

Jan 17, 2017

By electronic submission to: Innovation@occ.treas.gov

Office of the Comptroller of the Currency
400 Seventh St., S.W.
Washington, D.C. 20219

Re: *Exploring Special Purpose National Bank Charters for Fintech Companies*

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ welcomes the opportunity to comment on the December 2016 Whitepaper of the Office of the Comptroller (OCC), “*Exploring Special Purpose National Bank Charters for Fintech Companies*”² (Whitepaper).

The ABA supports the initiative of the OCC’ to facilitate financial innovation. ABA believes that innovation in financial services continues to have tremendous potential to benefit customers as it has throughout the history of banking. Innovation can give customers improved transparency into the financial products they use every day, make it possible to extend credit to many more borrowers, and promote financial inclusion, giving greater access to financial services.

These benefits are only realized when innovations are delivered responsibly. **ABA supports the OCC’s intent to consider special purpose charter applications from fintech companies as long as existing rules and oversight are applied consistent with those for any national bank.** Any such charter option must be implemented thoughtfully to ensure that the policy determinations underlying our bank regulatory framework are maintained, including the separation of banking and commerce. This means applicable rules are applied evenly and fairly across all national bank charters, and the OCC performs effective oversight to assure safe and sound operation and consumer protection.

A bank charter is a clear signal to customers that they are dealing with a trusted partner. The title of “bank” carries significant weight in the mind of customers and should not be taken lightly. Any fintech company that is granted a national bank charter will receive the instant credibility that comes with being a bank. Likewise, any missteps by a fintech company operating through a national bank charter will inevitably reflect on all banks. This is why a patient and careful process is required that ensures all key issues are fully addressed.

Since the OCC was chartered a century and a half ago, it has ensured the strength of the national banking system through strong regulation and oversight. The OCC must continue to ensure that all national banks – even special purpose national banks – meet the same high standards that customers have come to trust and expect.

¹ The American Bankers Association is the voice of the nation’s \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$9 trillion in loans.

² <https://www.occ.gov/topics/bank-operations/innovation/special-purpose-national-bank-charters-for-fintech.pdf>

Effective implementation is of utmost importance and is critical to ABA's support of this new charter. The OCC must ensure that the appropriate regulations apply consistently to all national bank charters and that no regulatory gaps emerge. We agree with statements by the OCC that robust regulatory compliance and an affirmative responsibility to the communities these new charters would serve – backed by vigorous examination and enforcement – can facilitate innovation in the banking system in a way customers can trust.

ABA encourages the OCC to continue to proceed carefully, deliberately, and transparently. The very nature of innovation means that we cannot predict exactly what businesses will seek to operate under these charters in coming years. New charters will necessarily be evaluated one at a time. The strength of this approach is that regulation can be tailored to activity and risk; however, it also leaves room for regulatory gaps if an individual charter application is not carefully considered to ensure that it meets underlying policy objectives. This individual approach adds complexity that will require significant resources to reliably and effectively examine and supervise these newly chartered institutions.

Working with the other agencies carefully and cooperatively is also important *before* any new special purpose charter is approved to assure that no current policy lines are directly or inadvertently moved as a consequence of this action. For example, answers to many difficult questions should be made before granting any special purpose charter, including how to ensure that regulations and consumer protection are applied evenly; what protections must be in place to preserve existing laws regarding the separation of banking and commerce; and how would enforcement of operating agreements be accomplished, particularly those related to financial inclusion or other CRA-like responsibilities.

ABA applauds the OCC's efforts to facilitate innovation in banking. Bringing new entrants into the system is one way to accomplish this, but OCC should not lose sight of empowering traditional banks to innovate. The priority of resources should be to help facilitate innovation in the 1,417 national bank charters. Banks are the original fintech companies and have a long history of bringing innovative services to customers in a responsible manner. There are a number of steps that the OCC can take to help facilitate this, including enabling banks to undertake limited-scale tests of innovative products and making it easier for banks to partner with fintech companies.

As the OCC considers ways to bring technology in banking forward, it should also look to innovative ways to modernize its approach to regulation and supervision. Many of the rules, regulations and practices were established well before the recent wave of technology and may inadvertently inhibit banks from implementing new technologies.

ABA views the OCC's intent to issue charters as an opportunity to further bring financial technology into the banking system, ensuring that innovative products are offered in a safe and responsible manner that customers can trust. In the remainder of this letter, we focus on key aspects that should be required of any newly chartered member of our national banking system: (1) strong and consistent regulation, (2) effective oversight, and (3) charter responsibilities.

I. Strong and Consistent Regulation is Needed for Any New Fintech Charter

At their core, most innovations in financial services today closely resemble traditional banking products and services. To customers, a loan is a loan and a payment is a payment. The innovations being implemented today primarily leverage new, digital delivery channels for these products to give customers faster, more convenient access. When making financial decisions, consumers expect the same level of protection regardless of the provider. Federal law provides for numerous protections for consumers when they borrow, deposit or transfer money, and they expect this same level of protection in all financial services interactions. Because the underlying activity has not changed, we expect regulators to apply the same activities-based regulatory requirements to special purpose charters as they do full service charters. Through consistent regulation and oversight, the OCC can help ensure that customers receive the treatment that they expect.

A bank charter is not something to be taken lightly. The seal of approval conferred by the OCC when it charters a national bank is an important marker of trust to customers. As such, any request for a special purpose charter should be subject to the following regulatory considerations consistent with the expectations of any national bank.

Robust, Well-developed Business Plan

The OCC has a long history of requiring robust, well-developed business plans from its charter applicants. Like applicants, OCC has an interest in the ongoing success of any new national bank, limited purpose or full-service. There are many relevant policy considerations in evaluating the potential for success of a business plan, and sometimes these are dynamic, changing in response to changing market conditions or policy developments. These considerations include policies regarding business models that are concentrated in one or few activities, variety and stability of funding sources, management depth and experience, and relationship with and expectations of any parent companies or affiliates.

We expect all of these policy considerations to be thoughtfully applied to any special purpose charter application. We expect there will be business plans contemplating activities that may present novel regulatory issues, or raise the same issues regarding current regulatory obligations that existing national banks face. It is important that OCC's thinking on these policy considerations be consistent, transparent, and open to public scrutiny, and we urge continued dialog with industry about the impact and consequences of any new policy approaches.

Governance Structure

In recent years, bankers and their supervisors have heightened their emphasis on robust governance structures as critical to the preservation of safety and soundness. The OCC's recent guidance in this area has focused in part on risk governance, requiring detailed risk governance frameworks; independent risk professionals (in appropriate cases); inclusion of a detailed risk framework in strategic plans for the institution; specific elaboration of responsibilities of front line business units, risk management specialists and internal audit; and detailed board reporting. The OCC has also required that risk governance be reflected in talent management and compensation planning and be supported by data architecture and management information systems.

The OCC has stressed that risk assessment, monitoring and reporting consider the full range of risks to which national banks are exposed: credit, interest rate, liquidity, price, operational,

compliance, strategic, and reputation risk. Though companies seeking a special purpose charter will likely present a wide variety of business models, and hence different risk profiles, it is likely that operational, compliance and reputation risk will be prominent common elements of technologically sophisticated businesses that seek to participate in the financial services industry. Protecting the privacy and ensuring the security of personally identifiable customer information, which many such businesses are likely to handle, is only one example of the operational, compliance and reputational risks likely involved. Carefully designed, detailed policies, procedures, governance routines, management information systems and reporting regimes, implemented by competent professionals under appropriate compensation policies, are essential for any company operating under a special purpose charter in managing these risks, as they are for national banks operating today. Likewise, supervisors should review these aspects of company operations in detail to protect both customers and counterparties who may depend on their services.

Capital Requirements

Prudent capital management and planning is a fundamental aspect of bank safety and soundness. Bank capital plays a crucial role in absorbing unexpected losses; supporting volume, type and character of business conducted; and ensuring public confidence in the stability of individual banks and the banking system. Given the importance of bank capital, ABA is pleased that the OCC has identified the key factors for capital of fintech companies in its white paper, but urge transparency and consistency on how levels are set. We believe that appropriate capital planning and management is important for applicants holding a special purpose national bank charter.

Establishing and maintaining appropriate capital levels for any new special purpose charter is critical to protect the company, customers of the company, and the economy. The parameters of any new special purpose charter should seek to avoid the problems caused by insufficient capital levels. Particularly important is the white paper's recognition that some special purpose national bank charter applicants' minimum capital requirements may not adequately reflect the risks of their off-balance sheet business activities. For these entities that have few on-balance sheet exposures, adapting capital requirements to appropriately capture the off-balance sheet risk is appropriate.

Liquidity

Prudent and effective management of liquidity risk is a fundamental aspect of bank safety and soundness that goes hand in hand with ensuring sufficient capital. Given the importance of liquidity, banks are required to establish robust, internal reporting and governance frameworks, to measure, monitor and mitigate liquidity risk. ABA is pleased that the OCC has identified the key factors for liquidity of fintech companies, but urge transparency and consistency in how levels are determined.

Under these frameworks, banks must assess their funding needs, costs, and sources over various time horizons and scenarios – including both normal and stressed conditions. Additionally, as a precaution against any future liquidity stress event, banks are required to hold liquid assets and have in place comprehensive contingency funding plans, which establish an operational framework for handling a liquidity event, including designating emergency funding sources. Larger more complex institutions are subject to regulations that mandate holdings of high quality liquid assets against cash outflows assumed to take place in a period of stress.

Liquidity requirements for the proposed special purpose charter should be equally robust and tailored to the business model, size and complexity of the special purpose entity. The importance of robust and formal liquidity frameworks is particularly important for those special purpose entities engaging in payment services, a stress in which could adversely impact the entire banking system.

Compliance Risk Management

In addition to running a bank safely, regulators must ensure that it is in compliance with a wide range of laws and regulations that apply to all national banks. A robust compliance risk management program requires an extensive set of policies and procedures, as well as qualified personnel to implement them. This includes designating a chief compliance officer with authority and accountability for implementation of these policies.

Bank Permissible Activities

Applications for a national bank charter may be granted by the OCC to applicants seeking to engage in the business of banking, which it has established as including one or more of fiduciary activities, lending money, paying checks, or receiving deposits. We agree with OCC that the business of banking is dynamic, thus the national bank charter should accommodate new products, services and delivery mechanisms within the business of banking.

The OCC has historically recognized its role in maintaining the vibrancy of the national charter through considered issuance of regulations and interpretations that develop what activities are considered within the business of banking. OCC may have the opportunity to revisit the business of banking as it considers applications for special purpose charters. If it does, it should publicize policy shifts—for public comment as appropriate—recognizing that the dual banking system has served us well and should not be undermined. Moreover, as the OCC evaluates the business plans of special purpose charter applicants, it should take the time to revisit regulations currently applicable to activities conducted by national banks to consider what provisions may benefit from modernization; this rethink occasioned by new entrants is healthy for the regulators and the regulated.

Recovery and Exit Strategies

Because companies having special purpose charters would operate under the National Bank Act, the resolution of a company in financial distress would fall under either the Federal Deposit Insurance Act (if the company's liabilities include insured deposits) or the National Bank Act, rather than the Bankruptcy Code. OCC has recently adopted a final regulation for receiverships of uninsured national banks, though which receivership regime applies will depend on the specific company's business model, i.e., whether it takes insured deposits. In either case, the responsible agency may confront an asset/liability mix and an operating platform that are very different from those of a traditional bank. Consequently, the appropriate resolution strategies and the operational, management and legal issues that a receiver faces may be quite different from the typical bank resolution.

Small start-up operations may not present concerns that would differ from an ordinary business bankruptcy or reorganization, but as companies operating under special purpose charters grow larger, and as they develop counterparty and customer interrelationships that verge on systemic importance, the implications associated with a potential resolution take on greater public importance. Therefore, OCC must carefully consider how a particular business model can impact

resolution strategies, taking into account how the model may evolve over time. Once the implications for a resolution strategy are understood, they can inform the company's and the OCC's thinking about appropriate recovery strategies that can be implemented and ideally forestall the need for a resolution.

Assessments

As noted in the Release, the OCC is funded through assessments and fees imposed on supervised full-service banks, independent trust banks and credit card banks based on the activities of and types of assets held by the institution. The OCC states that it would consider assessments for fintech special purpose national banks based on similar factors.³ ABA believes that an assessment is appropriate given the supervisory resources required and responsibilities of all national charters to fund the agency. In this effort, we urge the OCC to further consider the unique circumstances of and risks posed by a special purpose charter when determining the assessment criteria. We also reiterate comments made in our November 14, 2016 letter with respect to any special assessment for uninsured national banks and ask that the OCC to treat fintech banks separately so as to avoid having national trust banks subsidize new business models that may have significantly different risk profiles.

II. Effective Oversight is Critical for Any New Fintech National Bank Charter

Oversight is a critical component of any regulatory structure, ensuring that regulations are applied consistently – regardless of whether the charter is a special purpose fintech charter or any other national banking charter. Banks are subject to stringent and regular examination by state and federal agencies that proactively address concerns before an issue arises that could impact customers. Supervision should add value to enhance the practices of individual providers and ensure that customers remain protected. This helps financial services providers operate successfully and better serve their customers and communities. It also provides important protections for customers, especially consumers.

Consistent with expectations for all national banks, any special purpose national charter should be subject to oversight from more than one financial regulator to the extent that its activities warrant. A new charter issued by one regulator has implications for the supervisory access and activities of other regulators. We agree with the OCC that it is important for financial regulators to collaborate ahead of time and develop a full understanding of the expectations and obligations applicable to new charters and we expect those understandings to be publicized for the benefit of applicants and existing charter holders.

OCC

The OCC would be the primary federal regulator of any special purpose national bank charter. We appreciate the OCC's commitment to subject any applicants for special purpose charters to consistent standards of processing and supervision as full service national banks.

³ In addition, the OCC recently indicated that it would initiate a separate rulemaking on special assessments for uninsured national banks to address concerns about potential costs to the OCC of acting as receiver of such a failed institution.

- **Chartering and approval process**

As the business models of special purpose banks are likely to vary significantly, the OCC will need the ability to tailor requirements and impose conditions in addition to those that apply by statute to national banks. We agree that these should be applied as warranted by a charter applicant’s risk profile and business model.

The OCC has traditionally required an applicant to enter into an operating agreement with the agency to ensure any conditions and all applicable regulatory requirements are met. As operating agreements are typically tailored to an individual charter, it will be difficult for applicants to have a clear understanding of which laws they will be subject to before beginning the application process. ABA urges the OCC to provide transparency by clearly articulating which requirements would be included in an operating agreement and the conditions under which they would apply as it issues a formal chartering policy. Operating agreements must be set to establish a level playing field and must be enforced—particularly for CRA-like obligations.

Applications for the OCC’s newly proposed special purpose charter will also garner considerable public interest. Transparency and clearly articulated expectations and goals as the charter process and policy development evolves will be critical. Therefore, it is important that OCC frequently seeks public input as it proceeds and highlights applications and developments of the special purpose charter through press releases, speeches, and other available channels to bring these developments to the attention of the public. Publication of applications in the OCC’s Weekly Bulletin is not sufficient notice.

- **Supervisory expectations**

The OCC is responsible for chartering, regulating and supervising all national banks and federal thrifts. As part of that obligation, by statute the OCC is responsible for assuring “the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by” national banks. The agency does this through regular examinations to ensure the following:

Safety and Soundness – The agency examines national banks and federal thrifts to ensure that all activities are conducted properly and do not threaten or potentially compromise the financial health of the institution. It is important that the OCC hold special purpose charters to the same high standards of safety and soundness as full service banks. The title of “national bank” carries significant weight in the minds of customers, establishing trust; that same level of trust must apply to special purpose charters by holding them to the same level of standards in order to maintain confidence in the system.

The OCC has identified eight types of risk that it expects all national banks to manage: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation.⁴ Special purpose charters should be held to the same high standards for each identified risk as is appropriate to their business model.

Compliance – The OCC is also responsible for ensuring that national banks manage compliance risks appropriately. Banks traditionally have a culture of compliance. A strong compliance infrastructure contributes to a company’s safe and sound operation, as

⁴ These risks are discussed in the “Bank Supervision Process” in the *Comptroller’s Handbook*.

well as the provision of fair access to financial services, fair treatment of customers, and compliance with applicable laws, including consumer laws and regulations, privacy, data security, bank secrecy, anti-money laundering, and sanctions laws and regulations. If the OCC were to grant a charter to a fintech company, it is important that the OCC require the company to have a robust compliance management system to promote compliance with all appropriate laws and regulations no different than that expected of full service banks.

Fair Access and Fair Treatment – The OCC is responsible for ensuring compliance with fair lending laws and performance under the Community Reinvestment Act (CRA) to the extent that it is applied by the agency. While a fintech company might not be subject to the CRA *per se*, we support the concept that these new special purpose charters have responsibilities to meet the convenience and needs of their particular communities, just as national banks are expected to do under the CRA. Again, as with other elements of compliance, adaptation to the unique nature of the special purpose charter will be necessary but the general foundation of serving all parts of the local community should apply.

At the same time, consistent with expectations under the fair lending laws, a special purpose charter should also be expected to treat similarly situated customers equally. And, the OCC should ensure that special purpose charters implement appropriate fair lending and fair treatment policies and procedures to avoid discrimination on any protected basis.

Federal Reserve Board

The Federal Reserve Board plays an important role in the regulation and supervision of banks. The Federal Reserve would impact any special purpose charters in the following two key ways:

- **Federal Reserve Bank Membership**

By statute, every national bank must be a member of its district's Federal Reserve Bank. This membership confers responsibilities, and the obligations to comply with all regulations applicable to member banks. This membership also confers benefits which may especially include especially direct access to and participation in the payments system and access to the discount window.

It is critically important to maintain the integrity of the payments system. Payments facilitate all forms of commerce, and a stable, efficient payments system fosters economic activity for our country. Consumers must have faith in the system to continue using it. Participants' role includes maintaining robust controls and consumer protections, and regulators' role includes vigorous oversight. The Federal Reserve, through its evaluation of applications for stock by a special purpose national bank, must be mindful of potential risks to the operation of the payments system presented by new applicants and ensure that high standards for participants are maintained.

At this time, the Federal Reserve has not expressed its view on the obligations it may impose on special purpose charters as a member bank. For example, one important question is whether these new charters would have direct access to the payment system

and how the stringent requirements it entails would be applied in order to mitigate any undue risk brought on by their participation. There needs to be no gaps—either directly or indirectly—that would leave these new special purpose charters with obligations less robust than applied to all other institutions with access to the payments system.

- **Bank Holding Company Act (BHCA)**

Depending on the activities the special purpose national bank conducts, its holding company may be considered a bank holding company and in turn subject to the Federal Reserve Board’s oversight. The BHCA is triggered if the special purpose national bank is considered a bank under the BHCA definition which is one that either (i) has FDIC insurance or (ii) both accepts demand deposits and makes commercial loans. The OCC contemplates the possibility of a special purpose national bank charter applicant that would not take deposits and, therefore, would not have FDIC insurance, or meet the definition of bank. Special purpose national banks that the OCC has chartered in the past have a specific exemption from “bank” status under the BHCA. No such specific exemption exists for the special purpose charter under consideration by the OCC, and the Federal Reserve Board has not yet publicized its views on the potential application of the BHCA to such a charter.

Through its authority under the BHCA, the Federal Reserve Board serves an important role in supervising banking organizations on a consolidated basis (i.e., banks together with their owners and affiliates). If this kind of oversight matters for full service national banks, that same oversight would be important for a special purpose national bank. Importantly, the BHCA reflects Congress’s policy determinations regarding permissible mixing of banking and commerce. Any change to this balance would represent a significant policy change. The ABA believes that no such change should be made as part of issuing a special purpose national charter.

CFPB

The Consumer Financial Protection Bureau (Bureau) has the authority to write regulations and enforce most federal consumer protection statutes. While the Bureau’s jurisdiction extends beyond traditional banks to any non-bank offering consumer financial products or services, in practice there is little supervisory oversight to ensure compliance. The Dodd-Frank Act gave the Bureau authority to examine any company, regardless of size, engaged in mortgage, payday, and student lending and servicing, but its authority to examine other non-bank consumer financial service providers is limited to those entities determined (by rule) to be “larger participants” in a particular market. Those that fall beneath the larger participant threshold, as well as companies operating in markets in which the Bureau has not written a larger participant rule, are not subject to examination by any federal bank regulator.

Moreover, due to the pace of innovation, the Bureau’s completion of larger participant rules is likely to trail significantly the development of new fintech markets, perpetuating the existence of an unlevel playing field between banks and non-banks. For example, the Bureau’s fall 2016 Unified Regulatory Agenda states that the Bureau is in the *pre-rule* stage of development of a larger participant rule to identify non-bank participants in markets for consumer installment and vehicle title loans that will be subject to its supervisory jurisdiction. Indeed, the target date for beginning pre-rule activities is not until May 2017, which suggests a final rule will not be

published until late 2017 or early 2018. Thus, larger fintech companies offering consumer installment and vehicle title loans – hardly a “new” market – will not face regular examinations until mid-2018. And, as noted above, fintech companies that do not meet the larger participant threshold will not be subject to regular examination.

To help level the playing field and promote responsible innovation in markets for consumer financial products and services, ABA supports the special purpose charter. Fintech companies that received a national bank charter, regardless of size, would be subject to the OCC’s supervisory jurisdiction.⁵

FDIC

Any fintech company that proposed to accept deposits would be required to apply and be approved for deposit insurance by the FDIC. Therefore, it is important that the OCC coordinate with the FDIC to avoid conflicting expectations.

Bank – Fintech Partnerships

New special purpose national banks will have an impact on how traditional banks and fintech companies interact and partner. While in some cases, the special purpose charter might help facilitate partnerships it may also inadvertently make them more difficult. Bringing fintech companies under the regulatory umbrella will ensure that these companies have the regulatory supervision and expectations along with the culture of compliance. Knowing that a special purpose charter operates within those parameters should facilitate partnering with existing national banks since the fintech firm is operating under similar rules with OCC oversight. However, since a special purpose charter will be different than a third-party vendor and the established expectations for third-party relationships, the OCC should offer guidance on the expectations for national banks to work with special purpose charters. Additionally, some banks have raised concerns that state chartered banks may have difficulty partnering for fintech purposes with a special purpose national bank, as it would bring additional regulators to the table with potentially different expectations.

III. Charter Responsibilities Are an Important Part of Any New Fintech Charter

A federal charter is a privilege that is earned, not given. Rightly, the OCC has not lost focus on the need to ensure that special purpose charters adhere to the responsibilities that come along with a charter.

Today banks have an obligation to serve the public good and demonstrate their performance (such as complying with the Community Reinvestment Act). Any non-bank charter should have an affirmative responsibility to meet their charter purpose, have similar standards of performance consistent with the public policy goals of the charter, and document that performance.

⁵ We assume the Bureau and OCC will enter a Memorandum of Understanding (MOU) or amend their existing MOU, to address the coordination of supervision for any “larger participant” fintech companies that are subject to supervision by both agencies.

Ensure Special Purpose Charters Comply with Anti-Money Laundering and Sanctions Requirements

Law enforcement agencies have expressed concerns about how new technologies can be abused to screen possible illicit finance. When the OCC chartered a new fintech company, the agency should require it to adopt appropriate anti-money laundering (AML) and countering the financing of terrorism (CFT) programs in accordance with the standards that already apply to national banks and federal thrifts. The AML/CFT requirements for a special purpose charter should be risk-based, in accordance with standards set by the Financial Action Task Force (FATF) and federal expectations. And, the program should be adapted to the unique attributes of the special purpose charter being issued.

In developing appropriate AML/CFT programs, the special purpose charter should consider the types of products and services offered, the customers and entities served, the geographic locations where it will operate and any other pertinent risks. At the same time, and consistent with its risk profile and operations, the company should meet the existing expectations for AML/CFT compliance, with appropriate internal controls, a designated compliance official, independent testing of the AML/CFT operations and appropriate training for staff. In accordance with the expectations for national banks and federal thrifts, the program should be written and approved by the board of directors.

It is equally important that the OCC require any new special purpose charter to implement policies and procedures that comply with the regulations of the Office of Financial Asset Control (OFAC) and ensure the company does not violate sanctions restrictions.

Financial Inclusion

ABA agrees with the potential of new technologies to expand financial inclusion and believes that applications for new special purpose charters should articulate how this might be accomplished, and how performance would be documented. Fundamentally a chartered fintech company should be expected to treat similarly situated customers equally and fairly. In offering its products and services to the community, it should take steps to ensure that all members of the community have access to its products and services and that no-one is discouraged or turned away based on a characteristic protected under the fair lending laws.

If the fintech company is one that offers credit facilities, it should institute policies and procedures that comply with fair lending requirements. And, in keeping with the expectations that apply to national banks and federal thrifts, the fintech company should be expected to serve all segments of the community where it is based.

Application of the Community Reinvestment Act (CRA) is a challenge in a digital era. The current definition was adopted when the CRA rules were revised in 1995. While the definition might have had some relevance 20 years ago, new service delivery mechanisms through changing technology have made that definition outdated. The current approach is wedded to a physical presence. This poses a challenge for traditional banks and fintech companies alike.

Physical presence is not the only appropriate defining element for an assessment area, and the definition should be adapted (within statutory limits) to new technologies. At the same time, though, it is critically important to allow the bank to define an assessment area based on the market that it can logically serve, and it should not reflect a very small presence due to a single loan customer based far away from the bank. ABA commends the OCC's interest in promoting

awareness of innovative activities that could qualify for CRA consideration and urges the OCC to work with the other regulatory agencies to allow greater flexibility in granting credit for activities outside a bank's defined assessment area; the current approach discourages such activity.

Conclusion

Technology is quickly changing every aspect of banking. Therefore, a careful exploration of the challenges and opportunities posed by the rapid pace of fintech innovation is timely and appropriate. This new special purpose charter—if implemented with consistent regulation and supervision as currently applies to all national bank charters—provides an opportunity to further bring fintech innovations into the banking system, ensuring that products are offered in a safe, transparent and responsible manner that customers can trust.

A bank charter carries with it significant weight and responsibilities. It brings instant credibility and is why it is so important to ensure that any special purpose special purpose charters are subject and held to the same high regulatory standards as full-service national banks. Consumers expect the same level of protection regardless of provider and OCC should ensure that no regulatory gaps occur. The OCC must also ensure fintech institutions adhere to equivalent charter responsibilities, including anti-money laundering and CRA-like financial inclusion responsibilities, backed by vigorous examination.

Because the OCC's proposed special purpose charter takes the discussion of technology in banking to a new level, it deserves careful scrutiny and a transparent process to assure that there are no inadvertent gaps that can occur between full-service banks and a special-purpose charter. This includes many questions around capital and liquidity and whether operating agreements are sufficient to establish a level playing field and how enforcement of these agreements—particularly for CRA-like obligations—can be accomplished.

Coordination and collaboration among all the regulators—before any action is taken to consider a special purpose charter—is critical to ensure that no current policy lines are directly or indirectly moved as a consequence of these new charters, including the separation of banking and commerce.

ABA is pro-innovation and believes new technologies can deliver products and services that can better serve bank customers. We applaud the OCC's efforts over the last 18 months to raise important issues related to technology innovation and banking. We view the fintech charter proposal as a further step in the dialogue but know that many more in-depth discussions will be needed before any new charter should move forward.

Sincerely,
Rob Morgan
Vice President, Emerging Technologies