Kabbage

January 13, 2017

Via electronic submission to*: *specialpurposecharter@occ.treas.gov

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

RE: Request for Comments on FinTech Charter

Dear Comptroller Curry,

Thank you for the opportunity to comment on the "Exploring Special Purpose National Bank Charters for FinTech Companies" white paper. Kabbage, Inc. ("Kabbage") greatly appreciates the Office of the Comptroller of the Currency's ("OCC") efforts to understand and serve as a pioneer for harmonized, responsible and thoughtful regulation to support the financial services industry.

Kabbage has always been at the forefront of innovation. The company launched publicly in 2011 with a mission to serve small and medium-sized businesses ("SMBs"). By developing an automated loan application, underwriting and servicing platform ("Platform"), Kabbage enabled business owners to complete an application entirely online, receive a credit decision in fewer than seven minutes and in the case of an approval, quickly access funds. The company has consistently distinguished itself in the industry by leveraging the power of real-time, persistently connected data to streamline the lending process. In addition, Kabbage is leading the industry by extending the lending experience to mobile users, offering fast debit network funds disbursement and providing access to funds through point-of-sale card payments. Today, Kabbage customers can access their funds nearly anywhere, allowing them to focus on growing their business, creating jobs and taking advantage of new opportunities.

In April 2014, Kabbage partnered with Celtic Bank Corporation ("Celtic Bank"), a federally insured Utah-chartered industrial bank, to launch the Kabbage® small business loan program ("Program"), which allows SMBs to access lines of credit ranging from $2,000 to $100,000. A business approved under the Program can draw on the line up to the credit limit as needed. Each draw is a separate Kabbage®-branded, closed-end installment loan issued by Celtic Bank ("Kabbage Loan"). Kabbage, as program manager and service provider, performs various functions on behalf of Celtic Bank Corporation ("Celtic Bank") to support the Program. As a bank service company, Kabbage strictly follows bank-compliant policies and procedures, including Bank Secrecy Act and anti-money laundering requirements, when performing services for Celtic Bank.

Beginning in 2015, Kabbage began licensing its Platform through a software as a service ("SaaS") model to international financial institutions interested in expanding their SMB credit portfolios to deliver increased value to new and existing customers. Kabbage has successfully launched partnerships with a number of international financial institutions, including ING Bank N.V. ("ING"), The Bank of Nova Scotia ("Scotiabank") and Santander Bank, N.A. ("Santander").

A special purpose national bank charter for financial technology companies ("FinTechs") creates an opportunity for greater access to banking products, empowers a diverse and often underserved customer base, promotes efficiency in financial services, and encourages industry competition. Through a national bank charter, FinTechs can use their resources more effectively to focus on (i) responding to SMBs' unique and evolving needs, (ii) increasing SMBs' access to financial products and services and (iii) providing additional competition and loan product diversity for the benefit of SMBs.

Yet for all the benefits a FinTech charter could bring to the financial services industry, a national bank charter will not be a viable option for FinTechs if too many rigid conditions are attached to the charter. The primary risk in creating a special purpose national bank charter with too many restrictions is that the cost-benefit analysis will likely discourage FinTechs from pursuing the charter. A lack of regulation is not the status quo for online platforms. While it is expected that additional regulatory requirements will come with a national bank charter, the OCC should seek to strike a balance between regulation and flexibility. Innovation requires flexibility, which breeds further innovation and progress.

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

A national bank charter will enable FinTechs to act independently and efficiently to promote further innovation in financial services. Specifically, a national bank charter creates the following public policy benefits:

- ***Enables FinTechs to Meet SMBs' Evolving Needs.*** The needs and expectations of SMBs have changed over time and will continue to change. Technological advances have resulted in a great reduction of paperwork and in the ability to apply for funding during "non-banking" hours. The finance industry has moved beyond "nine-to-five," and this has benefited borrowers and lenders tremendously. SMBs need to be nimble to remain competitive and therefore demand funding options that are available at their fingertips at anytime and from anywhere. Through discussions with SMB owners and extensive data analysis, Kabbage has learned that businesses are not as desperate for credit as they are desperate for time. Automated, data-driven lending technology and flexible funding distribution options with 24/7 online access fill a notable gap in the lending marketplace and provide a critical service, particularly for time-strapped business owners. Management resources for SMBs are often limited, and SMBs' smaller size effectively precludes funding options typically available to larger enterprises. A FinTech charter will better meet the evolving needs and expectations of SMBs in the 24/7 digital world by enabling FinTechs to dedicate greater time and resources to understanding, anticipating and supporting the unique needs of SMBs.

- ***Provides Funding Options to Empower Underserved Communities***. A national charter provides another avenue by which FinTechs can enter the lending market and/or expand their existing footprint. FinTechs, like Kabbage, use technology to enable more individuals and businesses from underserved populations to effectively use financial products and services, thereby empowering these communities. For example, the Kabbage Platform leverages a rich and diverse set of real-time data from verified third-party data sources (e.g., transactional information, vendor payments, accounting information, social network data, online reviews and listing data, shipping records, etc.) to inform the underwriting function, which can increase the likelihood that SMBs traditionally turned down due to "thin-files" can qualify for credit. Online, automated and objective lending technology reduces the perceived bias in funding loans and encourages SMBs with diverse ownership to apply for funding.[1] Furthermore, Kabbage enables SMBs to borrow funds only when and if needed. While lines of credit are available as a source of primary or backup funding, SMBs only pay for the amount they borrow, instead of the entire line of credit. This unique and flexible product structure enables SMBs to make better financial decisions and often serves to reduce their overall cost of capital. An increase in similar innovative FinTech business models creates greater competition for products, pricing, customer service and user experience, all of which benefit the SMB borrower and ultimately strengthen the U.S. economy. A national bank charter will enable FinTech companies to dedicate more resources and have greater product flexibility to empower underserved communities.

- ***Promotes Efficiency by Harmonizing Laws and Regulations****.* A national licensing regime promotes operational efficiency and innovation by removing the high costs associated with complying with a patchwork regulatory system. Multi-state licensing regimes have inhibited the ability of FinTechs to enter new markets, scale operations and take advantage of new product opportunities. Different state licenses can apply to different activities within a loan program. Obtaining a license can take months and can require FinTechs to fundamentally change their business structure to meet rigid standards based on outdated and inflexible credit models, technology and delivery systems. The applicability of a license is not always clear. As a result, FinTechs must dedicate significant time and resources to manage regulatory uncertainty. Lowering these costs is essential to expanding credit availability and reducing the total cost of capital to SMBs.

- ***Creates Clear and Consistent Regulatory Expectations***. A national bank charter provides uniform standards and interpretations from a single supervisory agency that is dedicated to understanding contemporary FinTechs on a national basis. States' regulatory positions are not always clear and consistent. Additionally, states are not equal in their commitments of time and talent to staying abreast of changes in technology, products or delivery systems. States may not interact with a sufficient number of FinTechs to develop a comprehensive and holistic view of the industry, hampering a state's ability to develop a regulatory expertise and perspective. To innovate, FinTechs need to know the "rules of the road." Clarity in rules and consistency in application will likely improve investor confidence in FinTechs and attract capital. In contrast, regulatory uncertainty has the effect of chilling investment. A national bank charter enables FinTechs to comply with a single national licensing regime to conduct the necessary activities within a lending program. A national bank charter also gives the OCC the ability to monitor a FinTech's activities throughout the loan lifecycle with a comprehensive product and market understanding. Technology has enabled SMBs to run national businesses rather than being limited to local markets. A national charter supports these national businesses through a nationwide regulatory framework.

- ***Encourages Competition.*** A national bank charter for FinTechs creates a level playing field of regulation and more competition in the financial services industry. Competition spurs innovation, advanced product features and healthy pricing competition that ultimately benefits the end customers in the form of reduced capital costs and greater choice. The emergence of FinTechs has already caused some traditional full-service banks to invest more in technology and

[1] *See* Crosman, Penny, *Does Automatic Eliminate Bias from Small Business Lending,* AMERICAN BANKER, Dec. 20, 2016, http://www.americanbanker.com/news/bank-technology/does-automation-eliminate-bias-from-small-business-lending-1092957-1.html?zkPrintable=true.

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improve customer service and experiences. A national bank charter would also increase the number of financial institutions in the online lending space. The Federal Trade Commission observed that two state-chartered banks originate loans in 8 of the 15 marketplace lending programs surveyed by the Federal Trade Commission as part of its June 2016 Marketplace Lending Forum.[2] A national charter creates more competition that will benefit SMBs and customers in the financial services industry generally.

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?

Capital and liquidity requirements should be based on the nature of a FinTech's business and its future obligations, respectively. The FinTech industry contains an array of businesses with different risk profiles. Generally, FinTechs with less risky activities should have reduced capital requirements. The insolvency of a FinTech that engages only in lending activities poses minimal risk because no borrower or depositor assets are at risk. Customers can switch to other lenders or servicers in the event of a failure. Digitally native FinTech companies actually decrease the friction of transferring or changing service providers or lenders in the event of a failure.

Lending-only FinTechs have minimal future obligations; thus, if a lending-only FinTech becomes insolvent, the only relevant stakeholders are the borrowers, the debt holders (if any) and the equity holders. Failure of a lending-only FinTech that is funded by debt and equity could negatively affect shareholder equity, but the effect on borrowers (customers) and the debt holders would be limited. In the absence of deposits, there would be no continuing obligations to borrowers. To the extent that the insolvency of the FinTech removes an anticipated source of capital, an SMB borrower should be able to obtain comparable funding from the FinTech's competitors (e.g., banks, non-banks, MCA providers, etc.) or other sources. The lack of substantial future obligations inherent in a lending-only FinTech operation negates the need for cumbersome capital and liquidity requirements usually reserved for systemically important full-service deposit institutions.

In the event of an insolvency, debt holders would expect to be repaid, but this risk is significantly reduced for such parties because the debt issued to FinTechs is generally collateralized, the risk of default is already priced into the securities purchased, and mechanisms are typically in place to ensure that cash flows are serviced. FinTechs (like other businesses) generally obtain debt on a secured basis, meaning that the loan is secured by collateral (here, payments expected to be received on SMB loans). In the event of an insolvency, the deb tholders have rights to such collateral, which generally would be expected to repay the debt holders in full. Debt holders typically have the ability to service the collateral, whether directly or through a back-up servicer, thus further enhancing their ability to get repaid. Except for the potential for brief disruptions in the servicing/collection process while the debt holders or their designated servicers take control of the loan servicing function, SMB borrowers should not experience any material disruptions, as they would simply continue to make the requisite payments on their loans (albeit to a new party). The FinTech's failure may cut into shareholder's equity depending on the FinTech's capital structure but such risk is inherent in equity investments which, again, are priced accordingly in the markets. As the insolvency of a lending-only FinTech poses minimal risk to stakeholders, we suggest the OCC consider requiring such FinTechs to maintain sufficient liquid financial

[2] "A Survey of 15 Marketplace Lenders' Online Presence," Federal Trade Commission (June 9, 2016), https://www.ftc.gov/system/files/documents/public_events/944193/a_survey_of_15_marketplace_lenders_online_presence.pdf.

assets to provide for an orderly wind-down of the entity, the transition of assets to creditors and the transfer of servicing operations (if any) to a back-up servicer.

The OCC should also consider the following additional factors when establishing capital and liquidity requirements:

- ***Availability of Current and Potential Capital Sources.*** Clear and consistent regulation creates predictability and reduces regulatory risk from an operational and investment perspective. A national bank charter may have the effect of expanding the supply and stability of both equity and debt capital available to FinTechs. This will be particularly useful for FinTechs seeking to providing lending-only services, since they will not have the benefit of low-cost deposits as a source of funding. For such FinTechs, the cost of capital figures prominently in the return on investment calculus for pursuing a national charter. If such costs were to decline significantly, but the newly incurred costs of satisfying the charter requirements (e.g., capital, liquidity, subscription to Federal Reserve stock, increased compliance headcount, etc.) did not adequately offset that decline, a national charter would not be an attractive proposition. Therefore, the current and potential capital sources for FinTechs should be a key consideration when establishing minimum capital and liquidity requirements.

- ***Existing FinTechs Have Proven Business Strategies and Historic Data to Forecast Risk.*** Existing FinTechs are not *de novo* institutions. Their business strategies are proven. Capital markets have already assessed their business models and products, many with solid ratings and global investment buy-in. Many FinTechs offer traditional products or services with known risk profiles. In addition, FinTechs collect, generate and maintain extensive loan-level, industry centric and macroeconomic performance data on borrowers, which better informs FinTechs on business, market and product risk. FinTech modeling is also incredibly consistent, predictable and validated against the core business risks and macroeconomic trends. Based on these considerations, established FinTechs are more apt to determine appropriate liquidity and capital levels tailored to their business models, customer bases and risk profiles. It is important to note that FinTech customers are distributed democratically across geographic boundaries, industry classifications, business sizes and loan amounts. For example, Kabbage operates in all 50 states with loans as small as $2,000 and as large as $100,000. Given the real-time access to risk and business data, the OCC should consider providing deference to a FinTech's proposed capital and liquidity requirements if well-supported by validated models and data. Finally, Kabbage encourages the OCC to consider separate and flexible standards for start-up FinTechs and established FinTechs. There is a real concern that there is no "on-ramp" to the national charter model for start-up FinTech companies.

- ***Established FinTechs Have Significant Experience in Capital Markets***. The success of existing FinTechs has depended on their ability to raise capital. Market-leading FinTechs have raised capital through a combination of equity and debt. Equity capital has generally been provided by sophisticated private equity and venture capital firms as well as the public markets. Debt capital has generally been provided by large banking institutions (either directly or through syndicated facilities) as well as other specialty finance companies and has ranged from the tens of millions to hundreds of millions in size. FinTechs have also been able to raise debt through securitization transactions, which, due to the complex structuring and the rigors of the rating process, has allowed them to tap into a deeper source of capital and lower their cost of capital. To date, well over a billion dollars have been raised by FinTechs through such securitization transactions, which have received investment grade ratings by leading rating agencies including S&P, DRBS and Kroll. As a result, existing FinTechs have developed strong relationships, track records and funding strategies, which enable FinTechs to access diverse funding options. Additionally, some FinTechs utilize whole loan sale or participation programs to further diversify their funding sources. These programs allow investors to purchase SMB assets directly from the originating FinTech, with the FinTech earning immediate income from the sale, and correspondingly reducing any requirement to incur additional liabilities to finance such assets over their life. A FinTech's past capital raising campaigns and general ability to raise capital should be considered when establishing minimum requirements. Again, the OCC should consider flexible standards for established and start-up FinTechs according to their unique characteristics, risks and business models.

- ***Established FinTechs Are Sophisticated Experienced Liquidity Managers*.** While many FinTechs emerged during a period of relatively strong credit conditions, FinTechs have also introduced innovative technology that initially was not accepted by capital markets, making funding challenging. The Kabbage business model was born out of the last financial crisis, but the company actually closed its first round of funding during an economic downturn. Many FinTechs, including Kabbage, have experienced the same liquidity stress events as technology start-ups. To survive, FinTechs have had to become remarkably good liquidity managers and conduct rigorous analysis to ensure continued success through credit downturns. A FinTech's experience with managing liquidity should be considered when setting minimum liquidity requirements.

- ***Lending-Only FinTechs May Have a Diverse Range of Quality Assets.*** The perceived liquidity risk of a FinTech with a mono-line business may be greater than the actual liquidity risk. Lending-only FinTechs can have diverse but high quality assets, which reduce liquidity risk. Underwriting technology that considers traditional and non-traditional data in real-time, with persistent connections to data, can give a lender greater insight into a borrower's ongoing and developing risk profile. With this technology, lenders can make informed, holistic credit decisions, resulting in better loan portfolio performance, steadier cash flows and reduced off-balance sheet risk. Lending-only FinTechs can also reduce liquidity risk through adequate diversification. An SMB loan portfolio can be diversified by geography, use-case, industry, risk tiers, etc. FinTechs are well-positioned to diversify their business by expanding into other non-deposit business lines, such as technology licensing and paid advanced data insights for customers.

- ***Lending-Only FinTechs May Have Tools to Reduce Liquidity Needs.*** FinTechs should have a sufficient cushion to meet liquidity needs. Lending-only FinTechs can employ tools to reduce their liquidity needs. For example, additional technology can be introduced to reduce operational costs. Depending on the type of lending activities, loan originations can be temporarily suspended or loan terms adjusted to reduce cash output. The absence of deposit risk enables lending-only FinTechs to better manage and greatly reduce their liquidity needs in the event of a liquidity stress event.

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**

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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?

While Kabbage supports the spirit and goal of the Community Reinvestment Act ("CRA") and financial inclusion generally, conditions that replicate the specific "brick-and-mortar" bank requirements of the CRA should not be incorporated into a FinTech charter. A CRA assessment includes a geographic component not easily recognized by a FinTech lending platform because the ubiquity of technology, internet access and mobile banking makes it challenging for FinTechs to identify a traditional "community." Unlike traditional banks, FinTechs do not have brick-and-mortar locations accessible to the public in every state in which they operate. The operation of a national program can make it challenging to measure a record of financial inclusion in an assessment area that may span 50 states.

FinTechs know how to identify needs using tools such as data analytics and also understand how to meet those needs through innovation, insight and real-time data monitoring. Thus, FinTechs should be permitted to leverage their expertise to develop and submit written plans to promote financial inclusion, literacy and access for their customers. A FinTech company could demonstrate its commitment to financial inclusion through, for example:

- Partnering with community development banks, Community Development Financial Institutions ("CDFIs"), the Small Business Administration's ("SBA") loan programs or other community development organizations and programs. For example, Kabbage (i) participates in the SBA's Partnership for Lending in Underserved Markets ("PLUM") initiative to promote access to capital for minority-owned businesses throughout the United States, with live pilot projects in Baltimore, MD and Los Angeles, CA, (ii) partners with the SCORE Association (previously known as the Service Corps of Retired Executives) to mentor early-stage entrepreneurs and (iii) supports classes on the power of lending, data and data-driven marketing at various America's Small Business Development Centers ("SBDCs").

- Partnering with other chartered FinTechs to launch initiatives facilitated by the OCC, SBA or the U.S. Department of the Treasury.

- Supporting financial and technology literacy seminars in areas with low or moderate-income neighborhoods.

- Creating financial literacy pages on its platform or mobile applications to educate the public on responsible business borrowing.

- Leveraging the data to provide additional financial insights or management tools for SMB operations to facilitate financial literacy.

- Providing other loan data that demonstrates financial inclusion, such as the rate of successfully referring denied applicants to alternative funding sources, such as CDFIs.

- Submitting information on features incorporated into its products or services that help unbanked or underbanked customers gain access to or use its products and services. Such features could include mobile phone-accessible platforms or prepaid cards.

- Providing resources to help the OCC study unbanked or underbanked communities, for example, through deep data analytics.

Regardless of the financial inclusion initiatives pursued, a financial inclusion plan, like the strategic plan under the CRA, should have measurable goals. Whether a FinTech has demonstrated a "commitment" to financial inclusion should be based on the particular characteristics of the FinTech company and business model. The innovativeness and responsiveness of a FinTech's initiatives could be weighed more heavily than the number or amount of loans, services or investments provided through the initiatives. The geographic spread of the initiatives could also be considered favorably. Ultimately, financial inclusion assessment criteria should be developed considering a principles based approach to financial inclusion.

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?

Any SMB borrower protections should be discussed and introduced in the form of federal legislation that applies equally to competing SMB funding providers. Legislative rulemaking through chartering conditions or confidential operating agreements circumvents the principles of due process enshrined in the Administrative Procedure Act (including fair notice and fair opportunity for public comment by all stakeholders) and the spirit of fair and open representation and informed governance and discourse. Additionally, the OCC should not impose extraordinary conditions on FinTech charters for SMB funding for the following reasons:

- ***Special Conditions Create Uneven Playing Fields.*** Chartered FinTechs may be unable to compete with traditional banks, unchartered FinTechs or alternative SMB funding providers, such as factoring and merchant cash advance providers, that are not subject to the same requirements. The SMB funding market contains diverse players, products and business models. Applying special conditions could make a national bank charter an unattractive option for FinTechs when evaluating business models and returns on investment. From a policy standpoint, the pursuit of a special purpose charter should be encouraged as a means to benefit from clear, predictable, consistent and harmonized regulation as opposed to a tool to impose disparate restrictions on FinTechs.

- ***Products, Regulation and Capital Sources Have Been Established Based on the Recognized Differences Between Business Loans and Consumer Loans.*** Business loans and consumer loans have clear and important distinctions that have been reflected in product offerings and features, regulations, capital markets and banking history. Namely, the nature of borrowers (e.g., small business versus consumer) and the use of funds (e.g., personal, family or household purposes vs. business purposes) are different. SMB borrowers and lenders have different incentives, which affect the pricing and structure of products. SMBs seek access to capital to pursue growth opportunities or secure stable working capital. Ultimately, SMBs pursue a return on investment with every purchase of a product or service using a commercial loan. Accordingly, the SMB funding industry has designed diverse funding options (e.g., merchant cash advances, equipment lease financing, SMB loans, etc.) to fit these needs. SMB owners are generally considered more sophisticated and experienced with finances than average consumers.

Regulations have recognized these differences[3] and have provided greater flexibility for these parties to determine the terms of SMB funding that are most suitable for their needs. Investors have indicated to Kabbage that they view SMB loans as being generally lower risk than consumer loans, and some funding sources (as well as debt and equity investment) are available strictly to SMB-only funding portfolios. Treating SMB loans as consumer loans could affect a FinTech's ability to access diverse capital sources, require a significant modification of risk assumptions and greatly increase compliance costs. Thus, applying any consumer-like protections to SMB loans should be carefully considered and likely avoided.

Furthermore, there is real risk in damaging a consumer's ability to borrow if commercial and consumer credit are inappropriately conflated. Kabbage's small business customers, some with annual revenue as little as $50,000, use the Kabbage product to grow their operations and pursue a return on investment through inventory management or financing new hires. Conflating commercial and consumer credit potentially imposes an entirely different business model on existing industry players, altering the risk-to-return calculations for all SMB lenders, including established banks. The conflation of commercial and consumer credit risks also adversely impacts the borrower's personal cost of borrowing if commercial trade lines are entered as consumer transactions in a credit report or credit scoring model. This means a failed small business operation would forever impede an individual's ability to borrow for commercial or consumer purposes in the future, increasing the personal cost of borrowing with major unintended externalities for underserved populations, especially small and early stage businesses and sole proprietorships.

- ***SMB Loan Programs Are Well Regulated.*** There is a common misperception that SMBs are unprotected and FinTechs are unregulated. SMBs have protections under the current regulatory framework applicable to SMB loan programs, including protections afforded through the Equal Credit Opportunity Act, Fair Credit Reporting Act (including the identity theft protection program requirements), Section 5 of the Federal Trade Commission Act (i.e., UDAP), the Servicemember Civil Relief Act, Telephone Consumer Protection Act and various similar state laws. In our experience, an SMB's understanding of funding terms is a product of time-constraints and limited management resources more so than a lack of adequate information and protections.

- ***Industry Solutions Are Available.*** Finally, the SMB funding industry has responded to calls for greater understanding, better information, transparency and greater protections. The SMART (Straightforward Metrics Around Rate and Total Cost) Box™[4] is a helpful example of how the industry has responded. The SMART Box was created by the Innovative Lending Platform Association ("ILPA"), of which Kabbage is a founding member. It discloses FinTech product features in a fashion that is more closely aligned with traditional loan disclosures, including key metrics such as total cost of capital and annual percentage rate ("APR"). The SMART Box is designed to provide a common approach to pricing disclosures for diverse industry products and offerings, empowering SMBs to make more well-informed decisions by selecting the funding

[3] *See, e.g.*, the Equal Credit Opportunity Act, the Truth in Lending Act, the Electronic Funds Transfer Act and the Gramm-Leach-Bliley Act.

[4] Examples of a SMART Box standardized for loans, lines of credit and merchant cash advances are present on the ILPA website, available at http://innovativelending.org/smart-box-model-disclosure-depth/.

option that best serves their need. Instead of simply providing more information, the SMART Box seeks to provide better information to meet the unique needs of time-constrained SMB owners. Lastly, the SMART Box is well positioned to scale, as it can be licensed by any SMB funding program.

The SMART Box was developed with an in-depth analysis of the small business marketplace that was informed by small business survey data, including recent findings from an Electronic Transactions Association study,[5] which underscore small businesses' preferences and priorities with regard to pricing disclosures. In June 2016, the ILPA began a 90-day "national engagement period" to solicit feedback on the SMART Box initiative from other lending platforms, financial institutions, small business borrowers, policymakers, small business advocates, CDFIs and nonprofit organizations. Following the engagement period, the ILPA developed the SMART Box disclosure, drawing directly from the input provided by the key stakeholders. SMART Box will continue to develop and evolve as a "living" disclosure as the ILPA periodically reconvenes key stakeholders to solicit performance data. This is one very clear example of how the SMB funding industry has demonstrated that it is receptive to ongoing feedback and able to address concerns in a meaningful and productive way.

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?

As noted in the response to Question #6, many SMB loan programs offered through FinTechs are already subject to the same regulations as traditional loan programs. Other potential challenges in adapting the FinTech business model to meet regulatory expectations could include:

- ***Diversity of the FinTech Industry.*** The FinTech industry covers a broad array of products and services, including payments, lending/financing, financial management, insurance and market/exchanges. Even within a particular sector, such as SMB funding platforms, there can be diverse products and business structures. It could be challenging to account for this diversity while maintaining uniform requirements and a level playing field of regulation. As discussed with regard to capital and liquidity, the OCC should consider flexible standards that take into account the diversity of FinTechs' experience and business models.

- ***Speed of Change.*** The digital market changes fast to adapt to new customer demands, technological innovations and advancing standards and information. Technology companies, particularly FinTechs, need to be able to react quickly and dynamically to market changes. Regulatory delays could jeopardize the safety and soundness of FinTechs. For example, approvals for certain changes to a chartered FinTech's capital structure could inhibit FinTechs from raising vital capital or exploring synergistic partnerships. The necessity of approval requirements should be evaluated, and opportunities to streamline necessary core business approvals should be explored.

- ***Flexibility.*** To stay competitive, FinTechs need to maintain nimble business models and products that can be adjusted to react to market changes. Their dynamic nature has enabled

[5] New ETA Survey Finds Online Lending an Important Tool for Small Business Owners, available at http://www.electran.org/new-eta-survey-finds-online-lending-an-important-tool-for-small-business-owners/.

FinTechs to innovate and provide recognized benefits to the financial services industry. To yield the benefits of these dynamic business models, FinTechs need more regulatory flexibility than traditional full-service banks. Too many conditions connected to the FinTech charter will significantly slow down, if not entirely stifle, innovation. Waiving certain traditional chartering requirements not materially relevant to FinTech business models may be prudent to provide flexibility, encourage competition, and promote market development and growth.

- ***Requirements Tied to Geography***. Many FinTechs do not have a brick-and-mortar location open to the public. FinTechs tend to be structured more like technology companies with employees working remotely or in many offices around the world. Thus, national bank charter requirements and regulations that have geographic requirements, such as the director residency requirement, should be evaluated and possibly waived. The availability of video conferencing, shared internet work spaces and frequent hub-to-hub air routes allow today's technology companies to remain in constant contact and quickly mobilize in-person meetings when necessary.

- ***Investors.*** Most FinTechs have experience raising capital from diverse sources, such as technology companies. The Bank Holding Company Act ("BHCA") places limits on entities that own and control non-exempt banks. To maintain FinTechs' access to diverse funding options, technology partners and exclusive data sources and to ensure FinTechs' safety and soundness, no BHCA-like requirements should be incorporated into a FinTech charter or operating agreements with chartered FinTechs.

- ***Transitioning Existing Programs.*** Many FinTechs operate existing programs. Challenges may arise from transitioning existing programs to a FinTech charter. For example, the costs and time (if too lengthy) to apply for a charter while supporting an existing program could preclude some FinTechs from pursuing a charter.

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?

Traditional aspects of bank supervision, such as periodic examinations and ongoing dialogue, will help ensure that FinTechs operate in a safe and sound manner. However, some supervisory expectations for traditional depository financial institutions may not be appropriate for non-depository FinTechs and may actually jeopardize their safety and soundness. To ensure the safety and soundness of FinTechs, the OCC should:

- Explore opportunities to reduce the costs of examination and supervision by leveraging FinTechs' core competencies, such as data analytics. FinTech companies like Kabbage maintain ongoing and real-time data connections used to continually underwrite customers at the loan level but in the aggregate, can provide key indicators and insights to predict macroeconomic trends and risks. Regulators can work with the industry to develop frameworks to decrease supervisory and compliance burdens, in time and cost.

  Kabbage invites the OCC to work with us and the industry to create a framework for Regulation Technology ("RegTech") to deploy regulations through application programming interfaces ("APIs") and data monitoring systems and in turn, improve safety and soundness and reduce compliance, implementation and management costs and friction. RegTech with API solutions

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allow FinTechs to potentially simplify audit procedures and ease reporting requirements while promoting safety and soundness and financial inclusion through features like digital identity verification. For example, technology solutions, many already employed by Kabbage, allow for safer and simpler digital customer verification and increased confidence when underwriting underbanked populated while complying with existing regulations and standards. Kabbage encourages the OCC to continue to research and embrace intelligent RegTech solutions that help FinTechs reduce fraud, increase access, better assess know-your-customer and anti-money laundering risk and ultimately reduce costs.

- Set clear and consistent expectations that promote fair competition between chartered FinTechs, full-service banks, unchartered FinTechs and relevant market competitors, such as factoring and merchant cash advance providers in the SMB space. For example, full-service banks enjoy a funding advantage through deposit-taking, which entails and justifies greater regulation than that which should be imposed on lending-only FinTechs.

- Understand chartered FinTechs' products and services and stay informed on emerging trends to enable faster evaluation and approval of new opportunities through the Office of Innovation.

- Enable FinTechs to use their resources efficiently by setting appropriate and flexible regulatory expectations.

- Refrain from restricting a FinTech's ability to raise capital quickly, including removing the 3-year restriction on raising funds for tiered capital injections for newly-chartered banks.

- Share information with FinTechs on emerging risks and industry best practices and encourage open dialogue with FinTechs.

- Help FinTechs react quickly to market changes by streamlining necessary approvals and eliminating unnecessary ones.

- Facilitate FinTechs' efforts to increase financial inclusion by sharing information on unbanked or underbanked communities.

- Encourage synergistic collaborations between chartered entities.

By taking these actions, the OCC will help FinTechs focus on improving customer service, increasing financial inclusion and innovating to meet evolving customer needs.

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

A chartered FinTech must manage the risk inherent in its limited activities. However, a FinTech charter does not necessarily present as great of a risk as may be perceived. Depository and non-depository financial institutions have different risk profiles. Traditional full-service banks pose a greater systematic risk to the U.S. economy than lending-only FinTechs because lending-only FinTechs do not handle deposits and, in the case of SMB lending, operate in a diverse and competitive market.

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Diversity within the SMB funding sector should be recognized. Lending-only FinTechs do not have as great of a concentration risk as more limited entities like credit card banks or trust banks. SMB loans can be made against multiple risk tiers, to different business types, among different industry classifications, across various geographic locations, with varying maturity terms and for different amounts. SMB loans can also be made for a variety of uses, including, but not limited to, equipment purchases, inventory purchases, working capital**,** product expansion, renovations or upgrades, marketing, new hire financing, gap financing or off-season financing. SMB loans can be structured as secured or unsecured installment loans, revolving loans or hybrid products. In contrast, credit card banks engage only in non-commercial credit card activities and can be more sensitive to political and economic shocks. The FinTech charter actually presents an opportunity to decrease the current concentration risk in the online loan industry created by the handful of insured depository institutions that make loans through online platforms. The concentration risk for some FinTechs may not be as great as perceived.

The OCC already has established processes and tools that would help FinTechs mitigate risk. As part of the charter application, management must submit a business plan that includes a detailed risk assessment. Through the business plan, the OCC has the opportunity to review an applicant's ability to assess risk, provide feedback and in the process, train applicants on risk management. To approve a charter, OCC must vet the risks involved with an applicant's business, which allows the OCC to address unique risks posed by a FinTech. Apart from the charter application process, the OCC publishes helpful guides on risk management that enable chartered entities to manage risk better. Publishing additional risk management guides tailored specifically to FinTechs and maintaining open dialogues with FinTechs on emerging risks will further help FinTechs mitigate risks that may be perceived as unique.

The OCC could also aid FinTechs in addressing concentration risk by enabling FinTechs to diversify their business lines. FinTechs made their mark in the financial services industry through technology and data analytics, which could be valuable to other financial institutions. Permitting FinTech's to monetize these core competencies could be a significant source of diverse funds, lower concentration risk and may otherwise improve the safety and soundness of FinTechs while providing existing institutions with much needed data and insight into local, regional or macroeconomic trends and conditions.

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

Three pieces of information would be useful to a prospective FinTech applicant. First, applying for a charter involves considerable time and resources. Prior to pursuing a charter, FinTechs will engage in a careful cost-benefit analysis based on the known conditions attached to a FinTech charter. Special conditions (e.g., a capital floor) attached to a FinTech's charter could be deal breakers. While it is understandable that the OCC may not determine that special conditions are necessary until a review of the business plan or until a field investigation is complete, communicating potential or likely special conditions and costs for a particular FinTech charter early in the chartering process will enable FinTechs to make strategic decisions and avoid wasting limited resources.

Second, clearly indicating any differences from the standard national bank chartering process, timing requirements and privileges (e.g., access to the payments system, availability of the discount window and other benefits afforded to national banks) for FinTechs, including possibly creating a specific FinTech on-ramp and chartering guide, would be helpful.

Kabbage

Finally, explaining the role of the Office of Innovation in the pre-charter and chartering process could be highly useful. Establishing lines of communication between the Office of Innovation and a prospective FinTech applicant early could prove beneficial if issues arise during the chartering process or after a FinTech obtains a charter.

Again, we appreciate the opportunity to provide feedback on the OCC's FinTech charter proposal and look forward to additional dialogue with the OCC on considerations for FinTech and Kabbage more specifically.

Sincerely,

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Scott Askins
General Counsel
Kabbage, Inc.