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**VIA E-MAIL (SPECIALPURPOSECHARTER@OCC.TREAS.GOV)**

Office of the Comptroller of the Currency  
U.S. Department of the Treasury  
400 7th Street, SW  
Washington, DC 20219

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

Dear Comptroller Curry:

We write to you on behalf of our client, a state-licensed online lender (“Licensed Lender”) that provides unsecured installment loans to consumers. Licensed Lender appreciates the opportunity to comment on the U.S. Office of the Comptroller of the Currency’s (“OCC”) proposal to grant special purpose national bank charters to Fintech companies.

Licensed Lender is proud of its efforts to create innovative online advertising and marketing platforms and develop new strategies to underwrite and service loans while managing credit risk in the delivery of its loan products to consumers. However, state licensing regimes impose significant burdens on Licensed Lender’s ability to deliver pioneering products and services to consumers. For this reason, Licensed Lender welcomes the proposed issuance of special purpose national bank charters to Fintech companies. Making national bank charters available to Fintech companies would benefit both consumers and the financial services industry, and Licensed Lender wishes to express its support for the OCC’s proposal, and to offer the following comments regarding three specific aspects of the proposal: (i) its potential to foster significant innovation; (ii) the OCC’s intent to require a commitment to financial inclusion; and (iii) consumer protection concerns that consumer advocates have raised about the proposal.

**The OCC’s Proposal Has Significant Potential To Foster Innovation**

The stability and predictability offered by a well-considered Fintech charter process offers many benefits for Fintech companies and consumers. First, a national bank charter would thaw the chill on innovation by relieving Fintech companies of a fragmented and burdensome state regulatory regime. Free from a complex web of state laws that have been and are restricting the development of a robust national online lending marketplace, entities like Licensed Lender can focus on broadening the array of products and services offered to consumers – leading to greater competition and more consumer choice. With the flexibility to operate nationwide without a patchwork of state laws, the Fintech industry would develop into an efficient and innovative industry with the ability to price products competitively and offer new consumer-friendly benefits and services.

Second, a national bank charter also would offer consumers assurance that products or services obtained from a chartered Fintech national bank meet the same high standards as those received from traditional banks. And, because a national bank charter would permit Fintech companies to operate nationwide, consumer choice would not be limited based on a consumer's state of residence, a benefit that would promote the OCC's goal of financial inclusion.

### **Commitments To Financial Inclusion Must Consider The Limited Nature of Fintech Charters**

The OCC's paper entitled "Exploring Special Purpose National Bank Charters for Fintech Companies" (the "OCC Paper") noted that the OCC intends to seek a commitment to financial inclusion from Fintech national banks that do not accept deposits and, accordingly, are not FDIC-insured depository institutions. Even though these types of institutions would not be subject to the Community Reinvestment Act, the OCC has indicated that it would be appropriate to require applicants seeking a charter to demonstrate a commitment to financial inclusion that supports fair access to financial services and fair treatment of customers.

Online lenders like Licensed Lender have proven they can make credit available to consumers with limited options safely and soundly, and with careful regard to consumer protection. For this reason, Licensed Lender supports a system that promotes greater financial inclusion and facilitates the offering of innovative financial products and services that may lead to greater financial inclusion.

Licensed Lender believes that the appropriate way for the OCC to foster financial inclusion by Fintech national banks would be to **encourage** chartered entities to develop products and services that aid access to credit by underserved consumers or small businesses, and to enforce strict adherence to fair lending laws by those national banks for which the OCC oversees such compliance. However, a chartered Fintech national bank that does not accept deposits should not be **required** to make financial commitments for financial inclusion. Indeed, the best way for Fintech national banks to show their commitment to financial inclusion is compliance with existing requirements that they offer their products and services in a fair and transparent manner, consistent with the requirements of Section 5 of the FTC Act and Section 1036 of the Dodd Frank Act. This would include ensuring that their products and services comply with applicable fair lending laws, including those that prohibit having a disparate impact on protected classes of individuals, to the extent applicable, and a commitment to seek out ways within their business models to ensure disadvantaged or underserved consumers have access to their products and services, taking into account safety and soundness concerns and the developmental stage of the Fintech business.

The OCC also should not restrict the types of businesses or business models that can qualify for a special purpose national bank charter. In particular, Licensed Lender cautions the OCC that it would not serve the interest of financial inclusion merely to grant special purpose national bank charters only to those Fintech companies that serve consumers who already have ample access to other forms of credit, without also granting charters to Fintech companies that serve consumers who do not have access to traditional bank credit.

### **The OCC's Proposal Will Not Compromise Consumer Protection**

Licensed Lender appreciates the concerns that consumer advocacy groups have raised regarding consumer protection, but Licensed Lender believes the OCC's existing regulatory regime can and will fully protect consumers.

First, the OCC's proposal would not allow companies like Licensed Lender to escape meaningful supervision. Fintech charters are not unprecedented, in fact, what the OCC is proposing is simply to use its authority under the National Bank Act to charter national banks—as it has done for more than 150 years. Specifically, the OCC has stated that it is willing to use its chartering authority to approve charters for national banks that would engage in financial technology activities, as long as those activities are permissible for a national bank under the National Bank Act and so long as the fintech company engages in at least one core banking activity of accepting deposits, making loans or paying checks (or its modern equivalent) or is engaged in fiduciary activities. The main difference between this type of national bank and the banks that the OCC has historically chartered is that a Fintech national bank may have a special or limited purpose, such as facilitating payments or engaging in online lending, rather than engaging in the full scope of traditional banking activities, and may conduct business using innovative technology rather than through more traditional channels. The chartered fintech entity would still be a national bank and, as such, still subject to OCC regulations and guidance, and to comprehensive supervision and examination by the OCC.

The OCC Paper emphasized this point repeatedly. In particular, the OCC Paper states that “[i]f the OCC decides to grant a charter to a particular fintech company, the institution would be held to the same rigorous standards of safety and soundness, fair access, and fair treatment that apply to all national banks and federal savings associations.” See OCC Paper at 2. The OCC Paper specifically notes that “special purpose national banks generally are subject to the prohibitions on deceptive acts or practices under Section 5 of the Federal Trade Commission Act and unfair, deceptive, or abusive acts or practices under Section 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.” See OCC Paper at 5. The OCC Paper explains that the “supervisory standards” that the OCC applies to national banks “include safety and soundness requirements as well as requirements to provide fair access to financial services, treat customers fairly and comply with all applicable laws and regulations” and that appropriate risk management includes a compliance program that is designed to address these requirements. See OCC Paper at 8 at 11.

The OCC has previously provided extensive guidance to national banks to discourage national banks from engaging in allegedly predatory and abusive lending practices. In addition to providing guidance, in some cases, the OCC has brought enforcement actions against national banks for lending activity that failed to meet safety and soundness standards. Accordingly, while the Fintech charter may be new, the regulatory regime governing Fintech national banks is well-established, comprehensive, and fully able to protect consumers.

Finally, it is not true that a FinTech national bank would completely escape state regulation. While the national bank act precludes state authorities from exercising visitatorial powers over national banks, the



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OCC's regulations expressly provide that "[i]n accordance with the decision of the Supreme Court in *Cuomo v. Clearing House Assn., L. L. C.*, 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce an applicable law against a national bank and to seek relief as authorized by such law is not an exercise of visitorial powers under 12 U.S.C. 484." See 12 C.F.R. § 7.4000(b). As such, state laws aimed at unfair or deceptive treatment of customers nonetheless may apply to national banks.

We appreciate the opportunity to provide input on this important regulatory proposal.

Sincerely,

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Sabrina M. Rose-Smith