National Association of Industrial Bankers

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Office of the Comptoller of the Currency (OCC)
400 7th Street, SW
Washington, D.C. 20219

VIA E-MAIL TO specialpurposecharter@occ.treas.gov

Re: Written comments on the OCC consideration to grant a special purpose national bank charter to fintech companies.

Dear Thomas J. Curry,

This letter responds to your request for comments regarding the OCC's recent announcement that it is considering issuing special purpose national bank charters for what are commonly referred to as "fintech" companies. The National Association of Industrial Bankers[1] is a trade association and we appreciate the opportunity to submit comments on this topic.

We understand that many companies are developing new technologies and exploring an array of innovative ways to deliver financial services. Innovation is vitally important to the future of banking and our economy and should be facilitated in safe, sound and prudent ways. We compliment the OCC for raising the subject in this proactive manner.

However, as presented, the features of a new special purpose charter are very nebulous, probably unavoidably, which makes it difficult to provide specific comments. The kinds of companies that might seek a special purpose national bank charter and the issues various applications might present remains unclear. As such, this request for comments appears to be a preliminary step to decide whether more detailed proposals

[1] First chartered in 1910, industrial banks operate under a number of titles; industrial loan banks, industrial loan corporations First, or thrift and loan companies. These banks engage in consumer and commercial lending on both a secured and unsecured basis. They do not offer demand checking accounts but do accept time deposits, savings deposit money market accounts and NOW accounts. Industrial banks provide a broad array of products and services to customers and small businesses nationwide, including some of the most underserved segments of the US economy. Our members are chartered in California, Nevada and Utah.

should be developed. To help frame our comments, we will describe what we know at this point and then share some perspectives.

Chartering a national bank is a well-established process prescribed by existing laws and regulations. The OCC can restrict the activities of a particular national bank in any ways it deems appropriate for a particular business plan. Amending the National Bank Act ("NBA") is the only way to expand the existing powers and authorities of a national bank.

In the past, "special purpose bank" referred to a type of charter designed to facilitate limited kinds of banking activity requiring an exemption from laws such as the Bank Holding Company Act ("BHCA") or other regulations and requirements. Currently, the OCC charters two kinds of special purpose banks: (1) credit card banks; and (2) trust banks or community development banks. A credit card bank enables a diversified holding company to offer credit cards to consumers, but this is possible only because the owner of a credit card bank is expressly exempt from the BHCA in Section 2(c)(2)(F) (12 U.S.C. 1841(c)(2)(F)). The OCC also charters banks that only act in a trust or fiduciary capacity. These too are expressly exempted from the BHCA in Section 2(c)(2)(D) (12 U.S.C. 1841(c)(2)(D)). The OCC cannot charter any other kind of bank that accepts deposits that would be exempt from the BHCA without Congressional approval.

The key issue is whether the OCC is contemplating some other type of charter that would not be subject to certain laws, regulations or requirements applicable to banks in general when it refers to a new special purpose charter? Such a charter would be unprecedented absent Congressional authorization. Without further details it is not possible to provide detail on the proposal at this time. However, the proposal does raise numerous questions. For example, when the OCC states such a bank would have to engage in one basic banking activity, is it considering a bank charter that would originate loans or transmit money but not take deposits? Would the OCC waive or lessen requirements, such as capital, for such a bank?

Any new chartering option will still lead to the formation of a *national bank,* not the issuance of a national financial services *license.* As a result, the OCC should hold any newly chartered entity to the rigorous and comprehensive standards expected of a bank. Consumer lenders and money transmitters that are currently regulated outside of the banking system receive state licenses that govern their activities. However, the supervision that accompanies a license is substantially less robust than the supervision of a national bank. State regulators do not typically look at the safety and soundness of a licensed entity, and do not examine the entity's consumer compliance management system, its IT systems, and other matters. We urge the OCC to ensure that any newly chartered entities adhere to the standards expected of banks, and that a new charter for a fintech company does not mirror the weaker standards typically associated with licensed financial services companies. We think the most the OCC should offer is a pathway for a financial services company to develop into a true bank, not an opportunity for a weaker entity to gain the advantages of a bank charter without having the qualities of a bank.

For these reasons our members strongly support the OCC's statements in the request for comments that it does not plan to waive or dilute in any way the requirements and standards applicable to banks generally when granting a special

purpose charter, including a charter that does not take deposits or is not required to obtain federal deposit insurance.

Waiving or lessening standards and requirements for a bank would present a danger to all banks if such weakened institutions were less able to survive periodic economic downturns and failed in large numbers, similar to the closure of most stand alone mortgage companies during the Great Recession. This could start a run on actual banks.

These points lead us to the following conclusions:

1. A special purpose charter is not needed for most fintech companies offering financial services.

Any financial services company that can qualify as a bank can file an application now and does not need a special purpose charter to become a bank. Special conditions warranted by a particular business plan can be incorporated into the order approving the application. This would be a routine process under current standards.

A company with diverse business activities developing a fintech business has options if it wishes to organize a bank. A number of existing bank charters are exempt from the Bank Holding Company Act that any legitimate and well managed business can qualify to own now.

A financial services company that does not qualify or does not want to operate as a bank has the option to become a service provider partnering with a bank. This is already happening on a significant scale and provides benefits to the fintech companies, the banks with which they partner, and the public. Banks involved in such arrangements include national banks and state banks. Under current regulatory standards, the bank must ensure that the partner operates in a safe and legally compliant manner. This helps ensure the integrity of the overall program because the bank's regulator, which will be the OCC, the FDIC or the Federal Reserve, has authority over the entire financial services program through the bank. Indeed, the FDIC has gained substantial expertise in supervising innovative financial programs such as marketplace lending as the result of existing partnerships between banks and non-bank servicer providers.

For these reasons, our members do not see an unmet need for any fintech company that would be served by developing a special purpose national bank charter.

2. Developing a new kind of special purpose national bank charter for the purpose of avoiding state licensing requirements would significantly alter the regulatory structure of the nation's financial markets. Such a dramatic change should not be taken without Congressional authorization.

Currently, our nation benefits from a dual banking system, that allows chartering of both national banks and states banks that have substantially similar powers. But the proposed new charter would create a class of national banks that benefit from federal preemption in a way that no state bank can benefit – because state banks require FDIC insurance in order to benefit from the federal preemption of interest rate limitations. Such a special purpose charter could therefore lead to a substantial federalization of all financial services regulation. Congress -- not a single, unelected federal regulator -- should decide whether significant and fundamental structural

changes to the nation's financial regulatory system are warranted and how they should be implemented.

The impact on state regulation should be an especially important consideration. A new federal financial services charter has the potential to severely impair the dual banking system and the current system of state regulation of entities like money transmitters and finance companies. For example, a non-depository special purpose charter designed to avoid state licensing and allow rate exportation would potentially undermine the value and purpose of state banks and the dual banking system. This is just one issue that the possible new charter creates. It deserves a thorough, open and public review that only Congress and elected officials can provide.

In conclusion, our members see no real need for a new special purpose charter and no reasonable justification to create one. Our members believe it will only be used by companies that want the benefits of a bank charter, without having to maintain the financial strength and robust systems and processes required of a real bank. Any such weakened charter will be more susceptible to failure, which will likely impact the public's trust and confidence in all banks and the banking system. It would also significantly change the regulatory structure of the nation's financial markets by minimizing the role of the states and undermining the dual banking system. Such major risks to the nation's financial system cannot be justified when fintech companies of every variety have options now to pursue any business strategy.

Thank you again for the opportunity to provide these comments. We hope you find them helpful.

Sincerely,

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Frank R. Pignanelli
NAIB Executive Director