

**Office of the Comptroller of the  
Currency**

**FinTech Bank Charter**

**ACI Worldwide Response**

ACI Worldwide is pleased to provide feedback on the Office of the Comptroller of the Currency discussion paper “Exploring Special Purpose National Bank Charters for Fintech Companies”.

ACI Worldwide is a long-established Financial Technology firm, with a forty year history of providing software solutions to the financial community. ACI provides solutions to America’s and the world’s largest financial institutions, retailers and processors. Our solutions include retail card, ATM and POS processing, card issuing and management, fraud detection, wire payments, bill payments and online banking and corporate cash management.

As a preamble, ACI would like to make one overall, general comment.

All organizations – whether established, well-capitalized banks; small, community credit unions; financial intermediaries and processors; or new, high-tech entrants – should be regulated based on the activities they perform, not based on the name on the door or the nature of the institution. Put more succinctly - regulate for what they do, not for who they are.

For example, if a large, national bank creates an innovation group, tasked with creating new, creative and value-adding financial services products, that specific activity should be regulated with the same scope as the nimble, Silicon Valley startup. Similarly, when that Fintech startup begins to accept deposits and offer lending products (regardless of how innovative or cloud-based the approach), it should face the same regulatory requirements as any other organization doing the same. This follows the principles of both safety and fairness.

In keeping with this approach, ACI supports the granting of special purpose national bank charters to fintech companies. Their inclusion supports the safety of the system for their consumers, as well as promoting a consistent regulatory approach for all financial system participants.

ACI has provided responses below to each of the thirteen feedback questions.

Following these responses, ACI has provided a comment on one additional topic.

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1. What are the public policy benefits of approving Fintech companies to operate under a National bank charter? What are the risks?

A: These are mostly addressed in the OCC whitepaper and ACI agrees with the points presented.

- The inclusion of Fintechs will create the conditions to enhance competition in the financial services sector.
- By the act of bringing Fintech companies “into the tent”, the safety of the financial services sector can actually be improved.
- Fintechs will be exposed not only to the formal requirements and “letter of the law” in financial services regulation, but this exposure will also help Fintechs understand the intent and philosophy behind financial services regulations.
- With respect to risks, it should be noted that application and enforcement of new regulation upon Fintechs may introduce some small operational risks at the start. Many Fintechs exist in a very different operational culture. They maintain, and even encourage, a very different organizational culture than most regulated financial institutions. As a result, Fintech companies may not be used to the full organizational, procedural and even cultural requirements of full regulatory and operational ecosystem. This adoption period will pass for each Fintech, but the OCC should expect a rough period of adoption as each entrant acclimates to the expectation. The OCC may need to provide additional education and resources.
- One comment on systemic liquidity risk. The UK recently enacted regulatory changes that allowed Fintechs (among others) to connect directly to the national faster payment system. In order to do so, the Fintechs were required to maintain settlement accounts at the central bank. In the past, Fintechs performing payments generally accessed the payment systems through intermediary processors or financial institutions, and maintained accounts with them. As a result, the central bank (and regulators) were unaware of transactions sourced by the parties moving through these accounts and associated liquidity issues that might have arisen. Under the new regulations, the central bank has greater visibility into the activities of these Fintechs. The regulation has favorably decreased the settlement/liquidity risks in the system.

2. What elements should the OCC consider in establishing the capital and liquidity requirements for an uninsured special purpose national bank that limits the type of assets it holds?

A: Depending upon the nature of the Fintech (for example – whether it is involved in payments), the OCC may need to consider the potential high rate of turnover or transaction

activity by the organization. Some highly payment-related Fintechs may generate a high number of transactions each day, but end the day at roughly the same settlement balance. This high, intra-day activity would engender a different capital requirement than a more typical lending institution. In the rare case where settlement fails, this leaves a large number of transactions to be backed-out or reconciled.

A second consideration is that as it explores this new area of regulation, the OCC will have less hard data and less experience to draw upon in setting proper capital and liquidity requirements. There is a risk that the OCC could set levels inappropriately (either too high or too low) until it is more familiar with the territory. Flexibility to adjust as experience is gained, should be inherent in the regulations.

3. What information should a special purpose national bank provide to the OCC to demonstrate its commitment to financial inclusion to individuals, businesses, and communities? For instance, what new or alternative means (e.g., products, services) might a special purpose national bank establish in furtherance of its support for financial inclusion? How could an uninsured special purpose bank that uses innovative methods to develop or deliver financial products or services in a virtual or physical community demonstrate its commitment to financial inclusion?

A: Regardless of what product or service a Fintech develops, it is difficult to “prove” to the OCC that it is committed to financial inclusion. One possibility is that the Fintech demonstrate its commitment through the provision of education related to its products/services/market to the community or communities that it intends to serve.

4. Should the OCC seek a financial inclusion commitment from an uninsured special purpose national bank that would not engage in lending, and if so, how could such a bank demonstrate a commitment to financial inclusion?

A: Yes. The OCC should seek a financial inclusion commitment from uninsured special purpose national banks, even if they would not engage in lending.

Many Fintech products and services can promote financial inclusion - payments, funds transfer and remittance applications, micro-payments and even stored-value/micro-deposit offerings. The Fintech demonstrates its commitment by developing and offering these products.

In addressing this issue, the OCC should ensure both the inclusion and the protection of the consumer. Policies created to encourage the inclusion of individuals may succeed and bring them into the financial system, but these individuals are often vulnerable and similar

policies may be required for their protection. This is an example of the approach ACI advocated in the preamble. When an organization is reaching out to bring in the unbanked and under-served, it is irrelevant whether that organization is a startup bringing them in through innovative technology, or a large, established bank using similar or other mechanisms. The regulation should be based on the activity, not the classification of the institution performing it.

5. How could a special purpose national bank that is not engaged in providing banking services to the public support financial inclusion?

A: Supporting financial inclusion does not necessarily imply providing services directly to the public. A Fintech – with or without a national bank charter – can support and provide services to other organizations that then provide greater financial inclusion. The fintech can be a technology enabler, providing financial services to other firms that then sell or market these services to the general public. Square is an example of such a firm. Its technology offerings in both merchant transaction acquiring and small/micro-business loans have supported an entire new category of small and micro-merchants who in turn have been able to carry electronic payment capabilities into markets previously unserved.

6. Should the OCC use its chartering authority as an opportunity to address the gaps in protections afforded individuals versus small business borrowers, and if so, how?

A: ACI has no comment on this topic. We would suggest the gaps are outside the scope of this specific Fintech initiative and applies more broadly.

7. What are potential challenges in executing or adapting a Fintech business model to meet regulatory expectations, and what specific conditions governing the activities of special purpose national banks should the OCC consider?

A: Some of this was touched on above, including the cultural and organizational approach of a Fintech. The obvious challenge for the OCC is managing the balance between regulation and innovation. This is another example of the “Regulate what I do” principle. A fintech should be encouraged to create new and innovative ways to provide financial services, but once it is offering a product or service requiring regulation, it needs to follow the same guidance as any other firm.

One area that will cause issues with many fintechs will be their staffing and cost models. The staff costs and other costs associated with compliance could be seen as a barrier to the provision of the fintech’s new services. Consideration should be given how to make the

compliance as streamlined as possible.

8. What actions should the OCC take to ensure special purpose national banks operate in a safe and sound manner and in the public interest?

A: Once again, apply the principle of regulating by what they do. Depending on the nature of the fintech business (e.g. deposit taking, payments, lending, technology provider), monitor the fintech for safe and sound operations just like any other financial institution. Some fintech business models may not require large capital ratios and liquidity. Others may.

The same principle applies for other regulatory requirements. Just like any other regulated financial institution, fintechs will undergo audits, inspections, have required filings. If a fintech wants the benefits of a national bank charter, they need to comply just like a bank.

This principle should apply to existing financial institutions as well. If bank establishes a fintech-like subsidiary, as long as it is created appropriately, it should be allowed to operate more like an unregulated fintech. This promotes innovation and competition in the market. These new bank “appendages” would be regulated on par with other fintechs - again, only until they begin to offer services that require closer examination.

9. Would a Fintech special purpose national bank have any competitive advantages over full-service banks the OCC should address? Are there risks to full-service banks from Fintech companies that do not have bank charters?

A: Potentially, a fintech with a special purpose national bank charter *could* have a competitive advantage over existing full-service banks. However, this should be no different a situation than that of any startup entering any industry in a free competitive market. Established full-service banks have all the advantages of incumbency – including existing customer bases, investment capital and branch networks (if these are still an advantage). As with any incumbent facing a nimble startup, may the best provider win. And the marketplace is better for the competition.

So, yes, there are risks to the full-service incumbents, but these are the normal competitive risks of the changing market and the new capabilities of technology.

10. Are there particular products or services offered by Fintech companies, such as digital currencies, that may require different approaches to supervision to mitigate risk for both the institution and the broader financial system?

A: The simple answer here is yes. There will be products and services created by Fintechs that will require different approaches.

The difficulty lies in identifying these new offerings in a timely manner that provides the regulator(s) time to create “good/appropriate” regulation before the offering is widely used and the imposition of new regulation is difficult. The American consumer has an expectation that by the time new financial offerings are in their hands (or their phones) these offerings have been “approved” by the powers-that-be. And the same consumer does not take lightly to the removal of a service that they now consider to be essential.

In this fast-moving, quickly-changing environment, the general approach may need to be as simple as monitoring as these offerings arise. This reactive approach may create some uncertainty for the innovator, and will definitely put pressure on the regulator, but may be required to balance innovation with safety and stability.

With respect to digital currencies in particular – we would suggest this similar ad hoc case-by-case approach, and even then, would recommend only with great care. The definition of a “digital currency” could be very broad. The regulator does not want end up regulating every little retailer loyalty scheme. Until the US government begins to issue a digital currency of its own, this may be an area best left to the marketplace – unless the regulator perceives some specific risk it needs to address.

11. How can the OCC enhance its coordination and communication with other regulators that have jurisdiction over a proposed special purpose national bank, its parent company, or its activities?

A: It is reasonable that a Fintech should expect this coordination amongst relevant regulatory bodies. The regulatory environment should be made as clear as possible.

12. Certain risks may be increased in a special purpose national bank because of its concentration in a limited number of business activities. How can the OCC ensure that a special purpose national bank sufficiently mitigates these risks?

A: The situation of an excessive concentration of risk would be similar to the same situation in an existing specialized bank. The OCC, or applicable regulator, can use the same, applicable regulations as applied to existing financial institutions today. This is another example of regulating for what they do.

If the OCC has a specific risk scenario in mind, further detail would be helpful in creating a more specific response.

13. What additional information, materials, and technical assistance from the OCC would a prospective Fintech applicant find useful in the application process?

A: In most cases, the entire area of financial services regulation and compliance will be new to most Fintech companies. A mass of detail will exist around reporting, regulations, AML, OFAC, risk management and operational requirements. While the Fintech will be required to comprehend and comply, a simplified compliance guide and access to relevant resources would be useful.

In addition, a guide to other affiliated regulations, not specifically from the OCC, would be useful. The clearer, and the more detailed the information can be, the better.

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Finally, one topic not covered by the questions above. Many Fintech companies providing services to US consumers and corporates are not US domestically-based firms. The very nature of Fintech enables it to be provided from off-shore locations.

How will these firms be monitored? How would regulatory transgressions be addressed and enforced? The difficulties in the extra-territorial application of US regulations were highlighted in the area of off-shore online gaming. The same challenges will apply to the regulation of off-shore financial technology firms.

#### **Contact Information**

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#### **About ACI Worldwide**

ACI Worldwide, the [Universal Payments](#) (UP) company, powers electronic payments for more than 5,000 organizations around the world. More than 1,000 of the largest financial institutions and intermediaries as well as 300 of the leading [global retailers](#) rely on ACI to execute \$14 trillion each day in payments. In addition, thousands of organizations utilize our electronic bill presentment and payment services. Through our comprehensive suite of software and SaaS-based solutions, we deliver real-time, any-to-any payments capabilities and enable the industry's most complete omni-channel payments experience. To learn more about ACI, please visit [www.aciworldwide.com](http://www.aciworldwide.com).



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