NATIONAL ASSOCIATION of REALTORS®

William E. Brown
2017 President

Dale A. Stinton
Chief Executive Officer

GOVERNMENT AFFAIRS DIVISION
Jerry Giovaniello, Senior Vice President
Gary Weaver, Vice President
Joe Ventrone, Vice President & Deputy Chief for Regulatory Affairs
Scott Reiter, Vice President
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Ave., NW
Washington, DC 20001-2020
Ph. 202-383-1194; Fax 202-383-7580
WWW.NAR.REALTOR

January 13, 2017

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

Dear Comptroller Curry,

On behalf of its more than 1.2 million members, the National Association of REALTORS® provides the following feedback in response to the report issued December 2, 2016, *Exploring Special Purpose National Bank Charters for Fintech Companies*[1]. The National Association of REALTORS® is America's largest trade association. REALTORS® are involved in all aspects of the residential and commercial real estate industries, and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

NAR appreciates the efforts of the Office of the Comptroller of the Currency (OCC) to thoughtfully deliberate and share its thoughts on the emerging field of fintech. Like many businesses operating in a modern lending environment ruled by increasingly complex regulations, NAR members have felt the pinch of financial regulation and are eager for new innovations that would increase the speed and volume of lending.

Commercial and residential real estate professionals throughout the country have reported to NAR about the challenges in obtaining financing for all types of clients, and we view the developments in fintech as an exciting new option for serving consumers.

NAR policy has consistently supported the many innovations in financial services aimed at increasing lending to individuals and businesses. Both REALTORS® and their clients are consumers of these products: from an individual buying his or her first home to a small business accessing financing for continued growth, REALTORS® are their client's partner throughout the transaction. Access to affordable financing is critical to the success of the residential and commercial real estate sectors and the economy as a whole.

NAR recognizes the important role played by small businesses in the marketplace for financial service products. Small businesses are an important player in the economy as a whole and are the clients of REALTORS®, the CCIM Institute and the Institute of Real Estate Management (IREM) professionals. Properties that house small businesses are the exact property types that commercial REALTORS® most frequently work with:

[1] See OCC, Exploring Special Purpose National Bank Charters, (Dec. 2016) available at https://occ.gov/topics/bank-operations/innovation/special-purpose-national-bank-charters-for-fintech.pdf; see also, Remarks by Thomas J. Curry Regarding Special Purpose National Charters for Fintech Companies (Dec. 2, 2016), available at https://occ.gov/news-issuances/speeches/2016/pub-speech-2016-152.pdf.

office, retail and industrial[2]. Increasing lending to small businesses will help these businesses grow and solidify their important role in the US economy.

NAR believes that the development of safe and responsible banking and lending standards is a key component for safe expansion of fintech services. Clearly articulated standards provide predictability to the market, give regulators more information about the fintech providers' activities, and support safety and soundness goals in the US financial system. As regulation governing traditional banking has increased, borrowers are squeezed out and banks spend more resources on compliance. Innovation in the banking space has occurred in the margins and resulted in a flourishing fintech industry.

The market benefits afforded by the fintech industry have yet to be fully realized. When 59% of NAR survey respondents indicate that insufficient bank capital remains an obstacle to sales in the small commercial real estate (SCRE) market, there is a flaw in the system[3]. NAR sees the growth of the fintech sector as an indication of the consumer and business appetite for new financial products. Innovations in financial markets, such as fintech products, will hopefully ease the challenges posed by the current regulatory environment.

NAR offers the following responses to the specific questions posed in the Report.

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

   Many worthy public policy goals will be achieved, particularly in application of capital standards, consumer protection, and risk management.   These special purpose national banks will be structured in a way as to further the safety and soundness goals inherent in the US banking system.

   Consumer protection goals will also be easier to manage through this new charter. When done right, carefully implemented consumer protection regulations that apply to fintech products will create a uniform standard for consumers about what they can expect from different kinds of financial service providers. The providers will also have the same stringent reporting obligations about consumer protection efforts as traditional banks, which will contribute to the overall stability of the regulated entities.

   Regulating fintech providers as such will create predictability in the marketplace and a clear path for business operations. The benefit of this is availability of financial products to consumers, and a model for other successful operations.

   However, it is possible that regulating fintech entities in a way envisioned in the Report could extinguish a flourishing sector in the economy. The freedom which these entities have enjoyed, the creativity involved in getting these programs off the ground, and the wide availability of different products are a direct result of the carefully constructed regulatory environment in fintech.

   Redundant regulation could pose another risk of establishing this type of bank charter. As mentioned in the Report, some banking activities are already regulated by other agencies and regulations depending on the activity. Real estate is a particularly well-covered sector of bank lending regulation, a situation highlighted in the Report.

   Additionally, there is real risk that creating this new type of charter will mean less innovators in our financial markets. Fintech companies that are currently doing or want to do business in the US may no longer consider the US market option because of the regulations. W Supporting new innovations in finance is a complex thing to accomplish via regulation, but it is a worthy goal for the long term viability of an evolving market.

[2] Ratiu, G. Commercial Lending Survey 2016. Washington, DC: National Association of REALTORS® https://www.nar.realtor/reports/commercial-lending-trends-survey
[3] Ibid

We recommend a balanced approach between fostering innovation and creativity in financial markets, and creating systems to ensure safety and soundness in the financial system. The consumer protection aspects of fintech relationships also require a more nuanced approach, particularly as the online-only nature of these entities makes it easier to reach a wider consumer audience.

2. ***What elements should the OCC consider in establishing the capital and liquidity requirements for an uninsured special purpose national bank that limits the types of assets it holds?***

The OCC's expertise in bank composition should give the OCC leeway to create a workable system for fintech providers, consumers, and regulators. Taking a holistic approach that allows for evaluations for the unique nature of these financial institutions will allow the OCC the most flexibility in granting these charters, and will give the institutions options in how they are structured.

The OCC has articulated its desire for flexibility in applying capital and liquidity standards to this type of bank.4 Given the evolving nature of these products, NAR encourages the OCC to work closely with individual providers to truly understand the products being offered and to apply more tailored capital and liquidity standards as appropriate.

The qualitative elements that the OCC already uses to determine capital adequacy are a robust start to the conversation with the regulated community5. NAR encourages the OCC to pay special attention to the off-balance sheet activities of the providers, to better understand how the entities are funded.

A solid understanding of the nature of the fintech providers' business will help the OCC again apply a holistic approach to setting liquidity standards for these entities.

The evolving nature of the products offered by these providers speaks even more urgently to the need for a more tailored approach. Many of the fintech providers contemplated in the report are true innovators creating financial products new to the markets. Each provider knows its own product the best, knows its competitors, and knows its market.

It is important for OCC create a category of charter for these providers that is neither under- nor over-capitalized: either outcome would dissuade providers to apply for the charter.

The most important element that NAR encourages the OCC to use when evaluating these special charters is: how else is this entity already regulated. Fintech providers, like all other market participants, are already regulated in one or several ways depending on what product is offered and how it is offered. It is critical that whatever is included in a final charter for these fintech providers not be so burdensome that the market dries up.

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?***

In the immediate term, smaller providers may find difficulty adapting fintech models to regulatory expectations. As witnessed in the mortgage and other financial sectors, the compliance burden and costs will be more than some our able to manage or to take on. Some of these will be purchased by larger banks or other entities who want an entrée into the fintech world

In the midterm, we will see a steep learning curve for many of these providers to adjust to broader regulation.. The costs, time, and cultural challenges inherent in adjusting to a new regulatory regime will take a toll on the providers.

[4] OCC, Exploring Special Purpose National Bank Charters, (Dec. 2016)
[5] Ibid.

Lending will likely slow from this sector, smaller providers will be acquired by larger companies, and some more will not make it through this round.

On a positive note, some innovators who have been sitting on the sidelines, may find that standard regulations allow them to quantify risk. A new regulatory regime will give these entrepreneurs the ‘rules of the road’. Other small-but-stable entities looking to diversify product offerings, and who already has a solid understanding of the compliance required to exist in this space may also find opportunity.

The long-term view is one where the vision of a regulated fintech space is realized. The market’s goals of safety and soundness go to the basic structure of the provider’s business model. But the fintech providers are not banks in that they operate within an extremely limited scope of operation, as contemplated in the Report.

The National Association of REALTORS® is eager to work with the Office of the Comptroller of the Currency, fintech innovators, and other stakeholders on the development of these products. Achieving a reasonable balance between innovation, safety and soundness, and consumer protection will ensure continued safe growth of this rapidly developing financing option. Please do not hesitate to contact Charlie Dawson, Managing Director, Regulatory Policy and Industry Relations at CDawson@REALTORS.org or Stephanie Spear, Commercial Regulatory Policy Representative at SSpear@REALTORS.org if you have any questions.

Sincerely,

//S//

William E. Brown
2017 President, National Association of REALTORS®