Think

Think Computer Corporation
500 Race Suite
Suite 4321
San Jose, CA 95126

telephone +1 415 670 9350
fax +1 415 373 3959
web http://www.thinkcomputer.com

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

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

To Whom It May Concern:

The following are the comments of Think Computer Corporation ("Think"). This letter is a continuation of the comments offered to the Consumer Financial Protection Bureau (CFPB) on February 14, 2014 in response to its Request for Comment on Docket No. CFPB-2014-0003 (RIN 3170-AA25): Defining Larger Participants of the International Money Transfer Market.

Think is a computer software company that developed a mobile payment system called FaceCash® beginning in 2008. FaceCash was operational until July 1, 2011, when Think was forced to shut it down due to threats of incarceration directed at Think's officers by the California Department of Financial Institutions ("DFI," since merged into the California Department of Business Oversight, or "DBO"). These threats were made on the basis of the then newly-passed California Money Transmission Act of 2010 ("MTA"), one of the forty-seven state money transmission laws ("MTLs") alluded to in the CFPB's Request for Comment at 79 FR 5303. Even after protracted attempts—including appeals to DFI's parent agency, the California Governor, both houses of the California legislature, and Congress—to secure the information necessary to apply for a license, such as the *true* (and also unwritten) capital requirement under the new law, Think was unable to determine the DFI's demands, and Think eventually filed a federal lawsuit against the Governor and the DFI in November, 2011. That lawsuit ended up involving one of the most delayed, if not *the* most delayed, motion to dismiss in the history of the Northern District of California.[1] Judge Lloyd spent from late 2011 until mid-2015—nearly five years—sitting on the State's motion before dismissing the case on the erroneous basis that his own delays had rendered the issues moot. All of Think's employees were laid off.

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[1] *See* California Northern District Court Case No. 5:11-cv-05496-HRL, available via PlainSite at http://www.plainsite.org/dockets/8l0ickx4/california-northern-district-court/think-computer-corp-v-venchiarutti-et-al/.

Far from a devious plot to endanger the financial security of Californians, FaceCash is a modern replacement for plastic payment cards that makes point of sale transactions more secure, more convenient and less expensive than is possible with any other system, including EMV. In place of the traditional card signature on the back of the card, a digital image of the consumer's face is used to verify identity, and because all accounts are pre-funded, there is no need to use the aging plastic card technology infrastructure, saving on costs. FaceCash also integrates with the ThinkLink financial network, which provides functionality similar to wire transfers at a fraction of the cost, among many other features. Consumers (and government entities) could save many millions of dollars per year on payment processing expenses by using FaceCash and ThinkLink. Paradoxically, without nearly impossible-to-obtain MTLs, both products are illegal in the United States.

It is within this context that Think offers the following comments.

I. General Comments

A. A Federal Charter Is The Right Solution to Replace State MTLs

Broadly speaking, Think applauds the efforts of the Office of the Comptroller of the Currency (OCC) to finally address this issue, regardless of Congressional inaction and widespread regulatory capture that has hindered technological progress for the past decade. Not only will federal regulation "harmonize" disparate laws and regulations across the fifty states, including some states where no regulation exists at all, it will also hopefully make consumers safer by eliminating notable gaps in state law enforcement, which is crucial for a stable financial environment.

Conceptually the charter being considered should be somewhere between a money transmission license and a full bank charter. The single biggest difference is that a federal money transmission charter, or as OCC refers to it, a "special purpose" charter, should not permit the charter holder to make loans, which would distinguish the holder from a full-service bank. Otherwise, holders should have all of the other main rights and responsibilities of a bank: holding deposits, transferring funds, FDIC insurance, and access to the Automated Clearing House (ACH) and SWIFT banking networks.

State regulators have complained and will complain that only they have the expertise necessary to adequately regulate the money transmission sector. They are wrong. Not only are their skills far from unique in the space, but many of them are bad at their jobs, either because they are incompetent, or corrupt, or both. For example, in California, there is exists ample documentary evidence that Robert Venchiarutti, the Deputy Commissioner of Money Transmission, is guilty of the crime of perjury, having lied under oath during a deposition about being sued for legal malpractice.[2] Not only do such bureaucrats have no business regulating financial institutions, but they belong in jail. Many have been only too happy to acquiesce to the demands of the largest money transmitters in the country, who collectively form the Money Services Round Table (MSRT) lobbying group. Nothing the MSRT says should be trusted, and every claim it makes should undergo thorough examination and questioning.

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[2] *See* http://www.plainsite.org/dockets/2dplm3f6z/superior-court-of-california-county-of-los-angeles/roosevelt-bates-v-philip-j-halvorson-robert-r-venchiarutti-et-al/ and https://www.plainsite.org/dockets/2bo2lumrc/superior-court-of-california-county-of-san-diego/donald-h-lake-v-california-department-of-financial-institutions/.

B. Virtual Currency Is A Separate Issue

Due to the coincidental path of technological progress in the field of virtual currency, the issue of proper financial regulation for money transmitters has overlapped with the rise of Bitcoin and other similar distributed financial systems. Despite the considerable hype, these systems have proven themselves to be incredibly risky, poorly-thought-out financial networks with limited practical applicability for the average consumer that, as a seeming bonus, are rife with theft and security holes. They should be given separate consideration from systems that only make use of traditional currencies (e.g. dollars) due to the vastly different risk profiles.

II. Responses to OCC Questions

Starting on page 15 of the OCC's white paper, the OCC poses 13 questions. Think's answers are as follows.

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

There are clear benefits and risks to using a national bank charter, but equally clear is the fact that the benefits considerably outweigh the risks.

1. Benefits to Applicants

Applicants for charters would immediately benefit from having only one application to fill out, instead of a minimum of 47. In the past, the failure to complete any of those 47 applications properly, or the varying delays that inevitably ensue even after proper completion, could have led to federal criminal penalties. Federal criminal penalties clearly have their place in punishing federal financial crimes, but liability should attach at the federal level, not the state level. Having a national charter would finally solve that problem.

Applications would presumably also face lower government fees and legal fees as a result of the simpler process. This is especially significant as MTLs presently require renewal, audits, bonds, and other ongoing obligations on different schedules, and therefore constant maintenance to keep track of each state's demands.

2. Benefits to Charter Holders

Charter holders would immediate benefit in a number of ways. Foremost among them would be the certain knowledge that (assuming here for the sake of argument, good faith actors with legitimate businesses) they had done everything necessary to comply with the law pertaining to money transmission. This knowledge is never actually a certainty with the current system, even for the most well-intentioned of companies. A national charter would guarantee a level playing field for competitors across the country, so that companies based in one state are not advantaged over another due to compliance issues. The playing field would also be more level in regard to funding sources, whether from venture capital or other more traditional forms of investment. Additionally, charter holders would benefit from better-educated regulators with consistent standards of examination.

3. Benefits to Government

Federalizing the application process and later compliance processes, such as audits, would also make it easier for the Department of the Treasury, Secret Service, FinCEN, DEA, IRS, FDIC and other relevant agencies to keep track of what is actually transpiring the money transmission sector. In turn, this would hopefully reduce the amount of money laundering that takes place on a regular basis to facilitate narcotics sales and other crimes.

The national charter scheme would also resolve many of the glaring constitutional issues that plague the general concept of state-based currency licensing, which even the founding fathers found problematic with bills and coins.

4. Benefits to Consumers and Businesses

A national charter would also increase the amount of competition in the money transmission space, giving consumers more choice and lowering prices for basic financial transactions. Consumers would have access to widespread digital payment methods capable of storing line item data for arguably the first time, allowing them to dispense with paper checks and receipts once and for all.

5. Risks

As proven during World War II, there is a substantial risk to applicants, charter holders, and consumers that comes from having a more efficient government in the hands of a tyrannical executive administration that ignores the rule of law. Should such an administration come to power as the result of the 2016 election, the streamlined financial system could be used to monitor and persecute any perceived or actual enemies of the new administration.

There is also a risk that federal financial regulators will do an even worse job than the state regulators have, allowing more money laundering, less vetting of applicants, and more clever legal tricks to flourish. If this is the case, there will be no alternative jurisdiction in the United States for applications or charter holders to move to.

There is a risk that consumers will not understand the new regulatory framework, although it is already virtually guaranteed that consumers do not understand the existing one, so this is a minor risk at best.

There is a risk that federal regulators will feel it "safest" to give charters only to venture capital-backed startups with seals of approval from specific top investors (possibly those with political ties), encouraging a new form of cronyism and regulatory capture.

There is a risk that foreign governments could hack into the federal regulator and affect the financial infrastructure of the United States through a charter holder, although this risk is not particularly new.

There also exists a small risk that the Department of Justice or a federal judge could rule the new OCC charters are somehow different from standard bank charters, and therefore not exempt from state MTLs. This would render the entire endeavor moot, unless Congress acts.

B. Question 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?

When it comes to evaluating eligibility or ineligibility for a charter, as previously described, the OCC should at a minimum consider whether the depository institution being evaluated uses standard currencies or virtual currencies. Virtual currencies necessarily involve much greater risk and should therefore have much greater capital requirements (held in standard currencies). Otherwise, factors to take into account should focus on the ***trustworthiness*** of the founders, and ***not simply net worth***. It is a major fallacy that wealthier individuals are inherently more trustworthy, proven wrong time and again by massive financial blow-ups such as MF Global, which was backed by former United States Senator and (extremely wealthy) Goldman Sachs CEO Jon Corzine.

Factors for consideration might include:

- The number of civil lawsuits (state, federal, and/or overseas) filed against founders;
- Criminal proceedings or investigations regarding founders and their past companies, if any;
- Letters of recommendation attesting to the character of founders;
- Anonymous tips submitted during a notice and comment period for each charter application;
- Positive or negative press coverage regarding founders and their past companies, if any;
- Relevant expertise and compensation of members of the company's board of directors. Fraudulent concerns, e.g. Herbalife, Theranos, etc., frequently recruit former government officials with impeccable resumes who have no knowledge whatsoever of the business at hand, but receive large stipends for their seeming participation in the company's strategic matters. These individuals often make it difficult to question the underlying business, but their involvement should be seen as a red flag.

Other factors might also be taken into consideration, but a founder's individual net worth alone should never be the sole factor used to determine eligibility or ineligibility for a charter.

Capital requirements should be determined based on a plain and simple formula clearly available to the public to avoid any confusion. Such a formula might be:

$50,000 + 1% of deposits up to $100,000,000

The bare minimum capital required for a charter should not exceed $100,000 for the smallest qualified applicant.

The greatest threat for most startups, aside from malevolent intent amongst founders, will be vulnerability to hacking and money laundering schemes (and especially those associated with pre-paid cards). Therefore, FDIC insurance and government IT security audits should be a requirement of the charter, in lieu of state surety bonds that are traditionally required for state MTLs.

C. Question 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?

If depositors are willing to voluntarily provide information about their race to the depository institution, this information could be aggregated and reported back to OCC. True financial inclusion will come with lower prices for financial services and a proven track record of reliability for each institution, especially for international funds transfers.

D. Question 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?

Not at this time. The best way to make financial services more accessible to the wider public, including minorities and those who have traditionally avoided banking services, is to lower the price. Many past "inclusion" efforts have failed because they have ignored the fundamental reality that the financial sector is dominated by a few massive financial institutions with monopoly power.

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

Aside from offering very competitive prices and faster funds transfers due to technological benefits, language-based customizations for web sites and mobile applications could be used to encourage financial inclusion.

F. Question 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?

Perhaps, but not in this context. Money transmitters do not need to be given the ability to make loans under this type of new charter.

G. Question 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?

Regulators are used to conducting audits with pencil and paper. Like all banks, applicants under this program will be using relational databases and the internet to store information and to transfer funds. Regulators should be familiar with and provide APIs for reporting purposes in order to better understand the financial institutions they are regulating. Individual auditors should know SQL. Audits should be paid for by the government, not the party being audited, in order to avoid conflicts of interest and/or deliberately inaccurate audit reports.

H. Question 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?

The OCC should make available an anonymous tip line for complaints about entities that are both regulated and unregulated, and it should actively investigate those complaints. Whistle-blower rewards may also be effective. There are currently dozens of startup companies operating in clear violation of federal and state financial statutes, but no one ever bothers to investigate or take any action. Only when issues finally get to court due to a criminal proceeding or bankruptcy case, as in the case of the Mt. Gox Bitcoin exchange, is it clear how many people have been hurt as a result.

I. Question 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?

It is not and should not be the OCC's role to address in either direction the competitive advantages of technology firms over traditional banks, or *vice-versa*. If traditional banks want to adopt new technologies, they can afford to invest in and develop them. Or banks can acquire other companies, as they often do.

J. Question 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?

Yes. See prior comments in this letter and Think's comment to the CFPB addressing the serious risks associated with virtual currencies.

K. Question 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?

Going forward, there should be no involvement of state money transmission regulators, who have proven themselves utterly incompetent, and therefore there is no need for the OCC to communicate with them.

L. Question 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?

The OCC should work with the FDIC to set up insurance funds for special purpose national banks.

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

All application materials should be extremely clear and in writing. Unwritten regulations are unacceptable (and may be unlawful). All OCC audit API specifications should also be extremely clear and in writing, and

compatible with major modern web-based programming languages (Python, PHP, etc.).

III. Conclusion

It is reassuring to see the OCC moving in the right direction after years of frustrating stagnation in the payments industry. Regulation of the sector is a clear necessity, as countless criminal schemes have been falling through the cracks in the regulatory frameworks for years, while consumers have been cheated out of true technological progress by large financial institutions protecting their own turf. It remains to be seen whether the federal government is capable of fostering competition and innovation in the payments space, or if the OCC's proposal here will simply fall victim to regulatory capture, as most efforts in the industry have.

Sincerely,

//S//

Aaron Greenspan
President & CEO
Think Computer Corporation