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BY E-MAIL

specialpurposecharter@occ.treas.gov.

Re: Exploring Special Purpose National Bank Charters for Fintech Companies –
Request for Comment

Dear Comptroller Curry:

We write to you on behalf of our client, the Third Party Payment Processors Association (“TPPPA”). As an organization that has members who are interested in possibly applying for a special purpose national bank charter, the TPPPA hereby comments on the proposal of the United States Office of the Comptroller of the Currency (“OCC”) to grant special purpose national bank charters to fintech companies.

About the TPPPA

The TPPPA is a national, not-for-profit organization comprised of payment processors, payroll processors, money transmitters and banks. The TPPPA was formed in the Summer of 2013 because its members were concerned about rulemaking though enforcement against payment processors; and inconsistent state laws that affect payment processors. The TPPPA’s basic mission is to help its members operate in an efficient and compliant manner within the financial services industry by developing industry best practices. The TPPPA fulfills this mission by educating its members on industry rules and regulations, providing compliance tools and training, and advocating its members’ interests within the payments industry to members of Congress, to state government officials, and to federal government regulators. When necessary, the TPPPA also engages counsel to file amicus briefs in connection with government lawsuits that affect the payments industry.

The TPPPA appreciates and is supportive of the intentions of state and federal law enforcement and regulators to eliminate irresponsible payment processors, payroll processors and money transmitters from the payments industry. The lack of concrete and consistent federal guidance in conjunction with inconsistent state laws, however, has had a detrimental impact on the entire payments sector, which is mostly comprised of responsible companies. The TPPPA

looks forward to a dialogue with the OCC on the ways that a special purpose national bank charter can help smaller to middle market companies in the payments industry.

Interest of Third Party Payment Processors and Money Transmitters

Third-party payment processors provide essential services to small businesses in diverse industries, as they play a key role in processing credit and debit card payments for merchants. A third-party payment processor may receive from the merchant a list of payments to be generated by the merchant to pay for goods or services and/or a list of payments to employees for payroll. The third-party payment processor then submits a payment file with payment instructions from all of its merchant clients to the bank. These payment files include payments to be pulled from an account to pay for goods or services, and payments to be sent to an account for payroll or vendor payments. The bank will introduce the payments into the payments system and receive settlement for the payments. The funds are passed from the bank to the third-party payment processor, who settles with the merchant.

Among other things, money transmitters provide consumers with access to platforms that allow consumers to make electronic person-to-person payments and payments to merchants for goods and services. Money transmitters are technology innovators, and consumers use the services of money transmitters every day when they use their smart phones and computers to pay their bills and send money to their friends.

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

General Public Policy Benefits:

The primary public policy benefit of allowing payment processors and money transmitters to operate under a national bank charter is clarity of the rules that these companies will follow and consistent application of the rules. No federal regulator directly supervises payment processors and there is not a body of federal law that is particular to payment processors.

Rather, payment processors have had to deal with federal rulemaking through enforcement and inconsistent state laws. Given that there is little to no uniformity with respect to the state laws that apply to payment processors and money transmitters, these companies have encountered problems trying to comply with the inconsistent state laws.

As a result of the lack of uniformity and the desire to be compliant, technological innovation is sometimes stifled because payment processors and money transmitters either slow down or stop their progress while trying to figure out the different laws that may be interpreted to apply to them. If payment processors and money transmitters are allowed to operate under a national bank charter, these companies will have more clarity on the uniform set of laws that they must follow instead of trying to follow the different and sometimes inconsistent state laws.

Payment processors are especially impacted by the lack of legal clarity and consistency. For example, 18.U.S.C § 1960 states that it is a federal crime if a company acts as a money transmitter in a state without a state money transmitter license. This crime is a strict liability

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crime. Money transmitters are required to be licensed in 49 states. There is a conflict amongst the states, however, on the circumstances under which a payment processor is considered to be a money transmitter. In some states, a payment processor is not considered to be a money transmitter. In other states, the same payment processor is considered to be a money transmitter for engaging in the same activities. Additionally, state laws can change frequently in a rapid manner, sometimes with little notice, creating further challenges to compliance with state laws. Providing a payment processor with the ability to operate under a charter will eliminate this dilemma.

A consistent supervisory and enforcement approach to payment processing for both payment processors and, separately, money transmitters, will allow these companies to focus their efforts on innovation in the realm of faster and more secure electronic payments and customer service rather than scrambling to try to figure out the complex and constantly changing federal and state legal and regulatory matrix.

Impact on Consumers:

Consumers expect to have many choices to make safe, reliable and fast payments. Payment processors and money transmitters are the innovators that provide these choices. As stated above, payment processors, pursuant to agreements with merchants, process payments that customers initiate through the customer's direct relationship with the merchant. Money transmitters, among other things, allow consumers to make peer-to-peer and consumer to business money transfers through their smart phones and computers. The companies are innovators, and their technological advancements have had the effect of making money transactions easier for consumers; and they have exposed more consumers to the payments industry. These companies will continue to innovate if they receive more clarity and consistency from the federal government.

Impact on Banks:

Third-party payment processors are depository customers of banks. In that regard, third-party payment processors provide banks with a source of non-interest income and large deposit relationships. Banks working with payment processors under a national bank charter, and thus supervised and examined by the OCC, will have the ability to maintain these relationships and potentially expand their programs knowing that the enforcement landscape will be more predictable, stable and consistent with the compliance obligations of the bank. Bank examiners will be more comfortable with third-party payment processing relationships under this scenario, as they too will know that the processors are being examined in a manner consistent with the objectives of Federal Financial Institutions Examination Council ("FFIEC") examination guidelines. This will allow banks to reap the reward of non-interest fee income and expanded deposits.

Impact on Small Businesses:

Millions of small businesses rely upon third-party payment processors to make electronic payments. Qualifying to process payments directly through a bank requires the business to have an adequate credit profile, payments expertise and the technology to properly format and

transmit the payment instructions to the bank. The inability to meet one or more of these requirements leaves the business without the ability process electronic payments without services provided by payment processors. The ability for a small business to make low cost, secure electronic payments allows this kind of business to be more competitive in the global marketplace with its larger competitors. The inconsistent and unknown regulatory landscape in the financial services industry, with competing federal regulators and a diverse set of changing state laws and regulations, create additional costs to banks and payment processors that are passed down to small businesses and ultimately to the consumer. Providing consistent supervision and enforcement through the proposed charter process has the potential to stabilize payment processing while providing lower cost and greater reliability in electronic payments to small businesses.

Risks:

The risks are twofold: (1) a payment processor or money transmitter going out of business; and (2) a data breach within the payment processor or money transmitter. If a payment processor or money transmitter unexpectedly goes out of business, there is a risk that merchant or consumer funds will be in limbo at a bank before the funds reach their destination. Depending on the settlement times, payments may be delayed or not occur because these funds may be the subject of claims from the creditors of the payment processor or money transmitter. In addition, if there is a data breach, personally identifiable consumer information may be compromised.

These risks will be reduced by allowing a charter for payment processors and money transmitters who meet certain financial and data security requirements along with a written compliance management system that is audited regularly by OCC examiners.

If the OCC is attempting to both promote innovation and create a level regulatory landscape, it will need to be able to accommodate for the wide variety of fintech companies in a flexible and fair manner. Otherwise, the results will be a handful of large, mature companies that already have the means to withstand the robust licensing requirements and the rest of the innovators will be left at an even greater disadvantage than they are today. Indeed, full-service OCC chartered national banks enjoy a competitive advantage over fintech organizations through the uniform application of federal law and a single regulator. The payments system is a national system, it is nonsensical for only banks to be chartered and regulated on a national basis. We urge the OCC to provide an approach that is scalable and approachable to smaller payment processors and money transmitters in an effort to close the gap.

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

Expectations for capital and liquidity should be scalable based on the size and complexity of the fintech company's unique business model and its associated risk. For example, capital and liquidity requirements for a fintech organization engaged in lending should be markedly different from those fintech firms only providing technical or payment processing services. Third party payment processors and money transmitters' capital and liquidity requirements should be

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consistent with their transaction and chargeback volume. This should include funding the ongoing operation, setting aside adequate reserves to address credit risk and support the orderly cessation of services consistent with its business recovery and resolution plan.

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 and 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 service in a virtual or physical community demonstrate its commitment to financial inclusion?*

The purpose of Community Reinvestment Act (“CRA”) is to encourage banks to meet the depository and lending needs of consumers who reside in low to moderate income neighborhoods; and to eliminate discriminatory lending practices. Because third-party payment processors and money transmitters are not depository institutions or lenders, these companies do not fit within the framework of what the CRA was designed to do for consumers.

This is not to say that the payments ecosystem is immune to the desire for increased economic diversity and inclusion. Third party payment processors process payments for merchants who are located in, and/or provide goods and services for, low to moderate income communities.

According to the 2015 FDIC National Survey of Unbanked and Underbanked Households, 25.6 % of households that earned \$15,000 or less in 2015 were unbanked (“unbanked” means that members of these households do not have a checking or savings account), and 11.8% of households that earned between \$15,000 and \$30,000 in 2015 were unbanked. (2015 Survey at p. 15.) In contrast, 5.1% of households that earned between \$30,000 and \$50,000 in 2015 were unbanked, that percentage dropped to 1.7% for households that earned between \$50,000 and \$75,000, and the percentage dropped to .5% for households earning more \$75,000. (2015 Survey at p. 15.) These significant differences in income between the banked and unbanked reveal that people who reside in households earning less than \$30,000 in 2015 did not directly deposit their wages or government benefits to a bank account; nor do they have the ability to pay bills with a debit card linked to a bank account. Money transmitters, through payroll cards and general purpose reloadable cards, provide bank like access to the unbanked by providing a platform: (1) for payroll payments that can be received on reloadable debit cards (instead of check cashing stores) that can be used to receive money from banks and used for online purchases; and (2) through peer-to-peer or consumer to business payments from a smart phone or another electronic device. In fact, according to the 2015 FDIC National Survey, about 25% of consumers in households earning less than \$30,000 in 2015 used general purpose reloadable cards, including payroll cards. (2015 FDIC Survey at p. 28.) The TPPPA expects that continued innovation will provide greater access to bill payments and peer-to-peer transactions for low to moderate income households.

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?***

A financial inclusion commitment will be difficult for payment processors because payment processors do not have a direct relationship with consumers. Rather, payment processors have relationships with merchants and therefore the financial inclusion commitment ultimately depends on the merchant. As stated above, payment processors process payments for merchants who provide services to people who reside in low to moderate income communities. Payment processors will continue to process payments for merchants who have businesses that serve these communities.

A financial inclusion commitment will also be difficult for money transmitters, as money transmitters are not depository banks or nonbank lenders. Therefore, money transmitters do not have control over the demographics of the people that they can serve through money transmission. It is important to note that money transmitters have expanded financial inclusion for low to moderate income households by providing technological platforms that allow every person who has access to a smart phone or a computer to send money to friends, relatives and creditors. They also provide access to payroll cards for consumers without a bank account to accept direct deposit of payroll.

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

As stated above, payment processors will continue to process payments for merchants in low to moderate income communities; and money transmitters will continue to provide a variety of payments platforms for the unbanked.

6. ***How should the OCC use its chartering authority as an opportunity to address gaps in protections afforded individuals versus small business borrowers, and if so, how?***

This is not applicable to payment processors and money transmitters.

7. ***What are the potential challenges in executing or adapting a fintech business model to meet regulatory expectations and what specific conditions governing the activities of special purpose banks should the OCC consider?***

Fintech companies come in many flavors and sizes. To meet its objectives of fostering innovation and promoting consistency in the application of law and regulation, the fintech charter will need to have the flexibility to accommodate smaller payment processors and money transmitters. Otherwise, only the largest payments companies that can meet the application requirements, capital requirements and assessments will be the beneficiaries of these intended benefits. This will place smaller payment processors and money transmitters—who will be key agents of financial inclusion on the participant and business, as opposed to the customer, side—at an even greater disadvantage with the existing inconsistent application of laws and regulations

while their large counterparts can more actively focus on innovation. Both competition and the innovation that comes from new startup technology companies will suffer.

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?***

Supervision for purposes of safety and soundness should focus on the compliance and risk management systems of the fintech company. Fintech companies are diverse in nature and tend to be on the cutting edge of advances in technology. In the context of payment processors, advances in the payment systems' infrastructure (such as same-day ACH) means that their business risk profile will continually shift. The fintech company should have a documented risk-based compliance management system that adjusts with changing internal and external circumstances and provides for a top down culture of compliance with clear and direct oversight by the board members of the company. Compliance management systems should accommodate for consumer protection laws and regulations as well as anti-money laundering and anti-terrorist financing laws and regulations. Fincen registration by money transmitters, and full customer identification programs should also be considered.

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?***

There are no competitive advantages that the OCC should address. Payment processors and money transmitters rely on banking relationships to process the payments of their merchant or consumer customers. Banks with these relationships benefit from the large deposits that these fintech companies bring to the bank as well as non-interest fee income. Providing a consistent application of laws and regulations across the country and fostering innovation for these fintech companies through the charter process will directly benefit the banks with these relationships.

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?***

Maybe. Payment processors and money transmitters can potentially deal with both digital and non-digital currency. In order to adequately supervise these companies, it will be prudent for the OCC to receive guidance from a fintech advisory board comprised of representatives of fintech companies in order to fully understand the most sensible approach. As mentioned above, in order to achieve the benefits of consistent application of law and regulation across the country and foster innovation to this diverse set of industries that comprise fintech, the OCC will need to have the ability to apply a flexible scalable model to both charter requirements and supervision.

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?***

The coordination and communication with other regulators should be approached in the same manner that the OCC addresses these relationships for other national banks.

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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?***

Payment processors and money transmitters utilize banks to clear and settle payments through the payments system today. Because these fintech companies are not depository financial institutions, this category of fintech company should not increase concentration risk as these transactions will continue to be processed through traditional banks. The two risks highlighted above, failure of a fintech company and a data breach, are sufficiently mitigated through minimum threshold financial and data security requirements that are fair for small to middle market payment processors and money transmitters.

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

It will be helpful if the OCC provides updated information, after incorporating the comments received, into a white paper and potentially provide webinars to support the application process and what would or would not apply to the different classifications of fintech companies.

In conclusion, the TPPPA and its members support the OCC's proposal to charter fintech companies as special purpose national banks. Including third-party payment processors in the regulatory ecosystem through an OCC charter should result in a net improvement as processors are currently only regulated and examined at arm's length by their banking partners or state licensing authority. The OCC's expertise in the payments industry should help strengthen the entire arena. A fintech charter has the potential to promote innovation in the payments industry, provide for economic inclusion and allow smaller and middle market payment processors and money transmitters to participate in this exciting endeavor.

Respectfully Submitted,

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