CFSI Center for Financial Services Innovation

January 17, 2017

Thomas J. Curry
Comptroller of the Currency
400 7th St. S.W.
Washington DC 20219

RE: Comments on Exploring Special Purpose National Bank Charters for Fintech Companies

Dear Comptroller Curry,

The Center for Financial Services Innovation (CFSI) is submitting this letter in response to the request for comments on "Exploring Special Purpose National Bank Charters for Fintech Companies," issued by the Office of the Comptroller of the Currency (OCC) and published on December 2, 2016. Like you, we recognize the important role that access to high-quality financial products plays in helping consumers improve and maintain their financial health. We believe that finance can be a force for good in people's lives and that meeting consumers' and small businesses' needs responsibly is ultimately good for the consumer, the small business, and the provider.

CFSI is a national authority on consumer financial health. We believe that financial health comes about when a consumer's day-to-day financial systems enable them to build resilience and pursue opportunities. We lead a network of financial services innovators – banks, the fintech community, processors, servicers, non-profits, and community-based organizations – all committed to building higher quality products and services. CFSI informs, advises, and connects our network to seed innovation that will transform the financial services landscape. We hear the pain points and the see the opportunities from a variety of different viewpoints from both industry and consumers.

Through our consulting work, our Financial Capability Innovation Funds, and our Financial Solutions Lab, we have fostered innovative products and technologies that improve the financial health of consumers and nurture small businesses. Our vision is to see a strong, robust, and competitive financial services marketplace, where the diversity of consumer transaction, savings, and credit needs are met by a range of providers offering clear, transparent, and high-quality products and services at reasonable prices.

CFSI supports the OCC in using your authority to provide special-purpose national bank charters to financial service providers who can meet your standards for chartering. We believe a specialized charter for non-depository, tech-driven companies could accelerate positive innovations that have the potential to improve financial health. We believe the benefits outweigh the risks - but only if the OCC creates the right guidelines and processes for designing and awarding charters and supervising the resulting charter holders.

We also realize that those pursuing a special-purpose national bank charter will be a narrow group within a broader population of fintech providers. Those not qualifying for a national bank charter will still need to structure themselves to be able to provide services to their target audiences across the U.S. So while we support the OCC special-purpose national bank charters for fintech companies, we also recognize this is only one of potentially several tools needed to support a rapidly changing, diverse ecosystem. The OCCs continued engagement with other regulators, with the states, and with policymakers will be important. The charter can be a powerful tool, but it won't solve the whole problem of helping consumers and small businesses nationwide access innovations that improve their financial health.

In our 2016 Market Size Study, we report that marketplace loans were expected to increase 23% in revenue and 39% in volume across 2016. We also found high growth rates for short-term credit (but declines in single-payment credit), longer-term credit, and payments and deposits. Many of these services are being provided by new entrants with innovative – and sometimes disruptive – business models. For our 2016 cohort for CFSI's Financial Solutions Lab, 356 organizations responded to the call for applications, 19% more than in 2015. Collectively, these organizations serve 4.2 million Americans, have raised over $420 million in external capital, and employ 2,293 people. The "typical" applicant had been in operation for 15 months, had a team of six people, served 7,000 users, and had raised $450,000 in external capital. A large part of applicant distribution fell into more complex categories like credit, insurance, and payments. The more basic products that used to make up a large portion of the consumer fintech space are evolving to more advanced, multi-faceted tools that help consumers plan and enable them to take action. While it is impossible to know exactly how the market will evolve over the next decade, there is one thing that is certain -- technology will continue to change the way people and businesses manage their financial lives. A new charter type focused on tech-driven companies recognizes this eventuality and begins to create the rules of the road to ensure that new entrants with different business models have the same opportunities and responsibilities as incumbents.

In this letter we provide some specific responses to some of the issues raised by the OCC:

- Benefits of a special-purpose fintech charter
- Risks of a special-purpose fintech charter
- Supporting financial inclusion
- Addressing gaps in protections afforded individuals versus small business borrowers

We also share some other considerations about opportunities for the innovation ecosystem, and finally we offer some concluding remarks.

Benefits of a Special-purpose Fintech Charter (Question 1)

Technology improvements in recent years have enabled innovators to reduce costs that can lead to expanded access, improve user experience by leveraging real-time customer usage patterns and feedback, and develop new products for consumers' and small businesses' unmet needs. We encourage the OCC to consider how innovations impact consumers and small businesses when evaluating potential charters. For example, in our FinLab Consumer Impact Report we note the following about Financial Solutions Lab companies, which help establish formalized impact metrics:

- Digit users have saved more than $350 million in less than two years of operation. On average, Digit users earn less than $40,000 per year and save more than 3% of their net income in their Digit account. In recent years, this segment of the population has faced a zero interest rate or had to pay account fees (in effect, negative interest rates).
- 57% of Ascend Consumer Finance's borrowers using its RateRewards loan are earning a discount on their interest expense in any given month and, on average, are saving $300 off their interest expense over the life of the loan. RateReward earners have also significantly lowered Ascend's financial exposure by demonstrating an impressive 84% reduction in delinquency.

Early stage innovators – like Digit and Ascend Consumer Finance – often experience issues in finding financial institutions that can provide suitable and cost-effective capital and access to payments systems (e.g., ACH). Several innovators find more expensive solutions while still scaling their customer base. As we note later in this letter, receiving a fintech charter could help these innovators signal stability to potential banking partners.

Innovations can be both good and bad, and while the charter can help facilitate good innovation, it is equally important to minimize the bad by ensuring strong consumer protection. Another benefit is that this charter comes with regular and direct supervision, as opposed to complaint-based regulation at the state level or indirect oversight through current third-party oversight required by financial institutions. State regulators have made progress for consumer protection on many fronts in recent years and we would hope the OCC would find ways to retain and improve upon these protections.

The chartering process will also increase the regulators' familiarity with fintech providers and *vice versa*. Chartering will necessitate that regulators engage with and understand upcoming trends, products, services, and business models in this innovative space. It also allows fintech companies to have better access to regulators to discuss new ideas, regardless of whether they go through the chartering process. Eventually, this information exchange could help assuage concerns and more accurately assess the risks and opportunities of fintech companies in both the chartering and supervision processes. For example, the proposed chartering criteria include some very traditional financial institution provisions (e.g. three year business plans) that seem a bit outdated in the fintech context. The OCC may want to adopt a more flexible guideline -- e.g., evidence of sound business planning -- to allow for adaptation within the chartering process. Nonetheless, we believe increased interaction and trust will help to create more appropriately designed regulations for the products and services that fintech companies offer.

Another benefit of a special-purpose national bank charter is that it can serve as a signaling device for both fintech firms and others in the financial services market, leading to improved efficiencies. Chartered non-depositories may find is easier and more streamlined to partner with depositories. Third-party vendor rules may be easier to comply with if the partnership is among chartered entities. We believe that in many cases partnerships are the most exciting opportunities for financial health and a powerful path to scale and reaching more people. Also, chartered fintech companies engaged in lending may be able to find lower-cost capital, allowing them to offer more competitive loans for consumers and businesses across the country.

Risks of a Special-Purpose Fintech Charter (Question 1)

A special-purpose national bank charter may preempt some state consumer protection rules that are stronger than federal laws. Given the multiple business models fintech firms have and the products they offer (deposits, payments, credit), the OCC needs to be clear about when states will be able to provide additional levels of consumer protection to their citizens and what rights of action their citizens will have. Alternatively, the OCC could establish benchmarks that recognize higher consumer protection standards where appropriate.

The OCC is on the record saying it has no intention of granting charters to payday lenders. We encourage the OCC to set specific guidelines for the various types of organizations eligible for this charter (for example, lenders, payment and transaction providers, savings plans) so as to avoid rate exportation by low-quality, high-cost lenders. The OCC needs to be very transparent about the kinds of business models that are best served by chartering and that the OCC is prepared to support. This level of transparency will be critical so that all stakeholders trust the process and so that it is more stable over time.

Balanced against the benefit of increased familiarity with fintech business models is the issue that the potential candidates for special-purpose national bank charters are quite diverse. These could include payment providers, consumer lenders, small-business lenders, alternative currency wallets, and more. CFSI received applications for several credit products that were not traditional lenders – for example, income-based repayment, savings/credit groups, peer-to-peer lending (separate from today's marketplace model), and others. How will the OCC go about understanding these diverse models? How can the OCC be clear in the market about what is acceptable or unacceptable for a chartered institution? Most fintech companies strive to grow and need the ability to get to scale with their products, yet many *de novo* charters seek to limit the growth rate to manage risk. How will the OCC provide guidance on acceptable growth rates consistent with managing safety and soundness risks, but also consistent with market expectations for nascent businesses that may desire or need future fundraising for expansion?

Lack of transparency in the chartering process is another risk, especially if decisions are on a case-by-case basis. While we appreciate the need for flexibility, we also encourage the OCC to provide specific requirements that firms interested in applying for a charter should expect. We realize that enumerating every type of niche business model may be impossible and that it may in and of itself create barriers to innovation by pre-defining categories that products must fall within. But setting forth examples of how the more popular fintech business models would be seen by OCC evaluators would help innovators prepare for a charter and for identify what types of non-chartered innovators can actually go to market without a charter *per se.*

In the discussion of chartering benefits above, we mentioned the signaling function of charters. The risk side of that argument, however, is that non-chartered firms may seem relatively more risky than chartered firms, sending a negative signal to the market and consumers where it may not be merited. How will the OCC work with firms that might not be ready yet for a charter or might not qualify for a charter without sending negative signals to the market and consumers? Is that a good role for the Office of Innovation?

Supporting Financial Inclusion (Questions 3, 4, 5)

We are aware that CRA applies to depository institutions and that many of the candidates for a special-purpose national bank charter may be nondepositories. Further, we recognize that the CRA itself is outdated and not at all suited to virtual businesses. We applaud the OCC for incorporating measures of financial inclusion by applying principles of fair treatment of customers and fair access to financial services in determining whether to approve a special-purpose national bank charter application. These principles align with our mission at CFSI to improve financial health. As the marketplace expands with a whole set of providers beyond banks, we need to find ways to ensure that they are serving *all* consumers. In our 2016 FinLab Snapshot, we observe a rise in solutions targeted at populations that have traditionally been underserved by innovation. This is an encouraging trend in early-stage innovations that we aim to amplify in the coming years. Technology can help reach more hard-to-reach consumers, lower the cost to serve less profitable consumers, and provide real time information and advice that aids in consumer decision-making. But it isn't a foregone conclusion that tech-driven businesses will make a point of reaching low- and moderate-income customers and businesses without encouragement from regulators.

We recommend that charter applicants be required to submit a financial access and inclusion plan as part of the application. We also believe the OCC should establish a mechanism for chartered entities to be held accountable for those plans. Some elements that might be included in the plan are the range of consumers being served (across income levels, geographies, and demographics), specific considerations around serving low-to-moderate income populations, and partnerships with community development organizations. As an inclusion plan is developed, the OCC must clearly signal how different types of businesses -- lending, payments, etc. -- can indicate inclusive and fair efforts based on the product or service they offer and the range of consumers they serve.

The rapid pace of technology improvements means that the industry is constantly coming across new ways to improve consumer financial health in this country. We believe innovation can best be leveraged when providers align business outcomes with customer outcomes. Thus, we are hopeful that the industry and the regulatory community will adopt the view that improving consumer financial health should be a success metric for the financial services industry. At CFSI we have established Eight Indicators of Financial Health that can be used to measure and track consumer financial health. As the OCC builds a financial inclusion plan for these special-purpose national bank charters, we encourage you to consider metrics for financial health as outcome measures. We recommend that the OCC also leverage this framework in helping to determine which products and innovations are positive for consumers. Provisions around measuring financial health could help the OCC transcend traditional CRA requirements and more holistically meet financial health needs of consumers and small businesses. In planning discussions with providers, the OCC should go beyond just how avoid trouble and focus on best practices and how fintech providers can achieve positive financial health outcomes for their customers.

Addressing Gaps in Protections Afforded Individuals versus Small-Business Borrowers (Question 6)

As part of the chartering process, the OCC has the opportunity to ensure that the small business lenders you are considering operate in high-quality ways. We believe that ultimately it is important to address the gaps in transparency, information, and borrower protection that exist in the small business lending market. We know these gaps are there (see Alternative Lending through the Eyes of "Mom-and-Pop" Small-Business Owners: Findings from Online Focus Groups from the Cleveland Federal Reserve). And we know they are due, in part, to the diversity of business models and lending products (installment loans, merchant cash advances, lines of credit, whether loans are needed for capital goods or inventory, etc.).

There are a number of other initiatives already in process. Industry has begun to tackle some of these gaps themselves. The Responsible Business Lending Coalition – a combination of nonprofit and for-profit organizations and lenders – has established a Small Business Borrowers' Bill of Rights. The Innovative Lending Platform Association – a group of online lenders and a microbusiness association – has developed a SMART Box disclosure that provides standardized price comparison tools, including an annual percentage rate, to compare different finance options. However, both of these initiatives are rather nascent, they are voluntary on the part of lenders, and their impact on the market has yet to be seen.

Beyond the lack of clear disclosure requirements prior to loan consummation, we believe that we simply do not know what other gaps exist that need to be addressed through federal policy. Section 1071 of the Dodd-Frank Act calls for the Consumer Financial Protection Bureau to collect data about credit applications made by women-owned, minority-owned, and small businesses. The Bureau's initiatives are also nascent, and while the fair-lending enforcement implications for these data are clear, it is difficult to know how these data might be used to help identify other gaps in information and protections that need to be addressed.

Ideally, plans to address small-business borrower protections should include engaging with other relevant agencies – the CFPB, the FTC, and the SBA, among others – as part of a broader strategy to bolster small business lending. We would encourage the OCC to consider how provisions for borrower protections could also be included more broadly across the banking and financial service industry to create a more level marketplace for these loans; however, we recognize this may be beyond the scope of the OCC's chartering considerations.

Other Considerations

More chartering/licensing options

In CFSI's response to the OCC's whitepaper on Responsible Innovation in May, 2016, we encouraged you to consider federal charters for fintech firms. We support this current initiative on special-purpose national bank charters. However, we recognize that a national bank charter is not suitable for every fintech firm, so other federal-state options are needed to reduce barriers for other fintech firms that aren't suited for or don't want a federal charter. We believe the OCC should lead a national discussion with the Conference of State Bank Supervisors and other key regulators to help determine a system of "passporting" state licenses and charters for financial technology innovators. Much as drivers' licenses are recognized across state lines, it would be helpful if business licenses could be recognized across state lines in order to make financial innovations more available to consumers nationwide.

Establish principles versus rules per se

As part of the supervision process -- both for the newly-chartered special-purpose national banks and for all other OCC-supervised institutions -- we encourage the OCC to consider the relative usefulness of specific rules versus broad, principles-based regulations combined with enforcement procedures across the board for all institutions supervised by the OCC. The rate of change in both technology and the financial services and products these technologies enable make "bright line" rulemaking a bit of an anachronism.

Building and supporting the fintech ecosystem
In the section on benefits of the special-purpose national bank charter, we discussed the opportunity to increase the regulators' familiarity with fintech providers and *vice versa*. One potential outcome of this could be the expansion of 'fintech banks', whose key purpose is to power other third parties. For example, chartered institutions could go beyond providing customer products and services directly and provide resources, such as APIs, for other innovators. If so, then perhaps the OCC should consider special applications of third party vendor management requirements that empower ecosystem development.

Conclusion

We appreciate the OCC's initiative in engaging with the innovation community and grappling with the issue of a special-purpose national bank charter. We encourage you to continue to stay engaged broadly across the agency. We hope that the entire OCC staff – from the Controller himself through to the examination teams in the field – will have opportunities to get to know more about the innovators and fintech providers working in this arena.

We believe that consumers will be better able to achieve financial health if they have access to high-quality financial services that are innovative – evolving and growing as the consumers themselves evolve and grow in their financial journey. Innovations can help consumers spend, save, borrow, and plan safely and effectively, enabling them to manage their day-to-day finances, weather financial shocks, and providing them with longer-run financial opportunities.

We believe that the marketplace will benefit from a range of banks and fintech companies, start-ups and incumbents, and direct-service providers and partners all playing important roles in developing and delivering consumer-centric innovations. We recognize that regulators play an important role in keeping the market fair for both providers and consumers. We are glad that the OCC is tackling the issue of how to provide a federal chartering system and a process to move forward in an era of financial innovation writ broadly. We look forward to working with you as this effort moves ahead.

Sincerely,

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