Filling the Gap: How Technology Enables Access to Finance for Small- and Medium-Sized Enterprises*, vol. 10 No. 3/4 innovations 35, 36 (Summer-Fall 2015), http://www.mitpressjournals.org/doi/pdf/10.1162/innov_a_00239.

⁹ In this letter, we refer to Fintech entities that are granted a special purpose national bank charter as "Fintech banks."

We understand that a Fintech bank would be held to the same standards of safety and soundness and fair access and treatment of customers that apply to national banks and federal thrifts today. We fully expect and support that special purpose Fintech banks would be subject to high supervisory standards.

At the same time, we also want to ensure a special purpose national bank charter for Fintechs can evolve as innovations advance and the Fintech ecosystem changes. The charter needs to be a viable option and applicants should not face disproportionately higher requirements simply because they are new. One way to help ensure the long-term viability of this charter is to tailor supervision based on risk and the business model of a Fintech company.

This is in line with the OCC's current practice of tailoring oversight and supervisory standards based on risk. "The OCC employs a risk-based supervisory philosophy focused on evaluating risk, identifying material and emerging problems, and ensuring that individual banks take corrective action before problems compromise their safety and soundness."¹⁰ As explained in the White Paper, "a special purpose national bank... would be expected to meet these high [supervisory] standards, tailored to its size, complexity, and risks."¹¹

We would like to highlight a few areas in which we believe tailoring standards would be appropriate for Fintech banks.

Risk-Based Capital

As the OCC recognizes in the White Paper, capital standards of Fintech banks "need to be commensurate with the risk and complexity of the proposed activities..."¹² We support a risk-based approach to capital standards for Fintech banks.

Risk Analysis Based on Products and Services

Fintech companies typically provide a narrower range of financial products and services than traditional banks. The supervisory expectations for Fintech banks should reflect that narrow focus. For example, if a Fintech bank does not accept insured deposits, that Fintech bank would not expose taxpayers and consumers to the same level of risk as a deposit-taking institution. The supervisory standards should be adjusted accordingly to reflect that difference in risk.

¹⁰ OCC Comptroller's Handbook, *Bank Supervision Process* (Sept. 2007), 1-2.

¹¹ White Paper, 8.

¹² White Paper, 9.

Financial Inclusion

FIN members have long supported financial inclusion. As discussed above, Fintech companies are pivotal in providing financial services and products to the otherwise unbanked and underbanked. FIN agrees that Fintech banks should be subject to financial inclusion requirements, depending on their business model and products and services

As the OCC recognizes in the White Paper, the Community Reinvestment Act (CRA) would not apply to a Fintech bank charter that is not an insured deposit institution. The CRA requires a banking regulator to assess whether an insured depository institution is meeting the credit needs of its community, and the institution's assessment area typically is where its branches are located and a substantial portion of its loans are made.¹³ The CRA model would not be appropriate for most Fintechs due to the lack of branches and the declining relevance of geography and diminished opportunity for human bias made more possible by delivery of financial services via the mobile internet. Under CRA, wholesale or limited-purpose institutions are evaluated on 3 factors: (1) community development lending, qualified investments, or community development services; (2) use of innovative or complex qualified investments, community development loans, or community development services; and (3) responsiveness to community credit and development needs.¹⁴ Separately, institutions may develop and submit for approval a strategic plan, with measurable annual goals, addressing its responsibilities under CRA.¹⁵ The OCC may wish to consider these assessment tests as possible models for evaluating financial inclusion of a Fintech bank engaged in lending.

FIN believes that technology is lowering barriers to financial services in fundamentally new ways, and the OCC should be creative with charter applicants to discern novel approaches to realizing its financial inclusion goals.

Data Security

Fintech companies are highly attuned to privacy, data security, and cyber risk. As trusted holders of sensitive information, Fintech companies often are the first to integrate higher security measures, such as tokenization of payment data and two-factor authentication, among many other technologies. Innovation in security measures is advancing rapidly, far outpacing the ability of supervisory standards to effectively keep pace. The OCC's supervision of Fintech banks should account for this attunement to cyber risks and ensure that any supervisory standards are technology-neutral and principles-based, such that companies can freely adopt new technologies as rapidly and radically as necessary to mitigate risk.

¹³ OCC, *Comptroller's Handbook: Community Reinvestment Act Examination Procedures* (May 1999), 4.

¹⁴ *Id.*, 6.

¹⁵ *Id.*

To that point, we believe that the OCC should consider the technology-based nature of Fintech banks in its supervisory examinations. The OCC may want to consider tailoring the manner in which it requires reports and in which it examines Fintech banks for compliance to account for the different business models and systems. This type of approach may be appropriate for other institutions as well.

Informal conversations with the Office of Innovation and the informal meetings during the pre-filing stage will help achieve this necessary tailoring and help ensure the long-term viability of the Fintech bank charter.

In conclusion, FIN has a strong desire to see innovation and competition flourish in the U.S. financial services sector. Our companies work every day to help our customers wield technology to better manage and improve nearly every aspect of their daily lives. These same tools are growing in the financial services marketplace, where consumers and small businesses can use technology to increase access to financial services options that are safer, convenient, and affordable. Growth in these services can also help maintain U.S. competitiveness and job growth. The OCC's efforts, along with those of other financial regulators, can help foster a balanced U.S. regulatory approach that embraces technology and encourages innovation while protecting consumers and ensuring economic safety. FIN commends the OCC and looks forward to working with its Office of Innovation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Peters". The signature is fluid and cursive, with a large initial "B" and a stylized "Peters".

Brian Peters, Executive Director
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