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VIA ELECTRONIC SUBMISSION

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

Dear Comptroller Curry:

The Electronic Transactions Association ("ETA") submits these comments in response to the Office of the Comptroller of the Currency's ("OCC's") request for comment on its white paper, "Exploring Special Purpose National Bank Charters for Fintech Companies" (the "White Paper"). ETA and its members support the OCC's recent announcement that it will consider applications for special purpose national bank charters from "FinTech" companies that offer bank products and services that meet OCC standards and chartering requirements. We hope that these comments will assist the OCC in tailoring its application and evaluation process for the FinTech industry.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include financial institutions, mobile payment service providers, mobile wallet providers and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives. As a result, ETA applauds the OCC's innovation initiative and its efforts to develop a comprehensive framework to improve its ability to identify and understand trends and innovations in the financial services industry and the evolving needs of consumers of financial services

Responses to Specific Requests for Comment

As explained in the comments below, ETA encourages the OCC to take a flexible, business case specific, approach to reviewing charter applications, including assessment of the types of products and services that involve banking functions (as previously done in the area of "paying checks," now understood to include its modern equivalents, such as issuing credit and debit cards or any other method of facilitating electronic payments).[1] Taking a flexible approach will ensure that the OCC and FinTech industry are able to work together collaboratively to design a charter application and evaluation process that works for FinTech applicants while satisfying the OCC's regulatory expectations.

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

The OCC's decision to consider issuing charters to FinTech companies offers a number of public policy benefits for consumers and small business proprietors that are increasingly relying on these innovative products and services. As a starting point, a FinTech company that obtains a bank charter will have the benefit of a regular and consistent regulatory framework in which to provide services to customers. Operating under a bank charter will provide a uniform set of rules and regulatory expectations that will allow

[1] A special purpose national charter bank must engage in one or more "core banking" functions. These include (1) fiduciary activities; (2) receiving deposits; (3) "paying checks"; or (4) lending money.

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FinTech companies to grow and innovate new products and services that benefit customers. This type of clarity benefits everyone by ensuring that industry, customers, and regulators are operating from the same rules and expectations.

The OCC's decision to consider issuing charters to FinTech companies will also further industry's existing efforts to expand consumer access to innovate and affordable financial products and services. As discussed in response to question three, below, the FinTech industry is leading the way in using technology to address the financial needs of underserved consumers. A related benefit, also discussed below, is that creating a level playing field for these types of services will increase competition in the market and free up industry to focus, to the greatest extent, on developing cost-efficient, inclusive products and services. This type of competition will benefit consumers by ensuring they have access to products and services tailored for their specific needs and use cases.

It is important to recognize, however, that these benefits are most likely to be realized if the OCC tailors its application and evaluation process for the FinTech industry. The term FinTech covers a broad spectrum of companies, including payment processors, money transmitters, and online consumer and business lenders. To ensure the public policy benefits noted above, the OCC should develop an approach for the FinTech charter process that recognizes the unique characteristics of the different types of entities that fit under the FinTech umbrella. This approach should account for differences such as the nature of business (*e.g.*, payment processing, lending), type of product, and risk profile (both financial and from a regulatory compliance perspective).

Another important point to consider is that FinTech companies do not provide the same scope of services as traditional banks, and, therefore, do not present the same degree of risk. It is critical for the OCC to approach this process with the understanding that applicants are not traditional banks, and should not, be held to all of the same expectations and requirements currently in place for traditional banks, specifically capital and liquidity requirements intended for deposit taking institutions. Moreover, as discussed in response to question seven, below, most FinTech companies are already subject to various federal and state laws and regulations

In sum, the OCC's proposed FinTech charter offers a number of potential public policy benefits, but those benefits are unlikely to be realized if the program is not tailored appropriately for the FinTech industry. ETA encourages the OCC to use the new Office of Innovation to work openly and collaboratively with the FinTech community to develop a process that takes full advantage of the potential benefits offered by the proposed FinTech charter. The OCC must be sensitive to the risk that applying a uniform application and evaluation process for all products and services, without any appreciation of differences in products and services and consumer needs, will likely stifle creativity, consumer access, financial inclusion and innovation in the market. A program that is not designed around the unique needs of this industry is unlikely to garner much interest in the FinTech community.

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?

The issue of capital and liquidity requirements is a primary example of how the proposed FinTech charter process should be tailored for the FinTech industry. Unlike traditional banks, which take deposits and provide many other banking services for their customers, FinTech companies are often narrowly focused on specific services and market segments but often serve customers across the country.

When it comes to capital and liquidity requirements, the factors that the OCC considers must be viewed through the unique lens of the FinTech industry. The traditional elements that determine the current definitions of capital adequacy do not capture the full scope and nature of FinTech activities, funds management, risk diversification, and strategic planning that defines a nationally operating technology company engaging in one of the core banking areas. Risk is diversified generally, across multiple customer profiles, geographies, product availability and features. FinTech companies generally engage in less risky activities than full-service banks and have an availability of current capital sources and market experience, proven business strategies, and data driven insights to guide capital risk management. FinTech companies are not unproven operations. The capital markets have assessed the business models and risk profiles with the extensive performance data that better informs FinTech on business risk and product risks than most financial instructions. The business modeling is predictable and validated against macroeconomic risks and trends. Markets and investors around the world agree deference should be given to a FinTech's proposed capital and liquidity requirements with flexible standards tailored to the specific business model." In addition to assessing the quality and source of capital, the OCC also considers on- and-off balance sheet composition, credit risk, concentration, and market risks. As such, the OCC's capital and liquidity expectations should be designed carefully to consider the unique structure of different types of FinTech companies.

Further, as most FinTech applicants are likely to present a lower risk (particularly those that do not take deposits), the OCC should adjust its expectations for assessing risk to the financial system and the wind-down of operations. As such, ETA recommends that the OCC take a case-by-case approach to capital and liquidity requirements when reviewing applications to account for the differences between traditional banks and FinTech companies, as well as the variation in business models within the FinTech community.

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?**

One of the goals of our banking system is to provide quality, affordable financial services. An inclusive financial system is one that provides all consumers and businesses with access to a variety of financial products and services at competitive prices. A key driver of financial inclusion is the deployment of new technologies that allow the underserved to access financial services – a process that is being led by the FinTech industry. ETA's members are at the forefront of using technology to broaden financial inclusion for underserved consumers by creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions, and lending alternatives that are available to a broader set of consumers. The OCC's proposed FinTech charter aligns with these goals, and if implemented in a way that is tailored for the FinTech industry, has the potential to further these goals in a significant and meaningful way.

One of the benefits of FinTech is the industry's leveraging of the Internet and other new technologies to provide products and services that are inherently inclusive and democratic. These products and services are focused on increasing access to financial services for all consumers. In this way, FinTech companies have transformed the financial landscape through the introduction of new technologies that expand financial offerings for consumers, lower costs, improve financial management, and increase transaction security. These products and services have also expanded, and are continuing to expand, financial opportunities for underserved consumers.

For example, while small businesses are the backbone of the American economy, creating more than 60 percent of net new jobs and employing approximately half of the workforce in the private sector, they often have trouble accessing traditional credit for purposes of growing their businesses due, in part, to high search, transaction, and underwriting costs. Fortunately for small businesses, ETA's members and other new and innovative technology companies are expanding access to credit and offering attractive alternatives to traditional loans. Using sophisticated, data-driven processes to assess the creditworthiness of potential borrowers, lenders are able to reach funding decisions quickly and efficiently and provide access to capital to approved borrowers expeditiously, in some cases within 24 hours, or even a matter of minutes. These data-based processes are creating new opportunities for borrowers and lenders. Fintech platforms have also been used by Community Development Financial Institutions ("CDFIs") and other non-profit community lenders and development organizations to help increase efficiency in the lending process and better identify creditworthy small businesses. It's clear that online small business lending is reaching a broad market, and that providing quicker access to capital allows small businesses to invest in their employees, purchase more inventory, expand their services, and ultimately grow their businesses.

In sum, the FinTech industry is naturally focused on financial inclusion and ETA encourages the OCC to take this point into account when considering financial inclusion in the course of reviewing a FinTech charter application. While the OCC may consider including certain CRA-like requirements in the application process, it is important that these requirements be tailored for the FinTech industry and appreciate the role that these companies are already playing in helping the underserved and promoting financial inclusion. We encourage the OCC to consider that FinTech, by its very nature is inclusive- by lowering costs of existing products and services, and making them widely available, a mobile app or on-line application are free to use and available to all with access to the internet.

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?

ETA encourages the OCC to take a case-by-case approach to the application process that is based on requirements tailored for the unique attributes and variable business models of the FinTech industry. Under this approach, the OCC should not seek a blanket financial inclusion commitment from uninsured special purpose national banks that do not engage in lending. These types of FinTech companies, which may include payment processors, money transmitters, and others, do not raise the same financial inclusion concerns as may be presented by FinTech companies engage in lending (and, which, as noted above, are inherently focused on expanding financial inclusion through the leveraging of technology).

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

Fintech companies that do not engage in lending, such as payment processors, money transmitters, and others, promote financial inclusion by providing consumers access to traditional, mobile, and other forms of payments. These services promote financial inclusion by providing all consumers the ability to make payments, transfer funds, and engage in other financial transactions, often using mobile and other convenient technologies that suit the needs of consumers. It is also important to recognize that these types of FinTech companies often partner and work with other established FinTech companies or financial institutions (lenders, for example) that are focused on promoting financial inclusion. Additionally, processors, money transmitters and other non-lending FinTech businesses may also provide small business or 'micro-merchants' with accept to electronic payments and/or access to the card payments networks. This is an important segment of commercial activity that has been historically underserved.

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?

ETA supports a system that provides small business borrowers with clear information on their rights and responsibilities. ETA cautions, however, that a regulatory approach that would simply apply existing requirements for consumer lending to small business loans would have detrimental effects for both online small business lenders and the small business community. Small business borrowers have different needs and objectives in obtaining credit than consumers, and small business lenders have developed credit products specifically designed to answer those needs and objectives.

For example, application of TILA's many provisions to commercial lending would cause significant disruption and confusion, while limiting the ability of small businesses to access the varied types and sources of capital they need to grow. To provide just a few examples, it would make no sense to apply TILA's billing and error resolution procedures for open-end credit to commercial lending. Similarly, application of TILA's rescission rights to commercial lending would upend long-established legal precedent and rules of commercial practice, while similarly raising costs.

Furthermore, commercial and consumer credit are distinctly different types of credit. Given the comparison of apples to oranges, the dollar amount should not be uses as a distinguishing factor when deciding whether TILA should apply to a loan, as some FinTech small business customers have annual revenue as little as $50,000. Small business owners will always apply funds towards revenue or ROI generating activities. The conflation of commercial and consumer credit risks adversely impacting the borrowers' personal cost of borrowing if commercial trade lines are entered as consumer transactions in a credit report. It means that a failed business operation would forever impede an individual's ability to borrow for commercial or consumer purposes in the future.

While ETA supports transparency in small business credit, we encourage the OCC to be sensitive to the prospect that enhanced regulation may limit lenders' ability to answer such needs by stifling creativity and innovation. For these reasons, ETA encourages federal policy makers to avoid applying legacy regulations that were written for consumer financial products to online small business lending.

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?

Although FinTech has received considerable attention as a beneficial and "new" technology, it is not, as some have suggested, an unregulated industry. Online FinTech lending, for example, involves many of the same steps as traditional commercial lending – the marketing, underwriting, closing, servicing, securitization (in some cases), customer care, and collection of loans. In this regard, online FinTech lending is subject to various federal and state laws and regulations. Depending on circumstances, such as the nature of the product and lending model, these laws may include requirements related to fair lending, licensing, interest rates, credit reporting, and debt collection, among other requirements.

The OCC should take this into account and ensure that the charter process is tailored to provide a reasonable process for a FinTech company to adjust its current regulatory compliance to meet any additional or different compliance requirements associated with an OCC charter. On a related note, it is important for the OCC to appreciate that regulatory expectations should be designed in a way that does not discourage FinTech companies from engaging in innovation, such as the development of new products and services that benefit consumers.

Another area that deserves careful consideration is when, and how, the OCC might expect a FinTech company to take deposits in connection with its products and services, and whether such deposits should be treated the same as deposits with a traditional bank. In this regard, the OCC should take a practical approach when reviewing applications from FinTech companies, particularly those that process

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transactions or transfer funds. The FDIC, for example, has issued guidance on deposit requirements for banks issuing prepaid card accounts.[2] Thus, in the case of prepaid cards, it is possible that a FinTech chartered bank would need to provide FDIC deposit insurance or continue to partner with a bank (which would hold the master account and provide deposit insurance), which would seem to undermine the purpose of obtaining a FinTech charter in the first instance. The same type of considerations may apply with respect to the clearing and settlement of merchant processing accounts.

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?

ETA and its members firmly believe that the FinTech industry has a demonstrated track record of operating in a safe and sound manner. As discussed in these comments, the FinTech industry offers a number of benefits for consumers, including financial inclusion and access to innovative and affordable financial products and services. The OCC should preserve these benefits, while also ensuring safety and soundness, by tailoring the charter application and evaluation process for the unique attributes of the FinTech industry. This will likely require the OCC to take a case-by-case approach and work closely and collaboratively with industry.

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?

ETA does not believe that the FinTech charter process creates any competitive advantages. Rather, ETA encourages and supports the charter process because it helps create a level playing field in which all industry players are able to compete to provide consumers with access to the best products and services at the lowest costs. It is also important to recognize that the FinTech industry and traditional banks often work together to develop new products and services.

Banks, for example, have entered into numerous partnerships with FinTech innovators pursuant to which the banks use the innovators' technology platforms to streamline and automate their loan application processes and expedite their underwriting processes. These platforms allow potential lenders to analyze a broad range of financial and operational data to determine an applicant's creditworthiness and to do so quickly. Enabling small business borrowers to apply for loans online reduces processing costs, accelerates decision making, speeds access to funds and improves the overall customer experience. This type of collaboration has already provided numerous benefits for consumers, and is likely to increase under the additional flexibility provided by the proposed FinTech charter process.

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?

One of the benefits of FinTech is that the industry is focused on innovation and using new technologies to develop financial products and services that benefit consumers. These new technologies, which range from mobile payments to digital currencies, are unique and require different approaches to supervision in order to mitigate potential risks. As discussed throughout these comments, ETA encourages the OCC to take a

[2] FDIC, General Counsel's Opinion No. 8 (FIL-129-2008) (Nov. 13, 2008)—Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms Introduction (explaining that "all funds underlying stored value cards and other nontraditional access mechanisms will be treated as "deposits" to the extent that the funds have been placed at an insured depository institution.").

flexible approach to the FinTech charter process and subsequent supervision of FinTech-chartered special purpose national banks.

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?

One of the expected benefits of a charter is that it will provide FinTech companies with a regular and consistent regulatory framework in which to provide services to customers. ETA encourages the OCC to take this important point into consideration when addressing coordination with other regulators that may have jurisdiction over a FinTech-chartered bank. Given the number of possible regulatory agencies that could have jurisdiction over at FinTech-chartered bank, it is imperative that OCC and the other federal and state regulatory agencies work in tandem to ensure a smooth process for application and beyond.

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?

ETA does not believe that FinTech companies, because they may engage in limited business activities, present increased risks to consumers, industry, or the financial system. Many FinTech companies engage in relatively low risk activities (payment processing), or have a demonstrated track record of managing any higher risk activities through prudent and appropriate policies and procedures. In this regard, for example, online FinTech lenders are leading the way in using data and analytics to enhance identity and fraud detection and prevention in connection with their products and services. Ultimately, the question of risk is an inherently fact-specific issue that will vary by product, company, and industry. Additionally, FinTech companies have and will provide avenues for innovation, but at this time the FinTech industry and its participants do not present a systematic risk to the financial system because of the disintermediation nature of the services provided. As such, we encourage the OCC to consider the lack of systematic risk involved with issuing these types of charters throughout the application process.

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

ETA commends the OCC on its decision to consider FinTech charter applications, and the publication of the OCC's white paper on "Exploring Special Purpose National Bank Charters for Fintech Companies." In line with ETA's other comments, we encourage OCC to provide guidance to industry that is tailored for specific FinTech models, products, and services, so that industry can better assess the pros, cons, and other considerations of applying for a FinTech charter. In addition to written guidance, the OCC would also do well to provide guidance in other mediums including a website, webcasts, and videos to encourage a better understanding of its expectations. In addition, a dedicated contact person or office for which potential applicants can discuss the process.

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ETA thanks you for the opportunity to submit these comments.

Respectfully submitted,

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