Leader Bank
A STEP AHEAD

January 13, 2017

By electronic submission to specialpurposecharter@occ.treas.gov

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

Re: Public Comment to the OCC White Paper
"Exploring Special Purpose National Bank Charter for Fintech Companies"

Dear Comptroller Curry:

It is with great pleasure that Leader Bank, N.A. is able to offer feedback and commentary on the Office of the Comptroller of the Currency's ("OCC") white paper on "Exploring Special Purpose National Bank Charter for Fintech Companies" ("Paper"). Leader Bank has reviewed the Paper and the OCC's proposal to begin offering special purpose charters to financial technology, or "FinTech," companies, and we recognize the immense impact that FinTech will have on the future of banking in the United States. Undoubtedly, the race is underway to find new technology that will revolutionize the way people interact with the various mechanisms of banking, and provide more convenient and efficient solutions to consumers, many of whom are disconnected from the current banking system.

Based on its review of the Paper and the overall proposal from the OCC, Leader Bank believes that OCC should carefully consider (a) how to define what constitutes a "FinTech" company, (b) how to guard against and prevent charter arbitrage as an inadvertent result of a national charter, and (c) ensuring that FinTech companies are strictly required to comply with the Bank Secrecy Act rather than solely relying on bank partners for compliance. In addition to addressing these issues, we provide comments on behalf of Leader Bank on certain other questions specifically posed in the Paper, as identified below.

I. THE OCC SHOULD DEFINE FINTECH AND PROVIDE CATEGORIES FOR THE VARIOUS SECTORS.

As the OCC considers using its authority to charter special purpose national banks to create a charter for FinTech companies, the OCC must clearly define what it means to be a FinTech company. In addition to providing a formal definition of FinTech, Leader Bank also recommends the OCC delineate various categories of FinTech tailored to align with the most common specialties of such companies. Leader Bank suggests, at minimum, that the OCC consider the following categories for FinTech charters: lending technology, payment processing technology and client deposit technology.

In defining a lending based FinTech company, the OCC should consider the licensing benefits of a national charter. A FinTech company operating under current confines is obligated to meet state specific requirements for their products. If the OCC were to grant a national charter to a lending based FinTech company, that company could rapidly expand across the country without the burden of state specific regulations. While this would undoubtedly be a benefit to small companies currently hampered by the patchwork of state regulations and requirements, the OCC must be wary of the pitfalls of such a result. In particular, a mortgage company or mortgage broker who currently operates on a state-by-state basis may be inclined to pivot their processes to align with the requirements for a national FinTech charter. Upon doing so, it will only be a matter of time before they cease operating their previous business and attempt to operate entirely under the FinTech charter without truly falling within what the OCC intended as a FinTech business.

Additionally, the OCC should consider a separate category of FinTech charters involving companies working with client deposits. In considering such companies for a charter category, Leader Bank recommends taking a cautious approach. At this time, Leader Bank takes the position that a special FinTech chartered company should not be allowed to take deposits due to the hurdles, which may prove insurmountable given the positions taken by the FDIC, such entities will face insuring client funds. If the OCC feels some FinTech companies are capable of taking deposits without the backing of the FDIC, then Leader Bank recommends the OCC default to the same requirements a traditional uninsured national bank would be subject to.

Finally, the OCC should also develop a category for payment based technology. By providing a national charter to payment based FinTech, the OCC will allow these companies to accept and make payments nationally without the burden of state specific regulations. Moreover, in contrast to lending and deposit FinTech companies, there are less potential risks to the marketplace as a company engaging solely in such activity is unlikely to compete directly with traditional banking institutions.

II. THE OCC SHOULD BE MINDFUL OF CHARTER ARBITRAGE

As the OCC considers a special purpose FinTech charter, the OCC should be mindful of the possibility of charter arbitrage. Leader Bank anticipates many state chartered banks and mortgage companies will begin to separate their technology divisions and seek out a FinTech charter. From there, it is only a matter of time before institutions leverage their FinTech business to avoid banking regulations from which FinTech companies may be exempt by comingling traditional banking practices with their FinTech charters. This will lead to a competitive advantage in the market place as these companies could leverage less stringent regulations to make more profits on transactions being performed by nationally chartered banks.

III. THE OCC SHOULD PLACE A GREATER BURDEN ON FINTECH COMPANIES TO COMPLY WITH THE BANK SECRECY ACT.

In addition, the OCC should place substantial requirements on FinTech companies to ensure their compliance with the Bank Secrecy Act (BSA) and its associated regulations. Currently, some FinTech companies attempt to piggyback or rely solely on depository institutions for which they keep their accounts to ensure compliance with BSA requirements, effectively placing the burden on those banks to meet their regulatory requirements. If the OCC grants a special charter to a FinTech company and that company would need to identify and document the identification of their customers under the BSA, the OCC should now allow such companies to evade their own responsibilities by pointing to any national banks for which they do business. Rather, the OCC should require such companies to independently satisfy all requirements of BSA, preventing the burdening of the national banking system and encouraging more partnership between FinTech and traditional banking institutions. Moreover, requiring FinTech charters to independently satisfy BSA requirements will allow such companies and their bank partners to ultimately work out ultimate liability, whether shared or otherwise, for financial losses due to BSA related activity rather than place the burden solely on national banks. Such a requirement will not only help the FinTech companies grow, but also allow national banks to become more comfortable with FinTech companies and play a pivotal role in their growth as partners.

IV. Responses to Certain Questions Raised by the Paper

In addition to its general comments on the concept of a FinTech charter, Leader Bank also respectfully provides comments on certain of the questions presented by the OCC for comment in the Paper, specifically questions 1, 2, 7, 8, 9, 11 and 12.

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

There are many public policy benefits to approving FinTech companies to operate under a national bank charter. One of the key benefits is that it offers the OCC an opportunity to regulate FinTech companies. This will allow the OCC to ensure FinTech products benefit the public and offer the OCC an opportunity to leverage FinTech activities to further its public mission of ensuring the viability of the financial system by improving the customer experience and ensuring that banking remains on the forefront of the technological revolution. In doing so, the OCC should subject FinTech companies to stringent testing and review, with an emphasis on their rate of error.

There are also risks associated with granting FinTech companies a national charter. In particular, too much regulation could cause FinTech products to lose their identity. For example, if a product sets out to make a task easier, for example trading commodities, but regulations designed for national banks rather than the specific tasks engaged in by the FinTech company the regulations could hamper necessary innovation and the novelty of the technology is lost. When tailoring regulations for FinTech companies, the OCC must be mindful of the goal of technology in the financial sector: to make banking functions easier for the end consumer.

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 considering the capital and liquidity requirements for an uninsured special purpose national bank that limits the type of assets it holds, although Leader Bank believes that a categorical approach is necessary as outlined in its discussion in Section I above, the OCC should not far from the requirements that national banks currently must comply with. Otherwise, to allow FinTech companies the options to seek a national charter to compete with full service banks without needing to meet the full capital and liquidity requirements those banks are subject to would place traditional institutions at a competitive disadvantage and create friction between the banking and FinTech industries.

7. What are the potential challenges in executing or adapting a fintech business model to meet regulatory expectations, and what specific conditions governing the activities of a special purpose national bank should the OCC consider?

There are potential challenges in executing or adapting ownership requirements to a FinTech business model. Currently, ownership restrictions placed upon national banks and their holding companies preclude most venture capitalists from wanting to back banks, as those investors do not want to inadvertently subject themselves to bank holding company restrictions of ownership. Similarly, under a national FinTech charter, the OCC may inadvertently dissuade venture capital companies from investing in FinTech firms or provide a reason for well-capitalized FinTech companies to avoid national charter status. Removing the ability to pursue venture capital funds will undermine the current financing model for most FinTech firms, resulting in one of two results: the FinTech firm will seek financing from individuals, which has fewer opportunities for investment, or the FinTech go public to maintain adequate financing to grow, which is an expensive and time consuming process that would likely be an impossibility for most small and recently opened firms. Furthermore, under the Community Reinvestment Act (CRA), banks are subject to inclusion regulations based on the communities they serve. However, in the world of technology, a business based out of Washington, D.C. could have just as much, if not more of an impact on banking in California. Given the vital role technology can play in assisting outreach to low and moderate income communities, particularly those who lack brick and mortar banks in their general area, a careful consideration of CRA and community involvement requirements is essential to ensuring that these institutions help meet requirements to reach such underserved populations.

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?

FinTech companies operating under a national charter should operate within the same regulatory structure that small banks face. In principle, a nationally chartered FinTech company should be subject to the same annual review requirements of a traditionally chartered federal bank. As part of said review, the OCC should continue to use of Matters Requiring Attention (MRA) to ensure specially chartered national banks are protecting matters of public interest. Furthermore, it is important that special purpose national banks are not afforded special treatment to small banks that provide full services.

9. Would a fintech special purpose national bank have any competitive advantages over full-service banks the OCC should address? Are there risks of full-service banks from fintech companies that do not have bank charters?

Leader Bank refers the OCC to its discussion in Sections I and II above regarding the potential competitive disadvantages if a FinTech charter is not clearly defined to prevent overlap between such companies and traditional banking and lending companies. Moreover, if the lines between chartered FinTech companies and national banks become blurred, the potential for FinTech companies to leverage their charters to disadvantage national banks engaged in fintech is undeniable. With this same concept in mind, it is just as likely that state chartered banks and mortgage companies will seek to separate their FinTech divisions and seek a national FinTech charter with the intent of loosening state regulatory requirements while still being exempt from certain regulations applicable to national banks. If either of these acts were to occur, it would undermine the OCC's overall regulatory framework and place traditional national banks at a severe competitive disadvantage.

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 place the burden on FinTech companies seeking a special purpose national charter to outline clear and concise risk based strategies. As such, these companies should be required to outline a fully plausible exit strategy that protects its consumers and limits exposure. An emphasis should be placed on the amount of reserves held by the FinTech company. The FinTech company should be required to have an adequate amount of reserves to ensure it protects the consumers should failure occur. Lastly, an exit strategy and reserve requirement should be tailored to the amount of risk the FinTech company is engaged in. The more risk to the banking system, consumers and the company, the more detailed the exit strategy and the higher the reserve requirement.

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Leader Bank hopes that its comments on the Paper and the role of FinTech in the national banking system is useful to the OCC in addressing the thoughts and concerns of players in the financial sector. We thank the OCC for the opportunity to comment, and we look forward to more information and papers on the subject matter.

Sincerely yours,

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Sushil K. Tuli
President & CEO
Leader Bank, N.A.

Sincerely yours,

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