CIRCLE

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VIA EMAIL (specialpurposecharter@occ.treas.gov)

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street S.W., #3E
Washington, D.C. 20024

Re: Comments Regarding Special Purpose National Bank Charter for Fintech Companies

Dear Comptroller Curry:

On behalf of Circle Internet Financial, Inc. ("Circle") please find the enclosed comments in response to the Office of the Comptroller of the Currency's ("OCC") white paper, entitled "Exploring Special Purpose National Bank Charters for Fintech Companies," which was published in December 2016. Circle is a consumer internet company focused on transforming the world economy with secure, simple, and less costly technology for storing and using money.

Circle fully supports the OCC's decision to consider granting special purpose national bank charters to financial technology ("fintech") companies. The OCC's paper outlines its authority to charter special purpose national banks and considers how the agency might continue to cultivate responsible innovation in its approach to evaluating applications and supervising fintech companies. A special purpose bank is one that would conduct one of three core banking functions. "Fintech" is a term that may not be easily defined. There are several new business models for financial services firms that may serve a different core function. Each of these companies may provide unique risks and challenges from a regulatory standpoint.

The following comments are meant to provide further insight into various public policy benefits and important considerations in regulating and supervising fintech companies operating under a national bank charter from Circle's perspective as consumer payments company. As it has done in the past, the OCC should continue to review firms on a risk-based approach based on the criteria it has outlined for all of the institutions it supervises.

I. OCC's Responsible Innovation and Fintech Companies

The OCC has made significant strides with its recent initiatives on responsible innovation in the financial services industry. While there is concern that the current U.S. regulatory environment has not stayed competitive with other countries in offering clear avenues for innovative financial products and services to reach consumers, the OCC's recent efforts show promising steps toward closing this gap. The agency's most recent announcement on national bank charters for fintech companies presents an opportunity to reduce the complex, duplicative regulation that encumbers innovation, while strengthening oversight of the fintech industry.

The regulation of fintech companies as national banks would offer significant public policy benefits, so long as risks are promptly identified and mitigated. Circle looks forward to continuing a dialogue with the OCC on these matters. We are confident that the OCC can account for the newer, innovative business models of fintech companies, while maintaining robust oversight of the federal banking system. Furthermore, we believe that regulation of fintech companies is important to provide integrity to the financial system and consumers and that a national charter in this space would not create competitive advantages but would in fact level the playing field for all financial services institutions.

II. Benefits, Risks and Challenges

Federal Preemption and the State Regulatory System

Regulated as a money services business at the federal level by the Financial Crimes Enforcement Network and as a money transmitter by nearly fifty different banking departments at the state level, Circle operates in a regulatory regime that is fragmented and inconsistent. A national charter for fintech companies would promote regulatory certainty, introduce uniform supervision, and provide broad access to the banking system. This streamlining would allow Circle to focus its resources on providing access to our services to consumers across the country.

The availability of federal preemption is meaningful to fintech companies, allowing them to drive efficiencies and innovation in financial services by decreasing burdens associated with complying with state laws and supervisory regimes, including substantial reporting requirements and frequent examination cycles. The prospect of simplifying the system is also a promising development for consumers in communities throughout the country. With uniform, consistent prudential regulation and supervision, fintech companies can more easily deliver their products and services to unserved and underserved communities, allowing these companies to reaffirm their commitments to financial inclusion.

Improved Efficiencies and Ability to Innovate

Currently, fintech companies rely on depository institutions to conduct underlying transactions. In many cases, banks have de-risked and chosen not to work with fintech companies. In cases where partnerships exist, banks place several burdens on, and charge fees to, fintech firms. These barriers negatively impact the products and services offered to customers and the ability for companies to innovate and scale. If fintech companies were licensed under the proposed charter, those companies could achieve greater efficiencies and be able to offer expanded services.

Risks and Challenges

There are several challenges associated with attempting to regulate innovative financial services companies. However, we believe that the OCC can adequately address these risks when reviewing each company's application on a case by case basis. For fintech companies, the initial challenge would be to outline a clear business plan, what products are akin to core banking functions and how those products fit with the OCC's existing regulations. Fintech firms would need to review their corporate governance structure and ensure that they have adequate expertise at every level of management and the board in order to comply with the relevant guidelines. Depending on whether fintech firms' custody assets, send and receive customer funds or make loans, there will be different implications and risks.

One of the biggest challenges for fintech companies would be to satisfy safety and soundness concerns. Early stage companies are often backed by venture capital and have a low revenue model at the initial stages of the company. It would be incumbent upon companies that are seeking a charter to show projected revenue and sources of liquidity. Companies would also need to demonstrate how customer funds are protected and how risks to both customer assets and the financial strength of the company are mitigated. Investors and directors may be called upon to make additional commitments and the firms should create a voluntary resolution plan in lieu of further protections such as FDIC insurance.

Many of these challenges posed above could be addressed through the application process. While we believe that fintech companies should ultimately be licensed under the proposed charter, the use of a regulatory sandbox or similar program would also be helpful for the OCC to understand these businesses, the issues raised and what types of controls are needed. This process would also be helpful for fintech companies to comprehend the regulatory requirements and the impact on its business.

III. Financial Inclusion and Consumer Protection

By utilizing a combination of ubiquitous and innovative technologies, fintech companies can achieve increased levels of financial inclusion. While many individuals are able to open accounts at brick and mortar banks and manage the associated requirements and fees associated with traditional financial services, an even greater number of citizens could gain access to financial services if they were able to use their smartphones to utilize financial services offered by fintech companies. In particular, innovative companies in the payments space have already demonstrated the potential to reach underserved and underbanked populations while offering services that are less expensive, faster and more secure. Payments companies have made it easier for consumers to send money domestically and internationally. The pricing, security and consumer experience of payments through remittance corridors have been vastly improved with the introduction of these products and services.

We believe the OCC should strive to understand the new markets being created by fintech companies. The knowledge gained through the applicant review process, as well as through later supervision and during examinations, should help shape future regulations and requirements. While lending companies should have requirements akin to CRA, payments companies should be able to demonstrate how their products would benefit a large demographic of consumers while not discriminating against any others. Understanding the technologies and products at work will assist the OCC in determining whether or not a business is truly leveraging its innovative products and technologies as solutions to meet the needs of identifiable low and moderate-income communities or geographic areas.

With responsible innovation comes the need for consumer protection. We believe there are many ways that the OCC can ensure that fintech firms are properly protecting consumers. Fintech companies should provide similar disclosures and dispute resolution processes as other financial services firms. Consumers should be aware of risks and their funds should be protected. Risk management controls should be required to ensure related risks are mitigated (*i.e.* cybersecurity, privacy requirements). In addition, fintech firms should be given credit for proactive steps taken to protect consumers. For example, firms such as Circle have developed and acquired private insurance coverage to protect customer funds held in digital currency.

IV. Bank-Permissible Activities and Online Consumer Financial Services

As innovative products and methods of delivering financial services arise, legal precedent has widened the scope of activities within the "business of banking." While potential charter applicants across the fintech industry engage in a wide range of activities, many primarily engage in at least one of the three core banking functions: receiving deposits, paying checks, or lending money.

In Circle's case, providing a consumer financial mobile app allows customers to hold balances in their accounts and send funds to friends and family; however, we currently rely on bank partnerships to "take deposits" and hold them for the benefit of our customers and to offer FDIC insurance on these funds. The OCC has compared facilitating electronic payments to "paying checks," which is commonly offered as a primary function of a fintech company's products and services. A national charter would be applicable to Circle or any other company engaging in similar activities and would allow for companies to mitigate compliance risk by having a clear focus on a single prudential supervisory authority.

V. Baseline Supervisory Expectations

Capital Requirements and Liquidity

We appreciate the need for all financial services firms to operate in a safe and sound manner. Despite the similarities to a national bank in the types of activities undertaken by fintech firms, there are potential challenges in executing or adapting a fintech business model to meet certain regulatory expectations. For instance, the OCC notes in its discussion of minimum capital requirements that it would consider adapting capital requirements as necessary, within legal limits, to adequately reflect the fintech applicant's risks. Many fintech companies manage their business activities in ways that may be different from traditional banks, accomplishing the same consumer services with less financial risk or obligation. Notably, many fintech firms initially rely on venture capital funding as opposed to consumer fees as their initial source of operating funds. Unlike traditional banks, many fintech firms operate with less leverage and risk.

It would be more practicable for fintech companies if the capital requirements were adjusted to be commensurate with the various qualitative and quantitative elements considered by the OCC, including the risk and complexity of the company's activities. The OCC should closely review how companies manage this risk, the quality of the assets and the deployment of capital and it would be appropriate to account for off balance sheet items that would negatively impact the risk profile. In terms of liquidity, the OCC should consider a company's ability to raise capital or acquire funding from other third party sources and ongoing revenue model. For fintech firms and early stage companies, a company valuation's and access to liquidity can be very different to those of traditional depository institutions. The OCC should take this matters into consideration when evaluating risks.

Recovery and Exit Strategies

We encourage the Federal Deposit Insurance Corporation ("FDIC") to review the feasibility of offering FDIC insurance to fintech firms under the special purpose charter. However, we do not believe that it is a necessary prerequisite. Fintech firms, such as Circle, can partner with depository institutions to protect customer funds by placing them with an insured depository institution and passing through the FDIC insurance to customers. Regardless of where customer funds are held, we believe that provisions should be made for these funds for any uninsured special purpose bank. As the state level, money transmitters are required to hold surety bonds to protect customer funds and are subject to permissible investment requirements for the funds being held.

The OCC has stated that it would require an applicant's business plan to contain comprehensive recovery strategies or resolution plans to be implemented upon certain financial or risk triggers. While fintech companies may have basic strategies to sustain or restore the business' financial strength and viability, this requirement would likely need to be tailored for most fintech companies that would apply for a charter. The fintech industry is still relatively nascent, despite being a field that is constantly growing and evolving. As such, these exit plans and strategies will be an area where fintech companies may find it difficult to adapt to regulatory expectations without a flexible approach to any requirements or guidelines.

Compliance and Risk Management

Fintech firms seeking a charter would be subject to the same standards as other regulated depository institutions and would be judged on whether the compliance risk management program they have implemented is commensurate with its risk profile. The OCC has established strict guidelines and a high bar for financial services firms in order to protect the safety and soundness of these firms and the consumers they serve. Fintech firms would have to ensure that they allocate sufficient resources to this task. Fortunately, many firms have comprehensive risk management programs in place already and these programs have been vetted through other regulators, partner banks and investors. In addition, along with innovating products for consumers, many fintech companies have sought to create new ways to fulfill compliance obligations, These innovations in the compliance space are often done in a manner that are more efficient and more effective at combating the risks posed than existing methods used by traditional financial services companies.

Coordination with Other Agencies

Most fintech firms seeking a charter operate on a national (and often international) basis. We believe it is pivotal that the OCC coordinate with other federal, state and international regulators on its initiatives through the Office of Innovation and throughout the chartering process. There are many areas where other agencies should be involved, such as deposit insurance (FDIC), access to payment systems, liquidity and financial stability (Federal Reserve) and consumer protection (Consumer Financial Protection Bureau and state banking agencies). Full coordination is important to address risks and the maximize the benefits of the charter for applicants.

Chartering Process

Circle appreciates the OCC's leadership and progressive approach to the regulation of fintech companies. We believe that cultivating responsible innovation requires constant awareness of the rhythm and evolution of the industry. We are encouraged by the chartering process outlined by the OCC, particularly the ability for firms to engage with the OCC prior to filing a formal application. This approach has been instituted successfully in other countries, such as the United Kingdom. We believe the process for fintech firms seeking a charter should be similar to those for other bank charters and should adhere to comparable timelines for applications to be reviewed and approved. With open channels of communication between the OCC and prospective charter applicants, we believe that the relevant risks are likely to be identified and assessed appropriately.

Please do not hesitate to contact us should you require any further information. We appreciate the opportunity to provide comments to the OCC in connection with its decision to consider fintech companies to receive special purpose national bank charters.

Regards,

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John A. Beccia