



January 13, 2017

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Regarding: Office of the Comptroller of the Currency white paper titled *Exploring Special Purpose National Bank Charters for Fintech Companies*

Dear Comptroller Curry:

The Community Bankers Association of Illinois (“CBAI”), which proudly represents approximately 340 Illinois community banks, appreciates the opportunity to provide our observations and recommendations regarding the Office of Comptroller of the Currency (“OCC” or “Agency”) white paper discussing the issues and conditions that the Agency will consider in granting special-purpose national bank charters (“Proposal”). CBAI acknowledges that technology related to the delivery of various banking services is evolving. Young adults have a different expectation of the banking experience and many community banks are indeed innovating in this area while maintaining strong financial performance. We appreciate that the OCC is receptive to responsible innovation, and the Agency is positioning itself to be a valuable resource to community banks seeking to understand the risks and benefits associated with innovation.

CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high quality products. CBAI’s 340 members hold more than \$70 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit www.cbai.com

CBAI, however, was disturbed by the announcement that the OCC will be moving forward with chartering fintech companies (“Fintech(s)”) as we have a number of concerns with the Agency issuing special-purpose national bank charters (“Charters”) to Fintechs. **CBAI respectfully requests that the Agency delay moving forward with considering applications for Charters for Fintechs until these concerns are thoroughly addressed and completely resolved, and limit its activities in this area to providing resources, information, and guidance to community banks in their understanding of the risks and benefits associated with emerging technologies and new approaches to financial services.**

OCC’s Qualifications

CBAI has concerns about the OCC’s qualifications to charter, supervise, and examine Fintechs, notwithstanding the Agency’s past outreach efforts to gain a better understanding of various innovations and the OCC’s commitment to regularly evaluate whether it has the appropriate resources to supervise innovation within the federal banking system.

The OCC and other regulators caution banks about the risks of entering new lines of business. Chartering Fintechs for the OCC will be the community bank equivalent of entering a new line of business. The OCC requires a community bank to identify, explore, and measure risks; have effective corporate governance and internal controls; have a robust discussion among management; have thoroughly engaged the board of directors in those discussions; and require the board to approve the new line of business, together with the potential for personal liability if shortfalls are later discovered or alleged in the approval, implementation, or ongoing management.

Before chartering Fintechs the OCC needs to demonstrate that it has pursued a similar process required of the community banks it regulates when they enter new lines of business. Given that the OCC has not dealt with Fintechs before and may not have the expertise to regulate these firms, there are questions that need to be answered before going forward with this Proposal. These include: how the skills will be obtained; when will they be obtained; what will be the cost and who will bear the cost; and what senior management positions/individuals within the OCC will be responsible in the event of any design/implementation/ongoing management shortfalls. CBAI believes the OCC must require no less of itself when entering a new line of business than it requires of the community banks it regulates; yet none of these questions about the Agency’s abilities to oversee Fintechs have been addressed and answered sufficiently.

The elimination of the Office of Thrift Supervision (OTS) and the extended time it took for the OCC to completely integrate thrifts into the Agency's supervision and regulatory system illustrates our concerns. Thrifts are a modest variation of a commercial bank, yet this conversion was complex, difficult, prolonged and greatly frustrated the community banks involved in that process. Fintechs, unlike thrifts, are different business models that pose new risks and different challenges to supervision and regulation. The OCC will need to prepare itself for these new responsibilities which will take time to acquire and be costly to implement. **Before expanding into this area of regulation, CBAI urges the OCC to clearly demonstrate that it is fully prepared to assume the many new responsibilities of regulating Fintechs.**

Coordinated Agency Efforts

With Fintech being disruptive and having the potential to be transformative for the entire financial service profession, a single regulator acting unilaterally in chartering, examining, supervising and regulating Fintechs does not appear to be in the best interests of the profession, consumers and the economy. Congressional concurrence is needed as well as the cooperation and coordination of all the various national and state banking regulators.

The legality or authority of the OCC to issue Charters to Fintechs has been challenged by the Conference of State Bank Supervisors ("CSBS") in a December 2, 2016 media release and by Sherrod Brown, United States Senator and Ranking Member of the Senate Banking Committee, in a January 9, 2017 letter to the Agency. The OCC's legality and authority should be mutually agreed before the Agency issues Charters for Fintechs. It would be harmful to all parties for questions about the OCC's jurisdiction to cloud their legitimacy, or for subsequent legal challenges to distract the Agency and put the question of its rights in limbo for an extended period of time. **CBAI urges that the issue of legality and authority be resolved before the OCC moves forward with considering applications for Fintechs.**

CBAI also recommends that the other national banking regulators (FDIC and Federal Reserve) and the CSBS (on behalf of state bank regulators) be included in several formal and public outreach meetings about Fintechs around the country, as they may also be involved in supervising and regulating these companies. An added benefit of formal and public discussions is that the collective expertise and unique perspectives of all agencies will be brought to bear on these important issues. These collective discussions must take place before the Agency considers Fintech applications for Charters. **CBAI recommends that these meetings result in formal joint proposals, and be made available for comment, to**

cooperatively and clearly establish the various areas of responsibility in chartering Fintechs for each of the regulators. CBAI also recommends that all regulators jointly propose formal rules regarding the specific requirements for chartering and regulating Fintechs, and that these proposals be open for extended comment periods.

Specific Requirements, Transparency, and Accountability

A review of the Proposal revealed a surprising and disturbing lack of specificity regarding all aspects of how the OCC will be managing the application, regulation, examination, and enforcement process for Fintechs. CBAI is not insensitive to the need for flexibility in regulating financial institutions, but greater specificity is required for new Fintech Charters.

Equally as important as specific requirements is transparency and accountability in the chartering and regulation of Fintechs. For example, this is required to identify playing field distortions for all regulated institutions including community banks. CBAI cannot support any Charter approvals whereby Fintechs would have a competitive advantage over community banks.

The OCC proposes imposing additional conditions on Fintechs with operating agreements, but CBAI has concerns with this plan. These concerns include consistency both within the Fintech industry and between Fintechs and community banks. The Agency proposes using operating agreements presumably because of a lack of existing regulations for Fintechs which can be rectified by promulgating formal rules and regulations, publicly and available for comment, and not with ad hoc agreements. **CBAI urges the OCC not to regulate Fintechs through operating agreements but through specific, established and transparent rulemaking procedures to ensure clear guidance and consistent application of rules and regulations.**

Level Playing Field

The unfortunate reality for full-service community banks is that Fintechs, by the very nature of their limited-purpose business models, will enjoy a competitive advantage over community banks. For example, Fintech lenders that do not accept deposits will not be subject to the many deposit regulations, and a similar advantage would accrue to Fintechs that only pay checks or receives deposits but do not lend money. CBAI is concerned with the OCC's Proposal because it will institutionalize an inconsistent regulatory framework for Fintechs which will ensure that they will have a competitive advantage over community banks. This inevitable competitive

advantage for Fintechs must be addressed by the OCC and all of the banking regulators, and a way must be found to level the playing field so there is fair and equitable competition between all types of banking charters and within the financial services profession.

An unfair competitive advantage for Fintechs would create additional difficulties for community banks because they are already competing on an unlevel playing field with credit unions and Farm Credit System lenders. Credit unions are operating under a lighter regulatory burden and with the support of their “cheerleader regulator,” the National Credit Union Administration. Credit unions are tax exempt and use this advantage to expand market share, while ignoring their original mission, at the expense of taxpaying community banks. Farm Credit System lenders similarly enjoy a lighter regulatory burden and also have a “cheerleader regulator,” the Farm Credit Administration, which supports their expansionist agenda. The System lenders use their GSE funding advantage to cherry-pick the best agricultural loans while ignoring their original mission.

Fintech charters with a competitive advantage must not be allowed to occur, particularly by the very regulator [the OCC] that is tasked with ensuring the safety and soundness of the community banks it regulates. Additionally, competitive imbalance should not go unchallenged by the FDIC, the Federal Reserve and state banking regulators, as it impacts the safety and soundness of the community banks they regulate.

CBAI urges the OCC to guarantee that Fintechs will comply with all banking laws, rules and regulations, and be held to the same rigorous safety and soundness, and supervision and regulation standards currently being required of community banks and bank holding companies. These standards must include but not be limited to frequent examination, CRA compliance, compliance with laws to protect consumers, regulatory actions for noncompliance, sanctions and prohibitions, and personal liability for Fintech directors and officers. Fintech cannot have the advantages of being a national bank with limited requirements, regulations and liability.

Conclusion

CBAI has a number of concerns which must be addressed and resolved regarding the OCC issuing Charters for Fintechs.

One concern relates to the wisdom of the OCC chartering hundreds or perhaps thousands of

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Fintechs at this time. Any proposal to regulate Fintechs must be carefully analyzed and not interfere with the OCC performing its current regulatory responsibilities which should be focused on regulating the largest banks and community banks and holding them to the same regulatory standard.

Chartering and regulating Fintechs will be new territory for the OCC. The Agency needs to insure that it has the qualifications and the ability to successfully regulate Fintechs before embarking on this endeavor. It is also important to know who will bear the cost of getting the OCC fully prepared to assume these new responsibilities. Community banks certainly do not want to, nor should they be required to, bear any of those costs.

The legality and authority of OCC chartering Fintechs must be mutually agreed upon. The OCC should join with the other national banking regulators, and the CSBS on behalf of the state banking regulators, and a consensus must be reached regarding responsibilities for chartering, regulating and supervising Fintechs. The regulators' responsibilities and the requirements for Fintechs must be specific. The process must be public, transparent, and include the promulgation of formal rules including extended comment periods – and should not be ad hoc regulation through operating agreements.

Finally, community banks must not be placed at any competitive disadvantage with Fintechs and Fintechs must comply with all of the banking laws, rules and regulations, regardless of the limited scope of their activities.

CBAI urges the OCC to thoughtfully consider our observations and recommendations.

CBAI extends its thanks for the opportunity to comment on this Proposal. If you have any questions or need additional information, please do not hesitate to contact me at (847) 909-8341 or davids@cbai.com.

Sincerely,

/s/

David G. Schroeder

Vice President Federal Governmental Relations

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