



January 15, 2017

The Honorable Thomas J. Curry  
Comptroller  
Officer of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW  
Washington, D.C. 20219

**RE: Comments on *Exploring Special Purpose National Bank Charters for Fintech Companies***

Dear Comptroller Curry:

On behalf of our more than 155 savings, commercial and cooperative banks and savings and loan associations with 65,000 employees located throughout Massachusetts and New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to provide comments on the Office of the Comptroller of the Currency's (OCC) whitepaper, *Exploring Special Purpose National Bank Charters for Fintech Companies*. In March 2016, the OCC issued a whitepaper entitled *Supporting Responsible Innovation in the Federal Banking System*. Subsequently, the agency held a public forum on financial innovation in June 2016. In December 2016, the OCC published the most recent whitepaper with a request for comment on a number of topics, most notably the standards that will be applied to fintech companies if they pursue a special purpose charter relative to safety, access and fair treatment.

MBA is extremely appreciative of the OCC's efforts in the fintech space. The OCC has a longstanding history of oversight and regulation being guided by forward-thinking and innovative ideas and the current proposal surpasses the discussions and public statements of any of the other financial regulatory agencies. As discussed at length within the whitepaper, changing demographics and new technologies have created a market shift in how consumers access and use financial services. Interestingly enough, whereas at first these fintech companies viewed themselves in competition with the financial services industry, many have moved to integrate with banks or expressed interest in obtaining bank charters.

We believe that partnerships between fintech companies and traditional banks hold great promise. Consumers will have access to new products and services, while also still maintaining a critical local relationship within their communities – providing a continued resource to answer questions and meet their banking needs. Banks, in particular community banks, will be able to offer innovations through partnerships that they could not develop in-house.

While we are generally supportive of efforts to bring fintech firms into the mainstream regulatory system, we do have concerns with this initiative and recommend greater clarity and more specific frameworks be established to guide the process for granting national charters to fintech companies. These concerns are addressed in our comments below.

**MBA Comments**

Rather than address every question posed by the OCC, our comments will focus on what MBA views as the five most critical issues for fintech companies seeking a special purpose national charter. Most importantly, our concerns all coalesce on areas of emphasis for the development of requirements and guiding frameworks as the OCC works to integrate fintech companies into the national banking system.

- Capital & Liquidity

Based on the current make-up of the fintech industry, we expect that the majority of interested fintech companies will have volatile capital and liquidity. In fact, fintech remains as an umbrella catch-all for any number of startups and financial technology companies with limited prospects for long-term growth and stability. Nevertheless, as these companies emerge, their balance sheets may often function like many other privately-owned businesses, therefore reducing risk naturally. Financial assets such as cash on hand, investor commitments and any number of low volatility assets would satisfy risk management expectations, or represent a potential solid capital foundation. Firms should, at minimum, have strategic and capital plans that clarify company goals relative to growth, continued innovation and future expenditures related to development and innovation. A review and ongoing oversight of any trading or investment activity as well as angel or venture capital funding also seems practical.

MBA strongly believes that any firms ultimately granted a charter must demonstrate the financial capabilities to weather economic cycles and market changes. As we will discuss below, sufficient capital is a crucial tool in resolving any fintech firm failures or other issues that arise. It is our hope that the OCC will do a thorough analysis of any potential charter recipient's capital and liquidity prior to granting a charter as well as establishing stringent ongoing monitoring through a comprehensive safety and soundness examination process. Failing to ensure the capital strength and financial management capacity of these new organizations could have a negative, cascading effect given the interconnectedness of the industry.

- Federal Pre-emption

The federal preemption that is inherent in a national bank charter, even a limited purpose one, will certainly afford a significant benefit to fintech companies that may have profound impact on competition with state-chartered financial institutions and the dual banking system. Throughout the whitepaper, the OCC alludes to potential competitive advantages that special purpose national bank fintech companies could enjoy, and the issue of preemption could present potentially disruptive competitive advantages for fintech companies as they migrate from state-to-state and further their business activities. MBA is aware that many state regulators, including those in Massachusetts, have expressed concern with a national fintech charter. We respectfully request that any national charter show an appropriate level of respect and deference to the dual-banking system.

Specifically, MBA believes that these firms must be held to a high standard for consumer protection and regulatory compliance. In addition, we would suggest that in granting fintech firms charters, the OCC should consider to what extent the firm is conducting business in multiple states or jurisdictions and, based on the company's business plan, whether a pre-emptive federal charter is appropriate. In addition, we are concerned that the OCC charter may shift fintech innovation away from a state-chartered model. As you know, many innovations and powers in the banking system were initially adopted at the state level before being transferred to national banks and federal savings associations. Preserving innovation in the states is essential for the continued viability of the dual banking system and we ask that the OCC consider this issue as the chartering process moves forward.

- Resolution and Receivership

As we stated above, the OCC should consider issues relative to resolution and "receivership" of potentially failed or failing federally-chartered fintech firms. Given the history of the fintech industry and rapid changes in technology, invariably some firms will not succeed. Plans for their resolution in light of customer assets held, or deposits retained and even the systemic importance within a payments sector should all be addressed before the chartering process begins. A significant number of fintechs operate in

lending, payment and digital currency markets. The relative importance from one fintech company to another will be fluid, making issues of resolution particularly challenging for regulators. In addition, the failure of a fintech firm partnered with a bank or a large number of banks could have serious implications for the overall banking system. We support the OCC's strategy to meet these challenges through a variety of best-case, worse-case and risk triggering scenario testing.

- Consumer Protection and Regulatory Compliance

The issue of regulation, consumer protection, and a commitment to financial inclusion are also extremely important. While it is not possible or practical to expect non-bank entities to function or operate as banks from a regulatory compliance standpoint, MBA believes that these companies must express commitments to the communities and markets they serve as well as other regulatory compliance requirements currently imposed on the banking industry.

For example, fintech firms providing lending services should have requirements for compliance with some subset of the Community Reinvestment Act (CRA). While it may be impractical to cherry-pick regulatory compliance based on a fintech company's financial products or services offered, a guiding framework must be established and a baseline test for regulatory compliance and standards should be established. Many fintech firms were created specifically to bring technological innovation to retail financial services. Therefore, the protection of consumers and the inclusion of all potential customers must be ensured by a thorough vetting of accessibility, and comparisons between stated plans for inclusion with actual, demonstrable evidence of outreach.

MBA also strongly supports, at minimum, the OCC's stated inclusion of compliance risk management systems related to Bank Secrecy Act (BSA), Anti-Money Laundering (AML) and certain consumer compliance programs such as Unfair, Deceptive and Abusive Acts and Practices (UDAAP). As you know, banks, particularly community institutions, struggle with the costs and burden of regulatory compliance on a daily basis. Fintech firms must be held to the same standards with a rigorous examination regime. Ensuring that banks and fintech companies operate on a level playing field should be of primary importance to the OCC throughout the chartering process.

- Data Security

Finally, MBA is concerned that the whitepaper does not appear to address issues of data security, third-party agreements and the privacy of consumer information. It is not clear to what data security standards fintech will be held. As cyber security and the protection of consumer information are leading industry issues, we strongly believe that a chartering process must take into account a firm's ability to adhere to stringent data security standards.

As you know, banks must comply with the Gramm-Leach Bliley Act (GLBA) provisions to both safeguard customer data and facilitate the negotiation of third party services. We would recommend that fintech companies present evidence of baseline risk assessments for data security, focusing on information technology security, the complexity of hardware and company networks and the handling and transmission of customer data. In this instance, integration between fintech companies and banks may be a benefit to fintech companies that operate under a special purpose charter. Banks have had to comply with these provisions for many years and as integration and assimilation of new products and services occur, it is likely that both companies will benefit through a productive discussion based upon the protection of sensitive personally identifying information.

**Conclusion**

Thank you for the opportunity to comment and we again commend the OCC for its leadership in financial industry innovation. We are hopeful that collaboration between fintech companies and banks will continue and grow, and we expect more comprehensive standards to emerge for practical regulation and enforcement within the fintech arena. The whitepaper represents the initial attempt at addressing many of the banking industry's concerns and we hope our comments highlight the critical steps needed to be addressed in the coming months and years. If you have questions or need additional information, please contact me at (617)-502-3820 or via email ([bcraigie@massbankers.org](mailto:bcraigie@massbankers.org)).

Sincerely,

**//S//**

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Ben Craigie  
Director of Compliance