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Office of the Comptroller of the Currency
U.S. Department of the Treasury
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Via Email Only

RE: Special Purpose Charter--Request for Comment

Greetings:

The Online Lending Policy Institute (“OLPI”) welcomes the opportunity to provide feedback on the OCC’s Request for Comments on its paper, Exploring Special Purpose Bank Charters, issued by the OCC on December 2, 2016 (the “RFC”). Our comments on the paper are contained in this letter and our comments on the specific questions posed in the RFC are contained in the addendum to this letter.

OLPI is an independent research institute that, like the OCC, strives to foster responsible innovation in the rapidly growing linkages between financial services firms, nonbank technology providers, and customers. OLPI provides policy analysis, research, education, and thought leadership to ensure informed, well vetted decisions by industry participants and policymakers. In this regard, you may recall that OLPI and Boston University organized and hosted the first annual MPL Policy Summit this past September at which Comptroller Curry was kind enough to speak about the OCC’s Fintech initiatives.

The special purpose national bank charter proposal is part of a broader, forward leaning initiative by the OCC to ensure that institutions with federal charters “... have a regulatory framework that is receptive to responsible innovation along with the supervision that supports it.” Though relatively new, this initiative has already yielded concrete results including:

- A March 2016 comprehensive framework to improve the OCC’s capacity to evaluate innovation in the financial services industry along with the evolving needs of consumers

- The establishment of an Office of Innovation at the OCC to serve as a resource both to the agency and to industry, and
- The creation of an internal working group at the OCC to monitor developments in marketplace lending (all of which recognizes that this dynamic sector has the potential to alter how loans are originated, underwritten, and funded).

With or without a special purpose national bank charter, technology enabled innovation will be taking place in the delivery of financial services. In this inexorable process, banks enjoy certain advantages (capital, reliable funding, risk management expertise, etc.). Nonbanks enjoy their own advantages as well (lower overhead, technical expertise, nimbleness, reduced regulatory burden, etc.).

We view the prospects of a special purpose Fintech national bank charter as an important step for improving the United States' Fintech ecosystem in line with the efforts of the OCC's global peers in the UK, Australia, China, and the UAE, to name a few. We believe that, from a public policy perspective, it is far better for financial services regulators to be active participants than onlookers. Protection of consumers, small businesses, and the financial system itself will be more effective if carried out by supervisors who are fully informed and knowledgeable.

It is important to highlight, that (1) research and transparency is critical at this stage, and (2) an open and continual dialogue between all industry participants can lead to powerful "RegTech" innovation as well. Questions, in addition to those posed by the RFC, include: What is working in other countries to promote advances in Fintech? What are the best practices being used by industry leaders to leverage technology to make financial markets more efficient and improve the overall customer experience? Is there any evidence that certain Fintech firms in countries with less regulatory burdens take advantage of borrowers? Do certain regulations or legal opinions actually harm borrowers and unduly limit access to credit? Is the US a leader or a laggard when it comes to privacy and cybersecurity issues?

These are just some additional questions the OCC is no doubt asking, and which the OLPI and industry participants need to help answer. It is critical to study and publish findings on what is and what is not working for leveraging technological advances in financial services, and to publish solutions that foster responsible innovation in a way that allows the U.S. and its banking system to drive the future of financial services.

Finally, we would be remiss in not taking note of two events occurring this week: the World Economic Forum in Davos and the inauguration of a new president in Washington. Much has been written contrasting the attitudes that will be on display at these events. Yet perhaps there is more common ground than meets the eye.

Davos has been launched with "A Call for Responsive and Responsible Leadership." Part of that call echoes much of the RFC's emphasis that inclusiveness be an integral part of any special purpose Fintech national bank. Another part of the call points to what is referred to as the "Fourth

Industrial Revolution” involving a fusion of technologies that is blurring the lines between the physical, digital, and biological spheres. The call cautions that, in light of the complex new world we face, “There cannot be a return to basics!”

In Washington, the incoming administration has been blunt about its intention to roll back much of the reforms put in place after the Financial Crisis. It remains to be seen what the regulatory landscape will look like in the years to come, however, a return to basics is an unlikely scenario.

In sum, the opportunities and challenges posed by the convergence of technology and financial services are enormous. Introducing the option of a limited purpose Fintech national charter is a prudent way of mining those opportunities and meeting the challenges. A rapidly shifting regulatory landscape poses additional risks. Clinging to the *status quo* poses greater risk.

OLPI appreciates the opportunity to contribute to the conversation begun by the RFC and looks forward to continuing this dialogue.

Sincerely,



Cornelius Hurley

Executive Director

Addendum

ADDENDUM

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

Special purpose Fintech national banks will gain the efficiencies associated with operating on a national scale offering a uniform set of products and services to consumers, small businesses, and communities. One of the hurdles facing Fintech companies today is the high costs associated with a patchwork system of complying with fifty states' licensing and regulatory requirements. The capacity to operate nationally, as full service banks do, will be enormously helpful. Fintech has the potential to democratize financial services and a national charter will help realize that potential.

What are the risks?

There is a risk that the OCC and other regulators graft onto the regulation of special purpose banks the same rules that apply to full service insured banks. Regulation and supervision of special purpose Fintech banks should take account of each firm's risk profile.

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?*

For Fintech banks, it is investors' capital that is at risk and that is the ultimate buffer since neither the FDIC fund nor the taxpayer is at risk. To the extent that special purpose national banks become vital vendors to financial institutions their risk can be managed through the vendor management policies of the primary regulators. It is essential that capital and liquidity standards be tailored to the risk profile of each special purpose bank.

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?*

Please see response to question #5.

4. *Should the OCC seek a financial inclusion commitment from an uninsured special purpose national bank that would not engage in lending, and if so, how could such a bank demonstrate a commitment to financial inclusion?*

Please see response to question #5.

5. *How could a special purpose national bank that is not engaged in providing banking services to the public support financial inclusion? 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 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?*

Questions 3, 4, and 5 deal with inclusion. Much of Fintech is inherently inclusionary. To the extent that Fintech democratizes financial services, it should be presumed to be advancing the financial inclusion of individuals, businesses, and communities. Only in rare instances where Fintech strays from its broad distributionary roots should exceptions be taken either in the chartering process or through enforcement. We believe that the presumption should be on the side of Fintech being inclusionary by enabling products and services on a scale larger than is currently available or to market segments that are currently underserved.

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?*

OLPI cautions against using the Fintech chartering process to close this regulatory gap. The contrasting regulatory treatment of individual and small business borrowers deserves close scrutiny. It may well be that the OCC's experience gathered over time in supervising Fintech special purpose banks will provide the empirical evidence needed to address the regulatory gap. This is precisely the type of issue OLPI is charged with addressing and OLPI would be pleased to work with the OCC on this issue.

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?*

The RFC notes that the OCC by conditioning its approval of charter applications can help in managing risks. Care should be taken that in conditioning the activities or governance of Fintech banks the entrepreneurial character of these firms is not unduly impaired. It should be born in mind at all times that the Fintech banks pose no risk to either the deposit insurance fund or the taxpayers.

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?*

Surely, the OCC in its chartering process will review the management, business and strategic plans, risk management practices, recovery strategies, stress scenarios, etc. of each applicant. The four stages of the chartering process are then enhanced by specific standards and conditions imposed on the applicant prior to chartering. All of this is preceded by close consultation with OCC staff and in addition to robust reporting and supervision spearheaded by highly trained examiners. It can be anticipated that any deviation of a special purpose Fintech bank from standards of safety and soundness would be soon detected and remedied either through informal channels of communication with OCC staff or through the more formal enforcement processes.

9. *Would a Fintech special purpose national bank have any competitive advantages over full-service banks the OCC should address? Are there risks to full-service banks from Fintech companies that do not have bank charters?*

A popular misconception is that nonbank Fintech firms are exempt from consumer protection laws. Such is not the case. In this regard, the business models used for Fintech include nonbanks as well as banking organizations acquiring, building, and partnering with Fintech firms. We do not envision the chartering of special purpose Fintech national banks as creating unfair competitive advantages for any sector.

10. *Are there particular products or services offered by Fintech companies, such as digital currencies, that may require different approaches to supervision to mitigate risk for both the institution and the broader financial system?*

The expanding use of blockchain and blockchain enabled digital currencies would be perceived as more benign if conducted in a chartered institution with verified AML policies and procedures. Conversely, to the degree that de-risking has impeded the flow of remittances to developing countries, offering remittances services within a chartered bank may help in ameliorating the unintended consequences of de-risking.

11. *How can the OCC enhance its coordination and communication with other regulators that have jurisdiction over a proposed special purpose national bank, its parent company, or its activities?*

It would appear that the Federal Financial Institutions Examination Council is an appropriate existing vehicle for interagency cooperation.

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?*

The OCC has decades of experience with monoline special purpose banks namely trust banks and credit card banks. It appears that the OCC has adequately controlled whatever risks may be present from the concentration of these banks on a single product. Any risks unique to the Fintech bank model can be well contained through the chartering, conditioning, and supervision processes. Of course, the Fintech bank's own risk management framework is the first line of defense to any risk posed by the concentration upon a narrow product line.

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

With or without the chartering of Fintech banks, the new Office of Innovation promises to become a clearinghouse of knowledge and information in this area. As a central point of contact for information about innovation it will become a valuable resource. OLPI looks forward to cooperating with the Office in its outreach initiatives. OLPI is encouraged as well by the OCC's formation of an internal working group on marketplace lending and are hopeful that the designation of lead experts on responsible innovation will further deepen the OCC's skills inventory and knowledge.