January 15, 2017

Via E-mail (specialpurposecharter@occ.treas.gov)

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

RE: Comments on the Office of the Comptroller of the Currency (the "OCC") white paper: Exploring Special Purpose National Bank Charters for Fintech Companies, released on December 16, 2016 (the "White Paper").

Ladies and Gentlemen:

The undersigned companies appreciate the opportunity to provide our views in response to the OCC's request for comment on the White Paper regarding limited or special purpose national banking ("NB") charters. In particular, the White Paper helpfully addresses why emerging financial technology ("Fintech") companies can qualify for such a charter. You also seek additional information on how the OCC should evaluate such applications under the OCC's statutory mandate (the "National Bank Act"). The development and evolution of Fintech is recent and presents exciting opportunities for existing and underserved consumer and commercial customers. However, this development also represents simply another step in the on-going saga of applying new technologies to financial services for the benefit of all parts of society. The important step being taken by the OCC is a part of that saga and will hopefully be followed by additional regulatory action to bring this vision to reality through new, successful NB charters.

We are a group of companies geographically located in the mid-Atlantic region, and include both Fintech companies and others involved directly and indirectly with Fintech companies. In addition, many of the executives at our companies have previously worked for national banks, other regulated financial institutions, service providers and regulators. So collectively, we recognize the importance to the country and the economy of a vibrant, expanding and safe and sound national banking system, the benefits and responsibilities of the NB charter, and the important responsibilities delegated to the OCC by Congress to regulate and modernize that system.

Innovation related to financial products has the potential to contribute to a healthy economy by helping to keep borrowing costs low and facilitating the access of consumers and businesses to credit and other services via: (1) more variety in financial product choices to meet unique consumer and business needs; (2) more streamlined application processes for credit by

consumers and businesses; (3) potentially lower costs of credit for consumers and businesses; (4) lower transaction costs of borrowing and lending; (5) more convenient payment options; (6) reduced costs for collecting on delinquent and defaulted loans; (7) increased competition among lenders in the marketplace; (8) greater access by underserved communities to mainstream banking and financial products; and (9) an expanding ability of consumers and businesses to compare alternatives.

And so we applaud the OCC for encouraging special purpose charter applications from Fintech companies, and agree with the measures taken by the agency so far to grant and manage such charters. The proposed NB charters can help to promote a constructive business environment, support innovation in banking and allow Fintech companies to better deliver valuable products and services to their customers. We similarly support the agency taking additional appropriate steps such as implementing a resolution regime for limited purpose charters, the establishment of the Office of Innovation and releasing the White Paper. We believe that the OCC's support of Fintech innovation – be it undertaken by banks independently or through partnership with third parties – will both be positive for the nationwide banking system and significantly benefit both consumers and businesses.

But how will success of these important efforts be measured? We believe that new NB applicants, in significant number, will be the proof of success. Fintech companies have existing, workable structural alternatives to provide products to consumers, including the acquisition of specific state licenses and partnership with responsible bank partners. While each structure has some drawbacks (the former is somewhat cumbersome and inapt for the digital economy, and the latter is under some challenge due to unfortunate case law such as Madden v. Midland Funding[1]), they are available with known strengths and limitations. To encourage new applicants, the OCC will need to continue to show that it is open and focused on having new NBs.

For example, we encourage the OCC to adopt a flexible approach to chartering, and to tailor application of its requirements to be appropriate to the size, scope and maturity of each applicant. (The White Paper appears to support such an approach.) As a foundational matter, many Fintech companies are identifying faster and cheaper ways to connect customers either to capital providers or other banking services. Risk management requirements applicable to very large, complex traditional banking institutions will not be appropriate or economically feasible for many Fintech companies. We believe however that, if properly established, the limited purpose NB charter can be an attractive alternative for many Fintech companies and as a result benefit the national economy.

Some of the changes proposed in the letter may not be easy for the agency or even prove feasible. However, the following comments are provided in the spirt of helping the OCC to further these broad objectives.

[1] 786 F.3d 246 (2nd Cir. 2015).

General Comments on the White Paper

The OCC Initiative is Appropriate, Important and Benefits Many

We applaud and support the OCC's declaration that it is prepared to grant special or limited purpose national bank charters to Fintech companies. The various speeches of the Comptroller and formal releases from the OCC including the White Paper are positive, grounded actions to foster innovation in banking. We support the granting of limited purpose NB charters, including to Fintech companies consistent with the goals and purposes of the National Bank Act. Products and services offered by NBs have evolved and changed since the 1860s in response both to technology developments and of course to the changing needs of businesses and consumers (who can now access banking services from a handheld smartphone device). It is appropriate then that the agency analyze and consider the essential nature of a product or service versus limiting the inquiry to the format of such product or service. Where that essence is banking in nature, i.e., involves a core banking function -- receiving deposits, paying checks, or lending money – the option of a NB charter is consistent with the OCC's congressional mandate.

Recent innovations in financial services have underscored the need for and benefits of a flexible and responsive regulatory structure for the banking industry. Innovation is occurring in a broad range of financial services (e.g., marketplace lending platforms, cloud computing, digital wallets, blockchain ledgers, etc.). It is also occurring on the basis of several different models – including banks developing new products or services internally, banks partnering with or investing in third-party Fintech companies, Fintech companies conducting traditional banking activities under state (instead of federal) regulation, and various combinations of these approaches. There is no single model for financial innovation and, likewise, there is no single or static way to approach the regulation of these diverse activities. The regulatory environment best suited to promote responsible innovation must be flexible and must continue to evolve to properly facilitate investment, education, experimentation and the development of new products and services.

Competition serves as a foundational principle of the American economy. Competition within financial services including by Fintech companies highlights this fact. Customers, including banking customers, realize significant benefits when there is robust competition in the marketplace. Consistent regulation (or application of law) can foster competition and innovation by means of establishing a "level playing field". Due to the multiple overlapping and conflicting jurisdictions in the US, regulations can usually inadvertently create barriers to entry that limit competition. This happens even when such result is not intended by state or federal legislators or regulators. Thus actions, like this one undertaken by the OCC, to create more consistent regulatory requirements and oversight increase competition and deliver societal benefits.

Differing requirements, complexity of obligations and inconsistency in application or enforcement can all create barriers to entry that limit competition. On the other hand, applying the exact same requirements inflexibly (e.g., all NBs must have a dedicated BSA/AML officer

with no other duties; all NBs must hold exactly the same amount of capital regardless of activities) creates an inherent advantage for large organizations and a barrier to entry to small organizations. Customers may lose on a net basis even when such regulation may seem justified in the name of consumer protection. The OCC initiative here appears to recognize this challenge of balance.

For these reasons, we believe the OCC should have the objective of – and measure success by the number of – both new NB applicants and resulting NB charters. These measures will help demonstrate that the agency is successfully increasing healthy and transparent competition and so delivering broader benefits to the entire economy. By encouraging (and granting) the limited purpose NB charter for Fintech companies customers win.

The National Banking System Benefits

Innovation by Fintech companies brings new value to customers as stated, but also benefits the national banking system. These companies deliver products and services by applying technology developments in a manner that many traditional banks do not. This is so even with products and services offered by NBs. This also explains why a NB charter (either limited purpose or not) is a potentially attractive form of organization for Fintech companies. More generally Fintech companies must constantly deliver innovation to become and remain successful, and are built around that concept. New ideas may apply to products, services, operations or even better management of compliance requirements. If properly supported, some of these companies will also be able to reach currently underserved customers and populations. Bank and non-bank competitors will imitate successful innovation and so spread its impact.

Whether Fintech companies innovate as independent national banks, or as acquired units of larger banks, or through partnerships with banks or by inspiring innovation at such larger banks, the national banking system as a whole will benefit and in turn further benefit the many consumer and commercial customers the system is intended to serve. Encouraging the process therefore is a historic and appropriate function for the OCC to undertake. Making the NB charter accessible to more institutions brings new capital and ideas into the system, allows for appropriate oversight of developments and so encourages the safe and sound development of national banking.

As stated, competition within the national banking system is highly valuable and should be promoted. Notably even as many traditional brick and mortar banks (including NBs) are exiting the system (esp. via merger), Fintech companies (and possibly other entities) may be prepared to enter. Without new entrants, the system will calcify – focused around the exit of remaining smaller NBs and tending to the needs of a small number of very large institutions. A far preferable result is a vibrant banking system that encourages entrance by new entities, exit where appropriate and above all: healthy and safe competition.

Finally, the national banking system and the OCC as the regulator of that system will also benefit from encouraging a greater number of new charter applicants with diverse business models.

Engaging with such applicants and supervising newly chartered NBs will provide valuable and possibly early insight into product and service developments. This will also enable the agency to develop grounded supervisory assessments around new technologies including prior to their adoption by some larger and more complex organizations. Early training of bank examiners concerning the Community Reinvestment Act and concerning securitization, as two examples, began within banking organizations willing to offer knowhow and host that incubator format. In some ways this Fintech charter evolution is very similar.

The OCC can Provide a Consistent Supervisory Framework

Congress has recognized the value of allowing banks and particularly NBs to operate in multiple states under a consistent framework.[2] Such a framework promotes competition, provides consistency and certainty around the rules of the game for all market participants, and ultimately delivers value back to customers. The customer protection framework is and will remain robust as it includes not only the OCC, but also other prudential supervisors, the Consumer Financial Protection Bureau, the Federal Trade Commission and various state authorities. Today, many Fintech companies do not enjoy the benefits of the NB framework and must address vague and sometimes inconsistent state laws and requirements, as well as uneven application or enforcement. This is so despite such companies being already subject to the various state and federal customer protection laws. Making a limited purpose NB charter available is a step towards addressing that inconsistency which simply favors incumbent banking institutions at the expense of customers.

Fintech companies have structural alternatives for organizing their activities, including application for state licenses and partnership with regulated national or state banks. That said these structures are not without flaw. The Second Circuit decision in Madden v. Midland Funding, while wrongly decided highlights a risk of conflicting legal decisions for those using one of these structures. A limited purpose NB charter can be one tool to address these risks.

Moreover, a consistent multi-state regulatory framework is appropriate for businesses that operate interstate (as opposed to intrastate); and even more so in the digital economy. Customers today may access these products and services from the convenience of their own home, easily accessing banks and companies, by means of the global internet, that previously they could not reasonably reach by walking, driving or other forms of physical transportation. From that perspective, these customers are choosing to do business in another state, but from another perspective (that of the state of the customer's residence) the digitally-based companies are now

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[2]. This congressional intent has been consistently recognized in statutes such as the National Bank Act itself with its broadly preemptive scope and provisions and the Dodd-Frank act; regulations of the OCC; court cases of the Supreme Court and lower courts, see, e.g., *Barnett Bank of Marion Cnty., N.A. v. Nelson, 517 U.S. 25 (1996)*. These matters are well outlined in the Amicus Curiae brief delivered by the OCC and the Solicitor General in connection with the Petition for a Writ of Certiorari to the Supreme Court by Midland Funding.

doing business (possibly unexpectedly) in their state. A NB charter furthers the congressional goal of encouraging interstate commerce, allowing for product uniformity with greater certainty around the relevant regulatory framework for both customers and the institutions. And such certainty will mean more of the capital these Fintech businesses require will be devoted to strengthening the banking system. The White Paper sets forth and we support the core, consistent supervisory principles of safety and soundness, fair treatment and fair access.

First and foremost, the digital economy increasingly needs a consistent rule framework and will benefit from an expansion in the number and type of national banks.

Case-by-Case Approach to Supervision

The significant benefits for customers, Fintech companies, the national banking system and the economy described above will only result from actual new applicants and chartered NBs. For these reasons, we encourage the OCC to adopt a flexible approach in the NB chartering process. Such an approach would recognize that the risks and business opportunities presented by individual Fintech companies may vary substantially. A wide range of entities with diverse business models have been and will continue to be created. These companies will also have divergent risk profiles. Applying uniform, detailed requirements, particularly where inapplicable to a given Fintech company, will make the charter less attractive and likely result in many fewer companies interested in entering the charter process.

The White Paper identifies the statutory basis for OCC oversight: safety and soundness, fair access, and fair treatment of customers.[3] Federal regulators have recognized that application of a consistent regulatory framework, i.e., consistent principles, should be applied differently based upon the context, maturity, size and complexity of the regulated institution. It is a truism to state that a vendor program overseeing thousands of vendors presents greater risk and requires a far greater level of management engagement and oversight than a program overseeing 10 vendors. The same applies to risk management programs, compliance management systems, type and degree of oversight by a board of directors and so on. A large NB may have a senior executive specifically designated and fully employed to an operational and/or compliance area, whereas an executive at a smaller NB may wear multiple hats. Application of consistent principles is appropriate (having an AML/BSA designated officer), but care must be given so as to avoid placing an undue and excessive burden on smaller, newer and developing companies with less complex risk profiles.

Importantly, capital, liquidity and other safety and soundness requirements are sensitive and highly strategic topics for any possible NB applicant – foundational topics as to whether or not they will seek a NB charter. These will be especially important topics for limited purpose NBs where (i) insured deposits are not being placed "at risk" and (ii) where interactions with other institutions in the banking system are targeted and, on a relative basis, small in scale. The OCC has an appropriate and legitimate interest in chartering entities that have the financial wherewithal to be successful. However, the OCC needs to balance that interest against Fintech

[3] 12 USC Section 1.

charter requirements so high as to be barriers to applicants ever seeking a charter or substantially limiting their opportunity for innovation. As noted above, periodic failure (along with mergers, sales and other forms of exit) are evidence of a healthy and competitive marketplace. The OCC should apply a flexible, case-by-case approach in determining the proper application of safety and soundness requirements.

Similarly, we urge flexibility in measurement and understanding of fair access and fair treatment. These too are general concepts,[4] the application of which is best left to individual applications and business models. Using the framework of separate statutes is neither necessary nor advisable. Instead the OCC can and should ask each applicant to provide a view as to how its business activities meet: (i) the overall requirements that NBs engage in one of the 3 established banking activities and (ii) the requirements that the OCC oversee the applicant's safe and sound operations, fair access by customers to its products and services and its fair treatment of customers.

We also believe that the OCC should be careful to avoid using the principles and requirements of other statutes as a basis for creating a separate framework under 12 USC Section 1. While the OCC may have the power to require a NB applicant to engage in certain activities, some potential uses of such power would not be consistent with rule of law in the American system. For example, requiring a Fintech company that supports prime lending to offer subprime lending products and services (to address concerns regarding fair access to lending products) in a particular case may be both legally inappropriate and likely inconsistent with safety and soundness concerns. At the same time, seeking commitments that such company act consistently with the Equal Credit Opportunity Act and other principles of non-discrimination within its core business may be appropriate in that individual case.

Separate statutes such as the Community Reinvestment Act ("CRA") apply to business models (insured deposit-taking) for specific reasons (to encourage depository institutions to meet the credit needs of the communities they serve) as determined by Congress, and may or may not apply to the model of a given Fintech company. To apply significant requirements of the CRA to a Fintech company applicant that engages solely in activities related to consumer lending nationwide seems well beyond the statute. It would also place such company at a competitive disadvantage potentially requiring measures inconsistent with the Fintech company's business model. On the other hand, applying the CRA to a Fintech company that is engaged in lending and deposit-taking would likely be appropriate,[5] ensure a level playing field and consistent with the statutory objective of the CRA. Similarly, Fintech companies involved in the lending process can reasonably be expected to adhere to the fair lending laws which already apply.

We emphasize that many applicants will already have obligations related to, and comply with, a significant number of regulatory and consumer protection statutes notably including: Truth in Lending Act, Equal Credit Opportunity Act, Fair Debt Collection Practices Act, Bank Secrecy

[4] In general, these provisions appear similar to various fair lending laws including the Equal Credit Opportunity, Fair Housing and Home Mortgage Disclosure Acts and various implementing regulations, statutes that already govern lending activities.

[5] The OCC would likely need in that case to address the community and geography-based elements of the CRA and the current regulations.

Act, Dodd-Frank Act, Gramm-Leach-Bliley Act, Fair Credit Reporting Act, Truth in Savings Act, ESIGN, Electronic Fund Transfer Act, and many other federal and state statutes.

We also encourage the OCC to retain current distinctions regarding consumer banking products and services and commercial or small business banking products and services. Those distinctions are well understood, and the industry, including Fintech companies, manages to them. Establishment of the Fintech NB charter should not serve as an occasion to change otherwise well-established law and regulation.

In sum, we believe it critical to the success of this initiative that the OCC should demonstrate flexibility and tailored treatment in applying these broad regulatory principles. That said, we realize that some of these points may be challenging for the agency to implement and that there may be disagreement about how much flexibility is necessary or advisable. The agency does have experience with, has demonstrated the capacity to, and should apply regulatory principles in a consistent manner. And that application hopefully will be flexible based on the size, scope, complexity, etc. of the applicant.

Coordination with Other Regulators

The White Paper expressly discusses the coordination role of the OCC with other regulators. The language as proposed is appropriate, reasonable and expected. However, we would encourage the OCC to take on an active role and expressly work with other regulators to streamline the overall chartering process. (The White Paper as a public document is a good step in that direction.) Other regulators are required to determine independently whether an application will be required (for bank holding company status or deposit insurance), but the OCC can play a strong, central role in helping to create an overall process that minimizes the burden on applicants. This could potentially be accomplished by means of Memoranda of Understanding, guidance from Federal Financial Institutions Exam Council, or more appropriately a joint agency working group.

Moreover, matters that relate to deposit insurance and especially Bank Holding Company Act ("BHCA") status will determine whether or not many Fintech companies actually become applicants. Complexity inherent in the regulatory structure across the federal regulators already serve as a significant deterrent to new applicants, and a broad application of the BHCA would create additional challenges. The existing investors in many Fintech companies would likely be unable (or unwilling) to achieve status as a bank holding company. And so a Fintech company either will be unable to become a NB applicant or forced to find an entirely new set of capital providers. The OCC may be able to work closely with the Federal Reserve Board to create greater clarity and certainty for applicants on this point.

In sum, the OCC initiative and the White Paper are positive developments for customers, the national banking system, Fintech companies, traditional banks, the economy and the agency itself. We encourage the OCC to take additional steps to help foster the promise that Fintech companies bring by adopting flexible and focused regulatory actions.

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Responses to Specific Questions

1. **What are the public policy benefits of approving fintech companies to operate under a national bank charter? What are the risks?**

Please see our general comments. Some benefits we noted above include the potential for new products and services, increased competition, potential support for underserved customers and communities, more consistent regulatory approach across banking system, enhanced understanding and learnings for the OCC. The limited purpose NB charter is a positive development for consumers, Fintech companies, the OCC and the national banking system as a whole, providing clarity of regulation and a more uniform approach to law and regulation.

Some risks noted implicitly are a higher risk of failure due to both the novel nature of some Fintech companies and increased competition, and a likelihood that new regulatory resources will need to be developed. Also noted above, unless the OCC develops a flexible and targeted approach, the charter may prove unattractive compared to existing structure options and so attract few applicants beyond a few large Fintech companies.

A few public commenters have described concerns around certain products that might enter the national banking system and void state consumer protection. We believe that the OCC has demonstrated strong, forthright positions on products appropriate for national banks and their customers, and will continue to do so in the case of any application.

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?**

Generally, as discussed above, we recommend that the OCC establish certain principles related to capital and liquidity requirement, but be flexible in application of those principles to a particular charter applicant. For example, the general principle that national banks be appropriately capitalized can be narrowly tailored to the particular risks presented by a given

Fintech company based on its product and service offerings and the scope of potential impact to the broader financial system. Companies that are active in the capital markets would need to hold appropriate levels of capital including as associated with securitization or other transactions. Many Fintech companies engage in servicing activities and so should be capitalized appropriately to permit continued servicing should there be a wind-down of the NB. In the alternative, the OCC could require back-up servicing agreements and associated capital.

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?**

Please see our general comments. Innovation in the financial services sector can broaden financial inclusion, address unmet needs and make financial products and services better, safer and more affordable. Technology is a powerful tool for inclusion and expansion of banking services to traditionally underserved consumers and businesses. The broad range of possible applicants (and related product and service offerings) should be viewed within their particular market and business context. For these reasons, we recommend that the OCC not establish specific requirements, instead focus in each application on the core business offerings of an applicant to ensure (as set out in 12 U.S.C. Section 1) that the limited purpose NB products and services will provide fair access and financial inclusion. Importing requirements from other statutes (such as applying the CRA to non-depository institutions) with their unique objectives and requirements is inappropriate. It is worth noting that numerous statutes already apply to many Fintech companies (depending on the business model) which may address these elements, including for example:

- Federal and state laws prohibiting unfair and deceptive practices in consumer lending;
- Truth in Lending Act/Regulation Z;
- Equal Credit Opportunity Act/Regulation B;
- Fair Credit Reporting Act (and FACTA)/Regulation V;
- Electronic Signatures in Global and National Commerce Act;
- Electronic Fund Transfer Act/Regulation E;
- Telephone Consumer Protection Act/FCC regs;
- Telemarketing Sales Rule;
- Gramm-Leach-Bliley Act/Regulation P;
- State privacy laws;
- CAN-SPAM Act;
- Fair Credit Billing Act;
- Fair Debt Collections Practices Act;
- Dodd-Frank Act;

- Federal Trade Commission Act;
- Servicemembers Civil Relief Act;
- Military Lending Act and its implementing regulations;
- Bank Secrecy Act and its implementing regulations;
- Office of Foreign Assets and Compliance;

The effective and appropriate process is for individual applicants to provide descriptions of how they make products available to customers in a fair and non-discriminatory manner, rather than establish general requirements that may prove hard to fit to a particular company. As the OCC gains experience with different charter applicants, it can always revisit establishing more specific requirements in this area.

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?**

As a general matter, we believe that requiring a non-lender to make lending commitments is inappropriate and likely unwise from a safety and soundness perspective. Commitments should be flexible and more closely tied to the core product offerings of the applicant.

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

We do not have a specific response to this question, but again note that specific commitments should be flexible and closely tied to the core product offerings of the applicant.

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?**

We do not have a specific response to this question.

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?**

We are concerned that the existing bank regulatory environment does not sufficiently encourage or accommodate innovation in the financial services industry. Through the OCC's Responsible Innovation initiative, we see a significant opportunity to help turn a corner on this trend by

facilitating responsible innovation across all national banks – including new applicants for special purpose national bank charters – for the benefit of customers.

Agency Tools and Expertise

The OCC will have the opportunity to use this initiative to develop new tools and areas of expertise including for its personnel, most of whom have wide experience with more traditional banks. The agency therefore may find it useful to adopt tools around financial self-reporting (similar to bank "call" reports), and to establish separate units within applications and supervision areas. At a minimum, we recommend "Fintech cross-training" of relevant personnel. Fintech innovation is rapidly evolving, and flexibility and timeliness of execution are critical components of the needed regulatory framework. We also encourage the OCC to create space for innovation, while preserving safety and soundness as a key consideration. Specifically, the OCC should adopt principles- or objectives-based approaches to ensuring that regulatory interests are being addressed as new technologies are developed or adopted by NBs. Finally, we recommend that the agency engage in appropriate but targeted data collection activities to learn more and identify ways to improve the supervision process.

Need for Flexibility, Testing and Experimentation

A critical phase of the innovation process is small-scale customer "testing" to ensure alignment between the intent of the initiative and its outcome before a full-scale product launch. Testing is an important risk-management tool that helps uncover operational deficiencies or unexpected risks. By recognizing the clear benefits of testing as part of a well-managed and controlled risk management program, the OCC's approach to regulating NBs – including new applicants for special purpose charters – should acknowledge that experimentation through testing plays a critical role in technological advancement.

Long-term strategic planning is an important risk management tool. However, innovation often occurs in real time in response to a competitive and dynamic marketplace. Therefore, the OCC's regulation of national banks – including new applicants for special purpose charters – should retain flexibility to allow banks to adapt and pursue innovative opportunities.

Need to Affirm Treatment of Financial Assets Transferred in Connection with Securitization

FDIC-insured institutions currently have the benefit of a securitization safe harbor rule that accommodates the isolation of securitized assets from a receivership. If the OCC moves forward with granting special purpose charters to institutions involved in the origination of loans, the OCC should revise its resolution proposal for special purpose national banks to affirm that state law principles of sale treatment apply in the context of securitization and other asset transfers by non-depository national banks.

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?**

Please see our general comments. As noted in response to other questions, we encourage the OCC to adopt a flexible approach to the establishment and supervision of special purpose NBs.

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?**

Please see our general comments. In general, there may be certain competitive advantages (or disadvantages) that arise out of the business models chosen by a given entity – e.g., non-depositories are disadvantaged by not having access to insured deposit funding. As noted by the Comptroller, the OCC will have the ability to apply consistently those laws that apply to both special purpose and full-service NBs.

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?**

We do not have a specific response to this question.

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?**

Please see our general comments. We believe that the OCC can facilitate closer coordination with other regulators including the CFPB and the FRB. In the case of individual special purpose entities, this coordination could occur pursuant to joint Memoranda of Understanding that the regulatory agencies establish from time to time and possibly pursuant to commitments by the applicant releasing the agencies to share certain information. It is important to the success of this initiative that the agencies encourage and adopt a streamlined, collaborative approach to oversight. Increasing levels of regulatory burden overly bias the national banking system towards large banking institutions.

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?**

Please see our general comments above. While concentration of activities can present risks, especially in larger institutions, it is often necessary and appropriate in small institutions to ensure the proper focus on core business activities. We recommend that the OCC adopt a case-by-case flexible approach on this topic.

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

As described above, materials more specifically applicable to Fintech company applicants would be welcome. For example, this could include a stream-lined licensing handbook specifically applicable to special purpose de novo applicants, with a section discussion key elements of the pre-filing discussion with OCC. This would also be consistent with the approach that other agencies are starting to take.

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We appreciate the opportunity provided by the OCC to comment on the White Paper. In addition, we would welcome the opportunity to meet with the OCC in person to provide additional information as you deem appropriate or valuable. Please feel free to contact Frank Borchert at 302-449-4905 or Jim Stewart at 302-467-5447 with questions you may have on our comments.

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