REMARKS

By

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Good afternoon. Thank you for having me here at the Exchequer Club. It is a privilege to address this group as Acting Comptroller of the Currency. Since its formation in 1960, the Exchequer Club has welcomed Comptrollers, Treasury Secretaries, members of Congress, and Chairs of the Federal Reserve, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission. This audience is comfortable with the detail and nuance of financial regulation as well as the occasional financial acronym or reference to a specific statute. So, I feel right at home, sharing my thoughts on the Office of the Comptroller of the Currency's (OCC) initiatives to support responsible innovation.

Before diving into that topic, I want to let you know how honored I am to serve as Acting Comptroller until the Senate confirms the 31st Comptroller. I have worked with many of you over the years, and you know my commitment to the federal banking system. I believe the federal banking system is, and should be, a source of strength for the nation and its economy. When running well, it is an engine capable of powering tremendous growth and economic prosperity for consumers, businesses, and communities across the country. As bank supervisors, part of our job is to find that balance where supervision ensures safety, soundness, and compliance while not creating unnecessary regulatory burden or creating an environment so risk

averse that banks fail to meet the financial and credit needs of their customers. To borrow a phrase from another Acting Comptroller, we need banks to be safe *and* sound, and to be sound, banks must function in ways that satisfy their intended purposes.

You never know how long you will serve in an acting role, but when I arrived at the OCC, I shared three priorities with employees. I thought it would be helpful to share those with you as well. First, I intend to support the men and women of the OCC, who are deeply dedicated to the agency's statutory mission and work—sometimes thanklessly—day in and day out to ensure the federal banking system operates in a safe and sound manner, provides fair access, treats customers fairly, and complies with applicable laws and regulations. I accepted the opportunity to serve as Acting Comptroller because I view the bank supervisors and staff at the OCC as second to none.

Next, we need to minimize unnecessary regulatory burden and promote economic growth. It has been 10 years since the start of the financial crisis and seven years since Congress enacted Dodd-Frank. Now is a good time to take stock of the rules implemented and ensure the nation has the right sense of balance and coherence in regulating financial institutions so that they maintain their strength while invigorating the economy. Regulation does not work when it stifles investment and makes it harder for banks to serve their customers. To this end, I have discussed opportunities with Treasury and, in my testimony before the Senate Banking Committee last month, I offered some thoughts on specific legislative reforms we could pursue.[1] In other areas, we are exploring what we can do through regulation and supervision, independently and through coordination with other agencies.

[1] See Written Testimony of Acting Comptroller Keith A. Noreika. June 22, 2017 (https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-71b.pdf).

Third, I *will* champion the value of the national charter and the federal banking system. I believe that the nation's banking needs are best served by a robust, vibrant *dual* banking system. That requires a strong federal banking system as well as a diverse system of state banks. I will seek opportunities to amend regulations and recommend changes to legislation to promote the health and vitality of the federal banking system. We all need the federal banking system to be more inclusive, to accommodate new banks, and to adapt to the changing needs of the marketplace, customers, and communities. We have all complained too long about the dearth of *de novo* institutions as we have watched the industry consolidate. Now, we need to remove unnecessary barriers to becoming banks.

I am very optimistic about the future of the federal banking system and the OCC. One of the reasons for my optimism is the main topic of my remarks today—the innovation we are witnessing throughout the industry and what the OCC is doing to support that innovation within the federal banking system.

Since the agency launched its innovation effort in the summer of 2015,[2] it has published practical guiding principles,[3] held a public forum that was such a hot ticket I couldn't even get a seat,[4] and established a framework to support responsible innovation in the federal banking system.[5] To implement that framework, the agency established an Office of Innovation that has been up and running since January. Its primary purpose is to make certain that institutions with

[2] See Remarks by Comptroller of the Currency Thomas J. Curry before the Federal Home Loan Bank of Chicago. August 7, 2015 (https://www.occ.gov/news-issuances/speeches/2015/pub-speech-2015-111.pdf).

[3] See *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*. March 2016 (https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf).

[4] See https://www.occ.gov/topics/responsible-innovation/innovation-forum-videos.html.

[5] See *Recommendations and Decisions for Implementing a Responsible Innovation Framework.* October 2016 (https://www.occ.gov/topics/responsible-innovation/comments/recommendations-decisions-for-implementing-a-responsible-innovation-framework.pdf).

federal charters have a regulatory framework that is receptive to responsible innovation and the supervision that supports it. The office, headed by Chief Innovation Officer Beth Knickerbocker, serves as a clearinghouse for innovation-related matters and a central point of contact for OCC staff, banks, nonbank companies, and other industry stakeholders. It collaborates with OCC business lines and other regulators regarding innovation and facilitates-related activities. In May, the team's first office hours in San Francisco were "sold out," and banks exploring potential innovations, companies seeking to work with banks, and more than a few companies interested in opportunities to become national banks, met to discuss innovation-related issues and express their views.[6] The office will hold additional office hours in New York next week. The office has already become a valuable resource for national banks and thrifts, and its utility will only increase over time.

And that brings me to a subject I have been asked about frequently since becoming Acting Comptroller, "What are your thoughts on granting national bank charters to financial technology companies?" The New York Department of Financial Services helped put that question at the top of *my* list just a week into my tenure by naming me as a defendant in its lawsuit challenging the OCC's authority to grant special purpose national bank charters to fintech companies.

Since the OCC is still litigating that lawsuit and a similar suit by the Conference of State Bank Supervisors (CSBS), I have to be careful about going into any kind of detail. So, let me answer the question by sharing my views on the *idea* of granting national bank charters to fintech companies that are engaged in the business of banking and requiring them to meet the high standards for receiving a charter.

[6] See NR 2017-42, "OCC Announces One-on-One Industry Meetings as Part of Office of Innovation Office Hours." April 13, 2017 (https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-42.html).

Quite simply, I think it is a good idea that deserves the thorough analysis and the careful consideration we are giving it. The OCC after all was created to administer a system of federal banks and that authority clearly includes granting charters to companies engaged in the business of banking. Over the decades, the business of banking has evolved, just as companies have adapted and changed. We should be careful to avoid defining banking too narrowly or in a stagnant way that prevents the system from evolving or taking proper and responsible advantage of advances in technology and commerce.

As the United States Court of Appeals for the Ninth Circuit noted 40 years ago, when it comes to construing what it means to be engaged in the "business of banking" under the National Bank Act, "[W]hatever the scope of such powers may be, we believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking."[7]

On principle, companies that offer banking products and services *should* be allowed to apply for national bank charters so that they can pursue their businesses on a national scale if they choose, *and* if they meet the criteria and standards for doing so. Providing a path for these companies to become national banks is pro-growth and in some ways can reduce regulatory burden for those companies. National charters should be *one* choice that companies interested in banking should have. That option exists alongside other choices that include becoming a state bank or operating as a state-licensed financial service provider, or pursuing some partnership or business combination with existing banks.

[7] See M M Leasing Corp. v. Seattle First National Bank, 563 F. 2d 1377, 1383 (1977). See also Nationsbank of North Carolina, N.A. v. Variable Annuity Life Ins. Co. 513 U.S. 251, 258 n.2 (1995)("We expressly hold that the 'business of banking' is not limited to the enumerated powers in § 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated.").

I also believe that if you provide banking products and services, *acting like a bank*, you ought to be regulated and supervised like a bank. It is only fair, but today, that is not happening. Hundreds of fintechs presently compete against banks without the rigorous oversight and requirements facing national banks and federal savings associations. People who think that granting national bank charters to fintechs creates a disadvantage for *banks* have it backwards. The status quo disadvantages banks in many ways. While charters would provide great value to the companies that receive them, the supervision that accompanies becoming a national bank would help level the playing field in meaningful ways.

In the agency's December paper discussing the issues associated with chartering fintech companies,[8] in the response to comments on that paper,[9] and again in the draft supplement to its *Licensing Manual*,[10] the OCC made clear that fintech companies that receive a federal charter would be regulated and supervised like similarly situated national banks. That supervision and regulation includes regular examination, capital and liquidity standards, and *where appropriate*, reflects an expectation regarding financial inclusion. With the lessons of the financial crisis in mind, let me say that the OCC's approach to innovation has the virtue of bringing technology-oriented financial companies that provide banking services out of the shadows and into a well-established supervisory and regulatory regime that will promote their safety and soundness and allow the federal banking system and its customers to benefit from their inclusion.

[8] See *Exploring Special Purpose National Bank Charters for Fintech Companies*. December 2016 (https://www.occ.gov/topics/responsible-innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf).

[9] See *OCC Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies*. March 2017 (https://www.occ.gov/topics/responsible-innovation/summary-explanatory-statement-fintech-charters.pdf).

[10] See *Comptroller's Licensing Manual Draft Supplement: Evaluating Charter Applications From Financial Technology Companies*. March 2017 (https://www.occ.gov/topics/responsible-innovation/index-innovation.html).

Some opposition to granting national bank charters on consumer protection grounds ignores important changes in consumer protection and preemption over the last decade. Congress expanded federal protections for consumers through Title X of the Dodd-Frank Act.[11] The Dodd-Frank Act also clarified the scope of the OCC's application of federal preemption by expressly providing that the standard in the *Barnett Bank* case governs the applicability of state consumer financial laws to national banks. State laws that address anti-discrimination, fair lending, the right to collect debts, taxation, zoning, crime, and torts continue to apply to national banks and accordingly would apply to fintech companies that become national banks. At the same time, as the many lawyers in this room know well, there are also other laws that apply specifically to national banks that contain extensive protections for consumers. One example is the Federal Trade Commission Act, which outlaws unfair or deceptive acts or practices.[12] In addition, the OCC has adopted the position that many state laws that prohibit unfair or deceptive practices apply to national banks and federal savings associations.[13] These are important statutes and regulatory requirements that mitigate the consumer protection worries used to defend the status quo.

[11] The Dodd–Frank Act prohibits "abusive" acts or practices as well. Dodd-Frank, section 1031, codified at 12 USC 5531. The Dodd-Frank Act also generally preserves any state law that affords consumers greater protection than Title X of the Act, including with respect to unfair, deceptive, or abusive acts or practices. The Dodd-Frank Act, section 1041(a)(2), codified at 12 USC 5551(a)(2). Title X, section 1011(a), codified at 12 USC 5491(a), created the Consumer Financial Protection Bureau.

[12] See 15 USC 45(a)(1) and 15 USC 45(n). See also "FTC Policy Statement on Unfairness," Federal Trade Commission (December 17, 1980); "FTC Policy Statement on Deception," Federal Trade Commission (October 14, 1983).

[13] 7 See 12 USC 1818(b). OCC regulations regarding non-real estate and real estate lending, as well as the OCC's enforceable "Guidelines for Residential Mortgage Lending Practices," expressly reference the FTC Act standards. See 12 CFR 7.4008(c); 12 CFR 34.3(c); 12 CFR 30, appendix C. Further, OCC guidance also directly addresses unfair or deceptive acts or practices with respect to national banks. See OCC Advisory Letter 2002-3, "Guidance on Unfair or Deceptive Acts or Practices" (March 22, 2002); OCC Advisory Letter 2003-2, "Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices" (February 21, 2003); OCC Advisory Letter 2003-3, "Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans" (February 21, 2003); OCC Bulletin 2013-40, "Deposit Advance Products: Final Supervisory Guidance" (December 26, 2013); OCC Bulletin 2014-37, "Risk Management Guidance: Consumer Debt Sales" (August 4, 2014); and "Interagency Guidance Regarding Unfair or Deceptive Credit Practices" (August 22, 2014).

One consumer protection argument that I want to answer involves the notion that by granting national charters the OCC will somehow let unfair and deceptive lending practices creep into the federal banking system. The argument gets both history and the present state of financial services regulation wrong.

Let's set the record straight. For many years, well before Dodd-Frank, the OCC fought to eliminate unfair and deceptive lending practices in the federal banking system. By taking landmark precedential enforcement actions, the OCC made it clear that such unfair practices have no place in the federal banking system.[14] That fight takes constant vigilance, and OCC examiners and enforcement attorneys work closely with their counterparts at other agencies to prevent such practices from occurring and to correct them when they do. As a result, for example, where large-scale, short-term, consumer lending *abuse* occurs today, it does so through state-licensed and state-regulated companies, not national banks or federal savings associations.[15]

The fear that such abuse would grow unchecked because new sorts of national banks may export interest rates from state to state is also unfounded. National banks and federal savings associations have long had the ability to export rates,[16] without such feared practices taking root. In addition, Congress acted in 1980 to grant state banks the *same* power as national banks to export the usury laws in their home state.[17] Chartering additional companies as national banks or state banks will not necessarily result in the feared harm that has been suggested. Why? Because

[14] See https://www.occ.gov/topics/consumer-protection/payday-lending/index-payday-lending.html.

[15] See http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/americans-want-payday-loan-reform-support-lower-cost-bank-loans and http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.

[16] See 12 USC 85.

[17] See 12 U.S.C. 1831d(a) and FDIC Advisory Opinion FDIC-93-27 (https://www.fdic.gov/regulations/laws/rules/4000-8160.html).

banks at the state and national level are among the most highly regulated and closely supervised institutions in the world. All regulators understand that institutions cannot be safe and sound for long if they take unfair advantage of their customers.

The other question is "Does the OCC have the *authority* to grant national bank charters to financial technology companies that don't take deposits?" A potential spoiler here to our upcoming litigation filings, but the answer to that question is a rather simple "yes." We believe that we have the authority to do this in appropriate circumstances. The OCC clarified eligibility for receiving a special purpose national bank charter in 2003 in a regulation, 12 CFR 5.20(e)(1).[18] Suffice it to say, the agency is developing its litigation response and plans to defend this authority vigorously.

That said, at this point, the OCC has not determined whether it will actually accept or act upon applications from nondepository fintech companies for special purpose national bank charters that rely on *this* regulation. And, to be clear, we have not received, nor are we evaluating, any such applications from nondepository fintech companies. The OCC will continue to hold discussions with interested companies while we evaluate our options. These meetings have been very informative and provide insight into the financial landscape and the companies providing traditional banking services as they continue to evolve.

Of course, companies can continue to seek a national bank charter using other authority that the OCC has to charter full-service national banks and federal saving associations, as well as other long-established special purpose national banks, such as trust banks, banker's banks, and other so-called CEBA credit card banks. There is no dispute the OCC has the authority to charter these entities. In fact, the states in their current lawsuits concede as much in their arguments.

[18] See 12 CFR 5.20 (e)(1)(i) (https://www.gpo.gov/fdsys/granule/CFR-2010-title12-vol1/CFR-2010-title12-vol1-sec5-20).

Accordingly, we may well take them up on their invitation to use these authorities in the fintech-chartering context. Many fintech business models may fit well into these long-established categories of special purpose national bank charters that do *not* rely on the contested provision of regulation, section 5.20.

Chartering innovative *de novo* institutions through these other statutory authorities would enhance the federal banking system, increase choice, promote economic growth, and improve services to consumers, businesses, and communities. It would also support the original goal of ensuring the federal banking system can evolve to meet the changing needs of the marketplace and its customers. Companies interested in exploring chartering options should review the *Comptroller's Licensing Manual* "Charters" booklet[19] and contact the OCC's Office of Innovation for an initial discussion. So, while the OCC has no imminent or concrete plans to use section 5.20 to charter an uninsured special purpose fintech national bank, clearly other, statutory chartering options exist for the OCC and many fintech business models to achieve the same result.

In sum, the agency, and my predecessor, Tom Curry, deserve significant credit for changing the conversation about financial innovation and fintech. It is progress when our agency's consideration of *its* options spurs actions by others to explore ways innovation and fintech can make banking better and improve services to customers. While the OCC exercises its authorities and responsibilities in thoughtful and responsible ways, I am encouraged to see state and other federal agencies doing the same. I welcome the efforts by states to explore cross-state licensing opportunities and registration, while enhancing supervision of these companies as our industry rapidly changes. The more choices companies have to prosper and responsibly fulfill

[19] See *Comptroller's Licensing Manual*, "Charters." September 2016 (https://www.occ.gov/publications/publications-by-type/licensing-manuals/charters.pdf).

their public purpose, the better off we all are. We should take every opportunity to reduce unnecessary regulatory burden, promote economic growth, and eliminate barriers to becoming part of our banking system, so long as we ensure that the system operates in a safe and sound manner, provides fair access, treats customers fairly, and complies with applicable laws and regulations.

Before closing, I again want to thank the Exchequer Club for having me here today. It is good to see so many familiar faces and share my thoughts on this important topic. I appreciate your hospitality and have tested your attention spans long enough. I would be happy to answer a few questions as time permits.