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555 Washington Ave.
Suite 310
St. Louis, MO 63102

Mr. Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219
specialpurposecharter@occ.treas.gov

Re: Office of the Comptroller of the Currency' Special Purpose Charter

To Whom It May Concern:

My name is Thor Tobin Mathison and I serve as the General Counsel for PromisePay Inc. (“**PromisePay**”), which offers digital payment solutions to online platforms and marketplaces. I write in response to Office of the Comptroller of the Currency’s (“**OCC**”) December 2, 2016 white paper entitled *Exploring Special Purpose National Bank Charters for Fintech Companies* and, specifically, its request for public comment.

PromisePay applauds the OCC’s focus on fostering innovation within the banking and financial technology areas and is particularly encouraged by the contemplated special purpose charter.

This response will start with PromisePay’s general response to the OCC’s white paper and then address each of the OCC’s specific questions in turn.

General Response

The United States is currently a patchwork of inconsistent—even conflicting—state and federal regulations and statutes governing fintech companies. The internet has quickly revolutionized aspects of the financial industry, but, in many instances, regulations have lagged behind. This has caused significant pain for the fintech community and has led to inconsistent consumer experiences and undue favor to incumbents.

These state laws were not created with fintech companies in mind, but rather were promulgated to govern brick-and-mortar non-bank financial organizations (traditional escrow companies, check cashing business, etc.). This means that fintech companies are often treated inconsistently by state regulators, as fintech’s many unique and innovative business models do not fit squarely into the current state regulatory framework. This ultimately impacts consumer experience and limits economic growth and efficiency.

States and the federal government have inconsistent standards for what types of companies and business models should be regulated, which adds further confusion and uncertainty to the regulatory landscape. For example, a growing segment of the fintech space is online payment processing companies, which



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provide other online businesses with payment processing capabilities on their websites, online marketplaces, platforms, etc. These payment companies typically hold the funds during the term of the transaction, representing a smaller piece of the broader transaction between the buyer's and seller's bank accounts and the payment gateways. Under the United States Bank Secrecy Act, this type of payment processing business is explicitly exempt from the definition of money transmitter because it “[a]ccepts and transmits funds only integral to the sale of goods.”¹ The U.S. Dept. of Treasury Financial Crimes Enforcement Network (“**FinCEN**”) has issued authority citing this statute, specifically exempting these types of businesses from FinCEN oversight.² However, Texas does not have this same statutory exemption, and, accordingly the Texas Dept. of Banking classifies this particular type of business model as a money transmitter and requires licensure.³ And other states may have their own statutes and administrative guidance. So the business ends up being whipsawed between conflicting state / federal laws. Unfortunately, this example is all but too common in the fintech area.

Moreover, the steep separate licensing fees, bonding requirements, and unique compliance requirements associated with each state's regulatory schemes is expensive and burdensome for young fintech companies to navigate, to the point of stifling innovation in the field and putting the United States at a significant disadvantage vis-a-vis other advanced economies with centralized regulatory schemes (e.g. Australia). It has been estimated that the fees and bonding costs to obtain a money transmitter license in all 50 states is approximately \$175,000 with annual renewal fees of approximately \$150,000.⁴ And this does not include the costs associated with hiring staff and/or outside counsel to manage and execute the separate applications, which can be significant. Obviously, for a young company with only a few employees and a modest budget, this presents a huge burden. Young companies should be spending precious capital on hiring employees and growing their business, not pricey lawyers.

This is not to say, of course, that fintech companies want to or should be unregulated or should somehow be exempt from regulations necessary to protect consumers and ensure proper capitalization, policies, etc. We believe that many young companies in this space are actually eager to comply with applicable regulations and would prefer to have a strong, sophisticated central regulator to work with in order to ensure best practices and consumer protection. Indeed, as Comptroller Curry stated in his remarks, “it will be much better for the health of the federal banking system and everyone who relies on these institutions, if these companies enter the system through a clearly marked front gate, rather than in some

¹ 31 CFR § 1010.100(ff)(5)(ii)(F).

² See e.g. FinCEN's April 29, 2014 Authority re *Whether a Company that Offers Secured Transaction Services to a Buyer and Seller in a Given Sale of Goods or Services is a Money Transmitter*, found at <https://www.fincen.gov/sites/default/files/shared/FIN-2014-R005.pdf> (last visited on Jan. 15, 2017).

³ Texas's requirements for applying as a money transmitter include a net worth requirement of \$500,000, a minimum \$300,000 surety bond, and a \$10,000 application fee. See <http://www.dob.texas.gov/applications-forms-publications/general-application-requirements> (last visited on Jan. 15, 2017).

⁴ See e.g. <http://www.grimeslawaz.com/money-transmitter-licensing/> (last visited on Jan. 15, 2017).



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back door, where risks may not be as thoughtfully assessed and managed.” Further, the time, money, and energy spent digesting and complying with 50 overlapping, often redundant licenses could be much better spent working on substantive internal compliance policies, training and hiring employees, engaging with the community, etc.

Comptroller Curry’s announcement of a federal fintech charter is a welcomed development and will, hopefully, serve to streamline compliance obligations, reduce regulatory compliance costs, protect customers, and foster innovation in the fintech space.

With its comment, PromisePay wishes to encourage the OCC to permit a broad array of fintech companies, not just online lending companies, to apply for the special purpose charter. Indeed, the OCC referred to broad application of the charter in its white paper, noting (emphasis added):

Consistent with legal precedent, the OCC views the National Bank Act as sufficiently adaptable to permit national banks—full-service or special purpose—to engage in new activities as part of the business of banking or to engage in traditional activities in new ways. For example, discounting notes, purchasing bank-permissible debt securities, engaging in lease-financing transactions, and making loans are forms of lending money. Similarly, issuing debit cards or **engaging in other means of facilitating payments electronically are the modern equivalent of paying checks**. The OCC would consider on a case-by-case basis the permissibility of a new activity that a company seeking a special purpose charter wishes to conduct.

It is PromisePay’s position that, as an online payment processing company, it meets this definition and should be included in the scope of the OCC’s special charter.

Response to the OCC’s Specific Questions

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

It is PromisePay’s position that the public policy benefits of establishing—as Comptroller Curry called it—a “clearly marked front gate” for fintech companies strongly outweighs the relatively minor risks associated with the same and will serve to foster innovation and protect consumers.

First, the OCC’s plan does not mandate fintech companies to apply for a charter. Existing and new companies are free to exist under the current regulatory regime. Second, risks such as immature know your customer (“KYC”) and anti-money laundering (“AML”) policies would likely be markedly improved in effectiveness by taking advantage of sophisticated regulators and shared knowledge of the OCC and the corresponding special charter application process. There is presently little investment in this area by established banks, and new market entrant fintechs will drive faster innovation to match market threats rather than working slowly to keep up. Finally, by having a central regulatory body, it would



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bring regulatory consistency and certainty to the fintech arena. This would allow for more innovation and greater consumer protection by ensuring consistent regulations that promote consumer protection.

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?

It would have to depend, at least somewhat, on the products and services being offered by the applicant as well as the applicant's overall business model. The OCC could establish a minimum capitalization / liquidity requirement for all applicants; however, given the variance in fintech business models, the model would need to remain somewhat flexible in order to properly account for varying and novel business models. A business lending money directly to consumers should presumably have higher capitalization requirements than one engaged in payments processing or blockchain contracts, for instance. As is the case with many state licensing requirements, the OCC could have a bonding requirement based on a percentage of volume or net worth, which could be underwritten and preclude extensive liquidity requirements for a young capital-hungry company, while also protecting the public interest by ensuring appropriate capitalization.

Additionally, trust account models allowing or enforcing fintech holding of client funds in trust (outside of official escrow) could be balanced against liquidity requirements such that operation of these services would effectively insure the end user directly

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 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?

There are many ways which fintech brings financial inclusion to individuals, businesses, and communities not typically served by traditional banking. Indeed, fintech, at its core, seeks to expand access to financial systems and products. The increase of mobile banking and mobile payments is a good example of how fintech companies expand access to underserved communities. The ubiquity of low cost, reliable smartphones and internet access allows individuals, businesses, and communities in rural or poor areas to utilize these products, which may have not been available via traditional banking channels. Microfinance and microloans, easier access to credit and other markets, online financial planning and investment services, the list is effectively endless. It is not to say, of course, that transitional banking services are not inclusive. Rather, fintech can open doors and vastly improve efficiency. The OCC ought to request business plans and discuss each applicant's specific plans for financial inclusion to ensure inclusion is considered a priority by the OCC. Further, a consistent regulatory framework for financial policies and disclosures will lead to greater consumer education and awareness, financial literacy, and inclusion.



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?

Yes, as noted above fintech companies of all types and sizes are able to increase financial inclusion (*see* No. 3, *supra*) and the OCC ought to consider seeking the same from all of its special charter applicants. Of course, the best approach would presumably be to evaluate each applicant on a case-by-case basis, as some business models may not necessarily implicate financial inclusion (e.g. very narrow, specific business models, such as commodities futures modeling).

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

Again this would likely need to be addressed on a case by case basis, as fintech companies by their very nature tend to be novel and innovative. That said, there are ways for non-consumer facing organizations to promote financial inclusion, including contribution to disclosure policies, sustainable lending practices, financial literacy programs, specific hiring policies for employees and vendors, promoting equal access to platforms, community sponsorship, etc.

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?

By granting these contemplated special charters, the OCC would be in a unique position to identify and manage gaps in the protections afforded to market participants, including individuals and small businesses. By licensing both traditional large banks and special charter fintech companies, the OCC would have the perspective of both large and small financial organizations. By examining this cross section of businesses along the broader range of financial markets, the OCC would be well-positioned to ensure that all market participants, including consumers, are adequately protected.

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 biggest regulatory challenge would likely be the speed of innovation and the novel business models within the fintech community. The OCC would have to be relatively flexible and nimble in order to regulate young businesses on the cutting edge of financial services. Traditional banks have well-established business models, whereas fintech companies often have disruptive technologies in unknown markets. Furthermore, the OCC would have to allow of a certain level of flexibility for young companies to be able to quickly pivot and to try new things. And the OCC would have to be willing to grant licenses to novel businesses in order to promote innovation in the financial services arena.



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?

Appropriate risk based underwriting of all applicants must be completed. And by examining an array of state licensing schemes related to money transferring, escrow, prepaid cards, brokering, etc. the OCC could identify tactics used by state regulators to ensure special purpose banks operate in a safe and sound manner and in the public interest. The Nationwide Mortgage Licensing System acts as a clearinghouse of dozens of state regulators and may be a useful resource when the OCC is crafting its policies and regulations. The proposed structure would also be far better positioned to take advantage of international financial prudence frameworks, such as Basel 3.

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?

No. A fintech special purpose national bank would not create any new competitive advantages over full-service banks. If anything it would serve to level the regulatory playing field, foster competition, and support full service banks through partnership or acquisition. Full-service banks already enjoy a competitive advantage over fintech companies in many respects: economies of scale, incumbency, capital, etc. Allowing fintech companies to access the same regulatory structure banks have enjoyed for decades simply allows all market participants to be regulated under the same standards. This consistency will improve market protections for consumers by promoting competition and offering new products and services.

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?

Given the nature of fintech, it is likely that certain business models may require a unique approach by the OCC. It is critical that a technologically informed approach be taken with respect to all fintech business, not least digital currency. PromisePay does not have any further comments to submit on this question.

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?

PromisePay lacks the ability to specifically comment on the mechanics and nuances of communication between regulatory agency. However, it seems that state and other federal regulatory agencies ought to have the ability to communicate any concerns regarding chartered companies directly to the OCC. This would allow these regulators to be involved in the regulatory process by red flagging certain actions for the OCC.



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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 could promulgate a set of compliance standards that promote risk mitigation in the broader financial services sector and the global economy at large. The Payment Card Industry Data Security Standards (“PCI DSS”) are a good example of a comprehensive compliance framework that operate across many industries and geographies to mitigate risk that may transcend certain federal or state regulatory agencies. Communication amongst regulatory authorities, both state and federal, may also serve to manage risk in the broader market (*see* Question 11, *supra*).

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

Most importantly the OCC should act as a partner and resource to fintech companies attempting to navigate the contemplated chartering process. Many young fintech companies lack a certain level of expertise and institutional knowledge in this area, so the OCC would be wise to proactively work with companies that express interest in the special charter. By acting as a partner and a resource to the fintech community—and not just a policing agency—the OCC could establish itself as an indispensable component of the fintech ecosystem. And after the application process and licensure is complete, the OCC would be well-served by staying engaged through comprehensive annual reviews of the business and periodic outreach to ensure ongoing compliance.

Please let me know if you have any questions.

Sincerely,

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Thor Tobin Mathison
General Counsel
PromisePay Inc.