



The Voice of the Retail Banking Industry

January 14, 2017

Submitted Electronically: specialpurposecharter@occ.treas.gov

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

RE: OCC, Exploring Special Purpose National Bank Charters for Fintech Companies

Dear Comptroller Curry:

The Consumer Bankers Association (“CBA”)¹ has closely followed your efforts to modernize the Office of the Comptroller of the Currency (“OCC” or “agency”) to better facilitate the next generation of banking. As we laid out in our letter to you in response to the OCC’s March 2016 paper, *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*,² “we support any effort to enhance the ability of banks to innovate in order to better serve U.S. consumers with products and services appropriate for the rapidly changing financial services environment.”³ Therefore, we endorse the creation of an Office of Innovation to enhance the OCC’s knowledge and expertise of financial innovations; foster an internal culture receptive to innovation; streamline agency decisionmaking; and promote interagency collaboration.

¹ The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

² At <https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf>.

³ Letter from David Pommerehn, CBA, to Thomas Curry, Comptroller, Office of the Comptroller of the Currency (May 31, 2016), *available at* <http://consumerbankers.com/sites/default/files/OCC%20Innovation%20comment%205-31-16.pdf>.

In this latest White Paper, *Exploring Special Purpose National Bank Charters for Fintech Companies* (“White Paper”),⁴ it appears the OCC seeks to go beyond reorganizing the agency. Indeed, the agency expresses an intent to provide nonbank financial technology companies – often referred to as “Fintech” – a pathway to a national bank charter. This decision on the part of the OCC is surprising in many regards, but especially so given how quickly the agency is moving to incorporate fintech companies into the federal banking system.

It was only this past October the OCC finalized its new “responsible innovation framework.”⁵ That paper notably identified “a need for greater awareness and expertise regarding industry innovations among OCC staff,” and recommended “the OCC develop additional materials that describe the fundamentals of emerging products, services, processes, and technology.”⁶ The paper also indicated that OCC staff question “whether the OCC has sufficient expertise to understand and supervise some emerging developments,” and recommended “the OCC expand recruiting to reach individuals with a broader variety of skills than traditionally used by the agency.”⁷ Given the current state of the OCC’s knowledge of financial innovations and its ability to evaluate these developments, we believe it may be too early for the agency to give serious consideration for a fintech charter.

Although CBA is not opposed to expanding the scope of companies eligible for a national bank charter, we believe fundamentally important decisions such as this should be based on well-developed policy positions that have weighed the risks and rewards to all stakeholders in the banking industry. Unfortunately, we do not believe the White Paper meets these standards. As a result, CBA cannot yet support the inclusion of fintech companies into the federal banking system without more clarity from the OCC about the regulatory and supervisory framework that will be applied to these companies.

I. CBA Review of the OCC White Paper

The technological innovations of the last decade have placed an on-demand world of products and services at consumers’ fingertips. The banking industry has been shaped by the same technological forces that have transformed the delivery of books, music, movies and many more consumer transactions. Most, if not all, of CBA’s member banks have created mobile banking applications to provide our customers with convenient, round-the-clock access to their accounts and beneficial tools to improve their financial well-being. At the same time, however, these same forces have given rise to new entrants into the financial services marketplace that

⁴ Office of the Comptroller of the Currency (“OCC”), *Exploring Special Purpose National Bank Charters for Fintech Companies* (Dec. 2016), at <https://www.occ.treas.gov/topics/bank-operations/innovation/special-purpose-national-bank-charters-for-fintech.pdf>. [Hereinafter “OCC White Paper”]

⁵ OCC, *Recommendations and Decisions for Implementing a Responsible Innovation Framework* (Oct. 2016), available at <https://www.occ.gov/topics/bank-operations/innovation/recommendations-decisions-for-implementing-a-responsible-innovation-framework.pdf>.

⁶ *Id.* at 9.

⁷ *Id.* at 10.

are leveraging mobile networks and cloud-based computing systems to “disrupt” traditional banking models.

It is within this context the OCC issued a White Paper in favor of a fintech charter. To support its position, the OCC argues a fintech charter would ensure these companies operate in a safe and sound manner; that they could be encouraged to promote fair access and financial inclusion; and that consumers would be better protected with a consistent legal and regulatory framework for bank and nonbank companies.⁸

While we applaud the OCC’s sentiment and share its goals for a safe and sound banking system supportive of consumer protection and financial inclusion, CBA would argue the OCC may be moving too quickly for the industry. From our perspective, the OCC’s proposal to charter fintech companies appears to lack a sufficient foundation for the public to fully comprehend the agency’s endeavor. At a minimum, the OCC should have provided the industry and its stakeholders with a clear definition of “fintech” and the types of companies it views as eligible for a special purpose national bank charter. To date, “fintech” appears to be a marketing term to label a host of technology-based startup firms pursuing a variety of financial service business models. The White Paper itself provides little clarity on how the OCC defines fintech, referring to them as “technology-driven nonbank companies offering a new approach to products and services.”⁹ This definition leaves us confused about what technological elements of a nonbank financial service company’s business model would make it eligible for a charter. It would appear companies as diverse as payday lenders, marketplace lenders, and person-to-person payment companies could all be eligible.

Furthermore, the White Paper provides little evidence of the need for or public benefit of chartering these companies. For instance, the OCC has provided no evidence as to why the current state-based licensing and supervisory system applicable to nonbank financial companies is incompatible with the agency’s stated objectives.¹⁰ Even if we assume a special purpose national bank charter is an efficient and effective means to promote safety and soundness, consumer protection and financial inclusion, the White Paper does not provide sufficient information about how the OCC would regulate and supervise these fintech companies, while at the same time ensuring a competitive level playing field for full-service banks and other agency-supervised entities. The agency’s updated Comptroller’s Licensing

⁸ OCC White Paper, at 2.

⁹ OCC White Paper, at 1.

¹⁰ See, e.g., Letter from John Ryan, President & CEO, Conference of State Bank Supervisors, to Thomas Curry, Comptroller, Office of the Comptroller of the Currency (Nov. 14, 2016) (“State banking regulators oppose a potential national charter for certain financial technology companies because it would distort the marketplace for financial services and undermine State laws and regulations governing financial services.”), available at <https://www.csbs.org/regulatory/policy/Documents/2016/CSBS%20Comment%20Letter%20on%20OCC%20Receiv erships%20for%20Uninsured%20National%20Banks%20NPRM.pdf>.

Manual (“Licensing Manual”) provides greater detail about the national bank charting process, but it does not address how the OCC would regulate and supervise fintech companies.¹¹

CBA would urge the OCC to adopt a more deliberative approach to determine whether the national bank charter should be offered to fintech companies. The Federal Reserve (“Fed”) initiative on faster payments may be a useful model to emulate. The Fed has engaged in a multi-year effort to, among other things, “identify effective approaches for implementing a safe, ubiquitous, faster payments capability in the United States.”¹² The Fed has taken a deliberative, collaborative approach to improving the U.S. payments system – first publishing and then refining its strategies and objectives and then standing up two industry taskforces to promote engagement and input from a diverse group of payment system stakeholders.¹³ A similar approach to the fintech charter may quell certain concerns about fintech companies and improve the OCC’s decisionmaking process, ultimately benefiting the federal banking system and its customers.

II. CBA Recommendations

A. The OCC Should Produce a Fintech Study

CBA recommends the OCC utilize its new Office of Innovation and Responsible Innovation Framework to conduct a thorough study of the fintech sector. This study should provide sufficient information to evaluate the need for and public benefits of a fintech charter by answering the following questions:

- What is Fintech?
- What are the various business models being pursued by these fintech companies?
- How do these fintech companies interface with the U.S. banking system?
- Who supervises these fintech companies and to what laws, regulations and rules are they subject?
- What are the potential implications of allowing more commercial firms to control a bank subsidiary?
- What gaps in the several states’ licensing, regulatory, and supervisory systems require the OCC to develop a federal licensing framework?
- What process will the OCC implement to address chartered fintech companies that choose to switch charters or de-charter?
- What are the public benefits, costs, and risks of providing fintech companies with a special purpose national bank charter?

¹¹ See OCC, Comptroller’s Licensing Manual: Charters (Sep. 2016), available at <https://www.occ.gov/publications/publications-by-type/licensing-manuals/charters.pdf>. [Hereinafter “OCC Licensing Manual”]

¹² Federal Reserve System, Strategies for Improving the U.S. Payment System, at 2 (Jan. 26, 2015), available at <https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf>.

¹³ See <https://fedpaymentsimprovement.org/faster-payments/about-the-task-force/>.

An OCC study of the fintech sector such as this could significantly improve the public's understanding of these companies and how technological innovation more generally is refashioning the relationship between consumers and their financial service providers.

B. If Warranted by the Evidence, the OCC Should Issue a Formal Charter Proposal for Public Notice and Comment

Once the Fintech Study has been delivered for public examination, the OCC may still conclude a fintech charter is in the public interest and that it is in the best position to ensure these companies operate in a safe and sound manner, consistent with consumer protection, fair access, and financial inclusion. CBA would then recommend the OCC issue a formal charter proposal for public notice and comment. In contrast to the OCC's stated preference for a case-by-case method of evaluating different "activities" for a national bank charter,¹⁴ we respectfully suggest clear rules would provide the banking industry, fintech companies, and the public with more confidence in the new regime. Furthermore, while it is appropriate to tailor rules to align with a bank's business model and risk profile, we believe chartered fintech companies should be required to meet the same minimum standards applicable to all national banks; doing so will promote a level playing field and preserve a safe banking system.

CBA believes a comprehensive charter proposal would provide the public with information and clarity regarding the following subject matters:

- *Charter Authority.* The OCC should explain the specific authority it would rely on to offer fintech companies a national bank charter. The agency suggests it has the authority to charter fiduciary activities and core banking functions: receiving deposits, paying checks, or lending money. However, it is unclear how these functions are defined, or the process that will be used to evaluate new "permissible" functions.
- *Conditions for a Charter.* The proposal should identify the conditions fintech companies must satisfy to be eligible for a charter. These should include:
 - Capital – We agree with the Licensing Manual that new banks must be able to meet a minimum tier 1 leverage ratio of 8 percent for the first three years of operation.¹⁵ Therefore, fintech companies should be required to meet this standard and any additional capital necessary to address their unique risk profiles.
 - Liquidity – Fintech business models pose risk factors that are quite different from traditional full-service banks. In addition, many of these firms have never been through a full credit cycle. Therefore, it would be appropriate to impose higher

¹⁴ OCC White Paper, at 4.

¹⁵ OCC Licensing Manual, at 22.

liquidity standards. We would support a requirement that fintech companies “maintain high-quality liquid assets sufficient to cover a minimum of 180 days of operating expenses.”¹⁶

- *Conditions to Maintain a Charter.* The proposal should identify the conditions fintech companies must satisfy to maintain a charter. These should include:
 - Capital – as noted above.
 - Liquidity – as noted above.
 - Financial Inclusion – As stated in the White Paper, uninsured financial institutions are not subject to the Community Reinvestment Act (“CRA”). However, we would support imposing financial inclusion obligations on chartered fintech companies, perhaps through an operating agreement, to ensure they share similar requirements to that of insured depository institutions under the CRA. The OCC should consider the CRA strategic plan as a viable model for these types of companies.
 - Third-Party Relationship Management – Chartered fintech companies should be subject to the OCC risk management guidance on third-party relationships¹⁷ to the same extent as all national banks.
 - Compliance with Applicable Federal Banking Laws, Regulations, and Guidance – In addition to complying with the capital and liquidity requirements noted above, BSA/AML, OFAC sanctions, and cybersecurity standards seem particularly relevant to technology-based companies. OCC should also provide details on how it would supervise chartered fintech companies. A fair examination process would subject these companies to the same level of scrutiny as all national banks.
 - Compliance with Consumer Protection Law – Chartered fintech companies with consumer-facing business activities should be subject to the same consumer protection laws applicable to all national banks. These would include the laws and regulations under the purview of the Consumer Financial Protection Bureau (“CFPB”), and the Unfair, Deceptive Acts and Practices and Unfair, Deceptive, and Abusive Acts and Practices provisions set out in the Federal Trade Commission Act and the Dodd-Frank Act, respectively.

¹⁶ *Id.* at 56, n. 45.

¹⁷ OCC Bulletin 2013-29, Third-Party Relationships, Description: Risk Management Guidance (Oct. 30, 2013), at <https://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html>.

- Credit Risk Retention – Chartered fintech companies that operate a lending business model should be subject to the credit risk retention rule.¹⁸ Application of this rule would incentivize fintech lenders to monitor and ensure the quality of the assets underlying a securitization transaction.
- *Resolution.* The proposal should provide a comprehensive framework to resolve failed chartered fintech companies. Resolution rules would be particularly important to detail at the outset given that many of these companies have never gone through a full credit cycle. An effective resolution framework would include a living will requirement – mandating a sale, merger, or liquidation – to mitigate losses to the OCC acting as a receiver when a chartered fintech firm’s condition deteriorates beyond a certain threshold. It would also incorporate special assessments on chartered fintechs, and not on insured national banks, to allocate the OCC’s receivership costs to the right parties. The framework would also impose subservicing arrangements, where relevant, in order to protect consumers when a chartered fintech fails.
- *Regulatory Agency Coordination.* The proposal should explain how the federal banking regulators would coordinate with one another to ensure that chartered fintech companies are comprehensively supervised. If a fintech company engages in deposit-taking activities, then the Federal Deposit Insurance Corporation may play a supervisory role to protect the deposit insurance fund. If the fintech company is controlled by a holding company, then the Fed’s role as the consolidated supervisor is implicated. Finally, if the fintech company engages in consumer-facing activities, then the CFPB may have supervisory or enforcement responsibilities with respect to that company.
- *Membership in the Federal Reserve System.* The OCC should offer direction on whether chartered fintech companies will be members of the Federal Reserve System with access to the payments system and the discount window.

III. Conclusion

CBA shares the OCC’s goal to promote responsible innovation that can deliver new or improved financial products, services, and processes to meet the evolving needs of consumers, businesses and communities. As they have done in the past, our members will continue to develop the next generation of banking tools to provide our customers with the best opportunity to meet their financial goals. And they will continue to work and partner with responsible companies, fintech or otherwise, that share these objectives.

We look forward to the opportunity to work with the OCC and other industry stakeholders to evaluate the need for and public benefits of a fintech charter. However, extending the bank charter to untested companies without fully addressing the risks posed by new business models could have unintended consequences for consumers and the U.S. financial system. Therefore,

¹⁸ 12 CFR Part 43.

we urge the OCC to proceed with due caution and to provide the public with more information about the potential risks and rewards presented by fintech companies through an in-depth study of this sector. And, if the OCC still concludes the public would benefit from a fintech charter, then we ask the agency to issue a formal charter proposal for notice and comment.

Thank you for the opportunity to share our thoughts and comments on the White Paper with you. We would appreciate a chance to meet with you to review our concerns and to address any matters you would like to raise regarding the federal banking system.

Sincerely,



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