January 17, 2017

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219
(By email to: specialpurposecharter@occ.treas.gov)

Re: OCC White Paper "Exploring Special Purpose National Bank Charters for Fintech Companies"

Dear Comptroller Curry:

Lending Club is pleased to have the opportunity to participate in the discussion you have opened on "Exploring Special Purpose National Bank Charters for Fintech Companies." At Lending Club, our mission is to transform the banking system by making borrowing more affordable and investing more rewarding. We are working to advance responsible innovation by using technology to make borrowing and investing more transparent, efficient, and customer-friendly.

We are pleased to enclose the following letter to share our perspective on special purpose charters designed to enhance the public benefit of marketplace lending.

Sincerely,

Scott Sanborn
Chief Executive Officer
Lending Club

January 17, 2017

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219
(By email to: specialpurposecharter@occ.treas.gov)

Re: OCC White Paper "Exploring Special Purpose National Bank Charters for Fintech Companies"

Dear Comptroller Curry:

Lending Club is pleased to have the opportunity to participate in the discussion you have opened on "Exploring Special Purpose National Bank Charters for Fintech Companies."[1] The approach set forth in your release is thoughtful and forward-looking. We appreciate the chance to share our perspective on marketplace lending, its impact on consumers and businesses, and the contours of special purpose charters designed to enhance the public benefit of this industry.

Lending Club is the world's largest online credit marketplace, facilitating personal loans, auto loans, and small business loans. Borrowers access lower interest rate loans through a fast and easy online or mobile interface. Investors provide the capital to enable many of the loans in exchange for earning interest. We operate fully online with no branch infrastructure, and use technology to lower cost and deliver an amazing experience. We pass the cost savings to borrowers in the form of lower rates and investors in the form of attractive returns, helping people achieve their financial goals every day.

Our mission is to transform the banking system to make borrowing more affordable and investing more rewarding. We have facilitated over $22 billion in loans to more than 1.7 million

---

[1] *Exploring Special Purpose National Bank Charters for Fintech Companies*, *hereinafter* "OCC White Paper," OFFICE OF THE COMPTROLLER OF THE CURRENCY, Washington, D.C. (December 2016), *available at*: https://www.occ.gov/topics/bank-operations/innovation/special-purpose-national-bank-charters-for-fintech.pdf.

individual and small business borrowers since our founding in 2006. Among other benefits, these loans have saved consumers over $1.6 billion dollars[2] by helping them refinance expensive credit card debt into lower-rate term loans.

Despite having facilitated more than $22 billion in loan originations by our partner banks to consumers and small businesses, opportunities remain. For example, the average APR on automobile financing obtained through a dealer is 8.78%.[3] Lending Club believes this rate can be materially reduced through our use of technological advances and elimination of dealer mark-ups. A similar story rings true in other lending segments. The facilitation of credit does not merely impact the borrowers who receive the loans. Rather, these loans are a springboard for economic growth and job creation in communities across the country. A more direct path to facilitating those loans would allow marketplace lenders such as Lending Club to more easily make credit available to borrowers and thus unlock the broader benefits that accompany these loans.

Executive Summary

New technologies are making financial services more accessible, affordable, and easier to use. We applaud the OCC for its work to support this responsible innovation. The proposed special purpose national bank charters present marketplace lending with an additional path to continue to grow and serve consumers and small businesses nationwide more efficiently, fairly, and affordably. Although the term "marketplace" is sometimes used to refer to fintech lending broadly, for purposes of this comment letter we use it to refer the model of two-sided marketplace platforms, which connect borrowers and investors rather than traditional models of lending from a balance sheet.

Obtaining a national bank charter brings responsibilities alongside its privileges, and we fully support the OCC's efforts to ensure that applicants for the special purpose charter satisfy standards that protect the banking system and ensure consumers and businesses are served in a safe, fair, and responsible manner. To that end, we offer comments on the following topics:

[2] Based on responses from 14,986 borrowers in a survey of 70,150 randomly selected borrowers conducted from July 1, 2014 – July 1, 2015, borrowers who received a loan to consolidate existing debt or pay off their credit card balance reported that the average interest rate on outstanding debt or credit cards was 21.8% and average interest rate on loans through Lending Club is 14.8%. Lending Club determined a total payment the borrower would have made if they had paid off their credit card or debt in the same term as would correspond to the loan through Lending Club. Lending Club then compared that to what borrowers would pay in interest and origination fee on a loan through Lending Club, repaid on schedule.

[3] Experian, *State of the Automotive Finance Market* (Q4 2015) *available at* http://www.experian.com/assets/automotive/quarterly-webinars/experian-auto-2015-q4.pdf.

1. <u>Marketplace Lending Regulatory Models</u>

    a. *Existing marketplace lending regulatory models*: Currently, marketplace lending operates through either a direct lending model via state licensing or through an originating bank model as service provider to an FDIC-insured bank. The OCC should ensure that the addition of a new special purpose charter bank option is in no way restrictive of the responsible use of the originating bank model for marketplace lending, which affords robust federal and state supervision and has increased credit affordability and for consumers and small businesses nationwide.

    b. *Proposed special purpose national bank charter*: While marketplace lending platforms are able to operate responsibly under the existing models, a national special purpose charter would have unique benefits to support responsible innovation. A direct relationship with the OCC as a federal chartering agency could (i) ensure a focus on responsible innovation, (ii) improve simplicity of supervision and management, (iii) reassure banks and the public of consistency in regulatory and compliance requirements, (iv) lower costs relative to the originating bank model, enabling better rates for borrowers and investors, and (v) encourage partnerships between special purpose national banks and a broader range of banks perhaps more familiar with the OCC than with the existing marketplace lending regulatory models.

2. <u>Ensuring the Special Purpose Charter Supports Responsible Innovation</u>

    a. *Small business protections*: Small businesses lack some basic borrower protections, and a more complete protection framework is needed. The OCC should establish responsible lending standards as a requirement of the charter, and can look to the consensus established by consumer groups, CDFIs and leading marketplace lending platforms in the Small Business Borrowers Bill of Rights[4] to develop these standards.

    b. *Responsible lending*: To make it clear that the special purpose charter is cannot be used to evade substantive consumer protections, the OCC should consider limiting the lending activity for special purpose-chartered firms to rates of 36% APR or less.

    c. *Financial inclusion*: Fintech firms meeting the required public purpose for the new special purpose charter must serve the community broadly, and with helpful, not harmful, financial products. These special purpose banks should establish a strategic plan for financial inclusion, strive to "lead the market" with respect to inclusion, and demonstrate community development benefit through partnerships or programs.

[4] The Small Business Borrowers' Bill of Rights is available online at www.ResponsibleBuisinessLending.org.

3. Safety and Soundness

   a. *Unique considerations:* The marketplace model differs from the traditional balance sheet model of lending in that each loan is matched through the marketplace with capital from investors. Those investors, rather than the marketplace platform, earn the interest income from the loans and bear the associated risk. This model has unique benefits to safety and soundness, as the marketplace is not subject in traditional ways to credit risk, risk to FDIC-insured deposits, or to the liquidity risk of maturity transformation between short-term deposits and long-term loans.

   b. *Capital and liquidity*: Marketplace lending platforms should hold sufficient operating liquidity to ensure the ability to continue operations through temporary challenges. Because of the differences between the marketplace model and traditional balance sheet models, we believe that it is crucial that capital and liquidity standards be tailored closely to the business model and actual capital needs of the individual charter applicant.

   c. *Growth limits*: To support the growth of responsible innovation, the OCC should not unduly constrain growth for marketplace lending innovations if depositors and FDIC insurance are not at risk. Special purpose banks should be permitted to grow to the extent that management, compliance, internal controls, information systems, and servicing capabilities support such growth.

   d. *Concentration risk*: Charters are best suited for firms that have achieved some diversification by serving a broad range of customers with multiple products or large volumes of products and instruments.

   e. *Resolution planning*: Resolution planning for a marketplace lending platform is less complex, and largely limited to ensuring that a credible and workable plan is in place to prevent disruption to the servicing of existing loans. Additional requirements for resolution planning should be tailored to the specific risks posed to consumers or the financial system, taking into account that a marketplace failure may not pose risk to consumers, given there are no depositors, or to taxpayers, given there is no FDIC insurance, or to the financial system, given that a marketplace's matching of assets and liabilities minimizes the possibility of certain types of liquidity crises. As a result, a marketplace lender could be resolved with minimal cost or administrative burden to the OCC.

1. Marketplace Lending Models

Currently, marketplace platforms operate through one of two frameworks: (1) direct lending from the platform, as the lender, to the consumer or small business, which typically requires state-by-state licensing; or (2) in partnership with an issuing bank, in which a platform performs certain services to facilitate the loan and the partnering bank is responsible for origination. Regardless of the framework through which a marketplace platform operates, significant regulatory oversight currently exists at both state and federal levels.

State-by-State Licensing Model

For a marketplace platform to originate loans directly, it must obtain the applicable licenses in each state in which it engages in lending activity. By licensing itself as a lender, the marketplace platform becomes subject to state-level supervision and enforcement, and to federal enforcement with respect to certain activities.

I served as the Superintendent of Banks for the State of New York from 2007 to 2011. During that time, state regulation of the banking system was critical to minimize the impact of the financial crisis. Based on that experience, I have a strong understanding of the importance of state banking regulation's role in ensuring the financial security of institutions and consumers. I also understand the difficulties a multi-state regulatory system can sometimes create. Given the diversity among state regulations, operating under multiple states' licenses can subject a lender to very different, and sometimes outdated, requirements. For example, some states require physical offices, or for finance companies to accept payments in person.

Marketplace lending's ability to deliver affordable, responsible lending nationwide is built on technology and business model innovations that drive down operating costs, enabling the marketplace to offer better rates to both borrowers and investors. Unfortunately, the benefits of this innovation can be eroded by the cost and complexity of utilizing different forms of loan documentation in different states, developing legal expertise in the laws of each state, monitoring each state for legal changes, obtaining licenses and paying licensing fees, undergoing examinations by multiple state regulators, and managing different product requirements in different states. While state laws can offer important consumer protections, at times they can inadvertently inhibit responsible and innovative lending practices.

Originating Bank Model

Under the second framework, which is used by Lending Club, all loans are issued by a federally insured bank. The marketplace platform acts as a third-party vendor of this originating

bank. After the bank originates a loan, it sells the loan to the marketplace platform, though the originating bank generally retains some of the economic exposure of the loan, and in the case of Lending Club, the originating bank also retains an ongoing relationship with the borrower. The marketplace platform then issues either notes backed by the loans to investors, or sells the whole loans themselves to entities that wish to hold the asset, such as a community bank. As the loans are issued by a bank, borrowers benefit from the same regulatory protections as any other bank customer.

Working in conjunction with originating banks has held Lending Club to high compliance and regulatory standards. Because the marketplace platform is a service provider to the bank, it is held to strict regulatory compliance and consumer protection standards through the bank's compliance program. Owing to the strong expectations by federal and state regulators of bank oversight of third-party relationships, a marketplace platform is subject to intensive monitoring by its issuing bank partner as it performs tasks such as applying the bank's credit policy, underwriting loans on the bank's behalf, and verifying identity and credit of prospective borrowers. The FDIC, in its proposed guidance on Third-Party Lending, provides further clarity on its intent to oversee these arrangements. [5]

Lending Club also has arrangements with many other banks who private-label loan products through Lending Club to their customers or purchase loans through the Lending Club platform.[6] These banks perform additional compliance and due diligence reviews, creating additional indirect oversight. Their regulators may review the banks' partnerships with Lending Club in the course of supervision. And, through the Bank Service Company Act, the regulators of these banks or the originating bank have the authority to review Lending Club directly as a third party service provider. [7]

This model eases the burden of compliance with many states' differing and potentially conflicting requirements regarding rates, fees, and the particulars of the origination and servicing of loans. These in turn allow the marketplace and the issuing bank to achieve economies of scale and to serve more customers and communities; in turn affording responsible credit to qualified borrowers.

This model is not unique to marketplace platforms. The same model is used for some student loans, auto loans, private label credit cards, and other types of lending. Lending Club shares the concerns of many consumer advocates that the issuing bank model (like any other platform – even traditional banks), if not carefully supervised and regulated can be abused to offer irresponsible products that may harm bank customers and may create risks for banks; however, our experience has shown us that the issuing bank model can be used responsibly to

[5] FDIC, FIL-50-2016 "Examination Guidance for Third-Party Lending"
[6] Note that these additional arrangements with banks are not limited to the originating bank model.
[7] 12 U.S.C. § 1867(c).

provide responsible loan products that deliver greater consumer benefit than would be possible through state licenses. The fact that we undertake public offerings of securities, acting as a an issuer counterparty to a wide variety of investors, and partner with banks subject to careful state and federal examinations and regulation, which exercise direct oversight over the platform, helps us to ensure that our program is well-managed. And a well-managed program ultimately translates to better products for consumers.

The Option of a Special Purpose National Charter (Responsive to Question 1)

We support the OCC's proposal to make available a special purpose national banking charter that is tailored to the specific business needs of financial technology companies as a new option for marketplace lending. While our experience shows that marketplace lending is able to innovate under the originating bank model, a special purpose national charter would have unique benefits to promote responsible innovations. A direct relationship with the OCC as a federal chartering agency could (i) ensure a focus on responsible innovation, (ii) improve simplicity of supervision and management, (iii) reassure banks and the public of consistency in regulatory and compliance requirements, (iv) lower costs relative to the originating bank model, enabling better rates for borrowers and investors, and (v) encourage partnerships between special purpose national banks and a broader range of banks perhaps more familiar with the OCC than with the existing marketplace lending regulatory models.

By tailoring the regulatory and compliance framework to an institution's size, business model, complexity and risk profile, the special purpose charter would support responsible innovation. The special purpose charter would offer technology innovators who desire it an "on-ramp" to the comprehensive national oversight standard that national banks currently operate under. This on-ramp would allow them to assimilate their business models into the obligations, responsibilities and privileges that attend a banking charter, and to do so at a pace that is consistent with responsible growth and innovation.

Special purpose charter furthers another important policy goal—re-establishing new entry into the banking system. Both the Congress and the FDIC recently have been focused on the relatively low level of *de novo* entry into the banking system in the wake of the financial crisis and low interest rates.[8] As the economy and the banking system continue their recoveries, conditions are ripe for new entry and innovation. Understandably, one factor at the forefront of regulators' minds when considering new charter applications is whether *de novo* banks will pose risks to the Deposit Insurance Fund. Here, the special purpose charter presents two benefits.

[8] *See, e.g.,* Press Release, Federal Deposit Insurance Corporation, "FDIC Seeking Comment on New Handbook for De Novo Organizers Applying for Deposit Insurance" (December 22, 2016) *available at* https://www.fdic.gov/news/news/press/2016/pr16110.html.

First, the grant of a special purpose charter does not require accompanying deposit insurance, thus minimizing risk to the DIF. Second, in evaluating special purpose charter applications, rather than analyzing merely proposed business plans and *pro forma* financial projections, the OCC will have the opportunity to evaluate an applicant's actual financial performance and experience in offering responsible products and services.

2. **Ensuring The Special Purpose Charter Supports Responsible Innovation** *(Responsive to Question 8)*

The OCC should ensure that strong consumer protections and financial inclusion requirements are built into the charter approval and supervision process. Commentators who have publically opposed the concept of a special purpose fintech charter have done so for a number of reasons, but, at the risk of oversimplification, they can be summarized as a fear that the charter would open the way to a "low road" path that gives predatory lenders a means to exploit consumers and undercut more responsible competitors, all under the patina of credibility that a bank charter provides.

We understand these concerns. State consumer protection laws provide a vital role in maintaining the responsibility, integrity and effectiveness of the financial system and the companies that operate within it. State enforcement actions, as well as community engagement and reinvestment requirements, shore up public trust in our banks, and are part of the reason why the U.S. banking system is the strongest in the world.

We also understand that a healthy financial ecosphere requires all actors, not just banks, to lend a hand in building trust in the financial system. That is why many of Lending Club's employees chose to find a home at Lending Club and work towards our mission to transform the banking system to make credit more affordable for consumers and investing more rewarding. The OCC should expect high standards of any charter applicant or special purpose bank.

Borrower Protection Conditions (Responsive to Q6, Q8 & Q11)

We believe that special purpose national bank charter applications submitted by fintech lending innovators should be evaluated with respect to whether the lending services made available are responsible. Specifically, the OCC should (1) develop responsible lending guidelines that address the gap the OCC has identified in protections for small business borrowers, which must be considered in the charter application process, and (2) consider a 36% APR rate cap for lending activity under a special purpose charter. These measures would enable the OCC to ensure that the privileges of a national banking charter are granted only in the public interest and to institutions that are capable of meeting the obligations and responsibilities.

Small Business Borrower Protections (Responsive to Question 6): As the OCC observed, there is a gap in the protections afforded to small business, to whom most consumer protections laws do not apply. For example, the Truth in Lending Act does not protect small businesses. As a result, some small business loan products do not disclosure annualized interest rates or APRs and instead use pricing metrics that Federal Reserve research has indicated are widely misunderstood.[9] The OCC should address gaps like these by requiring responsible lending practices of charted special purpose banks. To define these practices for small business lending the OCC can draw on the Small Business Borrowers' Bill of Rights, which is the first-ever cross-sector consensus on responsible small business lending practices.[10] This consensus has been widely validated, and has been signed by over 70 organizations including for-profit and nonprofit lenders, fintechs, CDFIs, brokers, banks, investors, advocates, and others.

The Small Business Borrowers' Bill of Rights was developed by the Responsible Business Lending Coalition, and we refer the OCC to its comment letter for more detail on specific suggestions to address the following problems: Obfuscation of very high costs; Misaligned incentive between lenders and borrowers; Double-charging borrowers when their loans are renewed through a practice called "double dipping"; Mismatch between the use a product is designed for and the use it is marketed for; Hidden prepayment charges; Misaligned broker incentives; and "Stacking" of too much debt. Drawing on the Small Business Borrowers' Bill of Rights, the OCC can and should define standards that protect borrowers, and the credibility of the banking system, from these practices.

Consideration of a 36% Rate Cap: Although a federal charter would not preempt state UDAAP, Fair Lending, or other protections, it would likely preempt state rate caps. The OCC should consider the value of rate caps as a policy choice widely adopted among the states because of their value as a simple, effective way to protect borrowers from unaffordable loans and to align the interests of lenders and borrowers.[11, 12] UDAAP and Fair Lending alone do not protect consumers from products with rates in the triple-digits, debt-trap dynamics, misaligned incentives, and significant borrower inability to pay that can accompany very high rates.

---

[9] Lipman, Barbara and Ann Marie Wiersch. "Alternative Lending Through the Eyes of 'Mom & Pop' Small-Business Owners: Findings from Online Focus Groups." Federal Reserve Bank of Cleveland. August 25, 2015

[10] Over 70 lenders, marketplaces, and brokers, nonprofits, have signed the Small Business Borrowers' Bill of Rights. *See* http://www.ResponsibleBusinessLending.org.

[11] Lauren Saunders et al., *Misaligned Incentives: Why High-Rate Lenders Want Borrowers Who Will Default*, NATIONAL CONSUMER LAW CENTER (July 21, 2016), *available at*: http://www.nclc.org/issues/misaligned-incentives.html.

[12] On small-dollar loans, a rate over 36% would violate state law in 18 states plus D.C. *See* Carolyn Carter et al., *Installment Loans: Will States Protect Borrowers From A New Wave Of Predatory Lending?*, NATIONAL CONSUMER LAW CENTER 45 (July 30, 2015), *available at*: http://www.nclc.org/images/pdf/pr-reports/report-installment-loans.pdf.

The OCC should consider placing a 36% APR rate cap on special purpose banks. A rate cap would make it clear that the national charter is not being used to evade substantive consumer protections. The rate cap could be enforced by escalating examination and supervision activities for charterholders that breach the cap and utilizing the full range of enforcement actions for repeated or willful charter breaches. An APR of 36% is an appropriate threshold for the rate cap, as it is widely used as a dividing line between irresponsible loans and those that consumers are more likely to be able to afford.[13] This is also the interest rate cap that was established by the Military Lending Act,[14] and as such is a rate cap that lenders with experience lending to servicemembers are accustomed adhering to. Loans bearing rates in excess of 36% may permit very high rates of and default and potential borrower harm, and are more likely to result in enforcement actions being brought against the lender.[15]

Financial Inclusion Conditions (Responsive to Questions 3 and 7)

We are pleased the OCC has highlighted the benefits that technology platforms can provide in increasing financial inclusion. As the finance industry develops beyond the traditional banking models for which the Community Reinvestment Act of 1977 ("CRA") was designed, we recommend the OCC look to three goals underlying financial inclusion policy: financial access, financial safety, and financial health. In other words, firms meeting the required public purpose must serve the community broadly, and with helpful, not harmful, financial products.

To demonstrate contributions to public purpose through financial access, safety, and health, we recommend that special purpose banks establish a "strategic plan" for financial inclusion, including measurable goals, and in consultation with community groups.[16] Within such a plan:

a) The products offered should serve a broad range of the community, across income levels;

b) The geographic community to be served would likely simply be the national market for most special purpose national banks;

c) Special purpose national banks should strive to "lead the market" and not "lag the market" in serving low- and moderate-income households and communities with responsible products consistent with their business segments and safety and soundness;

[13] *See, e.g.,* Lauren K. Saunders, *Why 36%? The History, Use, and Purpose of the 36% Interest Rate Cap*, NATIONAL CONSUMER LAW CENTER (April 9, 2013), available at https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf.
[14] 10 U.S.C. § 987.
[15] *Misaligned Incentives*, NATIONAL CONSUMER LAW CENTER
[16] 12 CFR § 25.27.

d) Community investment activity should be demonstrated through partnerships or programs with community development organizations or a community development purpose;

e) All products should be responsible and offered through a robust compliance program, including fair lending and other borrower protections discussed above in section 4 of this letter; and

f) Special purpose banks should evaluate how their products contribute to consumer and small business financial health.

Below we address each of these elements individually.

a) *Serve the community inclusively:* Firms that serve a broad range of the community, including, moderate and low-income people, may meet the OCC's goal of public benefit. While excellent financial products provided to exclusively affluent clients may be high-quality, they may not contribute to an inclusive financial system and the OCC's public purpose obligation. Indeed, inclusion is considered a public benefit because serving the community inclusively can be difficult. Fortunately, the innovation of the marketplace lending model lends itself naturally to serving a broad range of the community, and Lending Club is a good example.

The borrowers served through Lending Club span much of America—across income levels, credit scores, and geographies. Borrowers through the Lending Club platform range from well-off consumers borrowing to renovate their homes to middle and lower-income consumers seeking to lower the cost of their credit cards or auto loans, to small business seeking smaller loans that have become difficult to access from traditional banks.

This broad service is a strategic result of our marketplace model. The diversity of capital sources, which includes individuals, institutional investors, and traditional banks, provides an exceptionally broad range of risk/return preferences. This enables Lending Club to work with a broader range of borrowers than most traditional models may. The ability to serve a broad population is enhanced by Lending Club's technology, which lowers the cost of facilitating loans and facilitates excellent risk-modeling. The credit models we support for our issuing banks are able to evaluate credit risk twice as effectively as generic scores provided by major consumer reporting agencies.[17] These factors also enable the Lending Club platform to offer lower rates, reach more borrowers, and enable cost effective delivery of smaller loans. Though Lending Club, borrowers can access personal loans as small as $1,000 and business loans and lines of credit as small as $5,000.

[17] Based on a comparison of the currently deployed model on the platform to industry generic scores such as FICO utilizing the Kolmogorov–Smirnov test, an industry standard measure of the effectiveness of a risk model.

b) *Geography:* The communities served by brick and mortar banks have traditionally been defined by the geographic distribution of deposits and of branches. Many fintech companies have neither. Moreover, the absence of a costly branch infrastructure contributes to Lending Club's lower operating cost ratio of 2-3%, as compared to a traditional lender's 5-7%, enabling cost savings to borrowers in the form of lower rates.[18] Without deposits or branches, it makes little sense to define a geographic service community. Rather, marketplace lending platforms should serve a national market, including low- and moderate-income and minority communities, and the OCC should enforce fair lending and anti-redlining laws.

c) *Assessment:* As the OCC has noted, marketplace lending companies may be able to help address the financial system's persistent financial inclusion challenges through technology innovations. Achieving inclusion levels that "lead the market" and do not "lag the market" would be a measurable way to demonstrate success. A special purpose bank, as part of its strategic plan, could identify the applicable market and the levels of service that it strives to meet. An example of a market-leading practice is Lending Club's small business product, which reaches about double the percentage of minority-owned small businesses as compared to traditional branch banking.[19] Analysis also indicates that 71% of small business borrowers in this program otherwise lacked access to affordable capital or had not pursued it.

d) *Community Development (Responsive to Question 9):* Just as traditional banks are assessed for their community development work, special purpose chartered banks should be expected to contribute to community development. Programs focused on the unique needs of underserved populations or partnerships with community development organizations may achieve this goal.

Marketplace lending can even help traditional banks reach underserved communities, as encouraged by the CRA. In 2015, Lending Club conducted an innovative partnership with Citi and Varadero Capital, designed to deliver affordable credit to underserved borrowers specifically in low and moderate-income communities. Borrowers applying through Lending Club from certain low- to moderate-income geographies, and with incomes below 80% area median income, qualified for discounted pricing through this program. This enabled Citi to

---

[18] Lending Club's operating cost ratio of 2-3% is estimated on a run rate basis on operate expenses for quarter ended June 30th, 2016 annualized, assuming no growth in monthly rate of origination volume. Traditional lenders' operating expenses ratio of 5-7% is operating expenses expressed as a percentage of outstanding loan balance. The analysis used Q2 2016 and included Wells Fargo % Co., Citi, Capital One Financial, Discover Financial Services, Bank of American, and JPMorgan.

[19] Based on BISG analysis of Lending Club business loan borrowers, benchmarked to 14.6% representation of minority-owned businesses in traditional retail bank loans, as per Usman Ahmed, Thorsten Beck, Christine McDaniel, and Simon Schropp, "Filling the Gap: How technology Enables Access to Finance for Small- and Medium-Sized Enterprises." *innovations* / volume 10, number ¾, 42 (2016).

efficiently deploy capital to lower-income borrowers by leveraging the operating efficiency and reach of Lending Club's platform.

Lending Club's partnership with Opportunity Fund, one of the leading nonprofit small business lenders in the United States, is an example of a fintech/CDFI community development partnership. This partnership combines the strengths of the marketplace lending and CDFI models in order to expand access to capital to small businesses that neither organization would be able to serve on its own. Lending Club contributes our technology, enabling loans to be underwritten at lower operating cost, our focus on customer experience to provide applicants a simple and fast experience, and the broad reach of our applicant base and marketing activities. Opportunity Fund provides a CDFI's expertise with "high-touch" service to help borrowers who do not qualify for the core Lending Club program to prove themselves to be creditworthy. This program began as a pilot in California, and is moving towards expansion into other states to serve more underserved small businesses.

e) *Protections*: Borrowers should not simply be served; They should be served safely and fairly. It is no help to underserved communities to be targeted with irresponsible credit products. All products offered should adhere to the compliance and protection standards discussed above. With respect to financial inclusion, a fair lending program is particularly important to ensure that women, minorities, and other protected classes are served fairly and not excluded.

f) *Financial Health:* High-quality products contribute to the financial health of the customers that use them. Improving financial health is, perhaps, the primary underlying reason for financial inclusion policy. Within a strategic plan for financial inclusion, a special purpose bank can propose a plan for assessing its impact on the financial health of its customers, with the goal of improving customers' financial health.

While we are proud of contributions we have made to financial inclusion, Lending Club, and perhaps fintech broadly, will not have solutions for everyone. For example, borrowers through Lending Club must already be "banked" with an existing bank account where Lending Club can deposit loan proceeds. Most borrowers in fact already have credit card debt, which they are refinancing through Lending Club in order to save money through lower interest rates and responsible product structure. We believe that the value of financial inclusion does not stop at the first financial product a person receives, and that helping borrowers access subsequent products that deliver lower rates or needed capital can be a meaningful contribution to inclusion. We hope to build on these contributions as our company and industry evolves.

3. **Safety and Soundness: Prudential and Supervision Requirements** *(Responsive to Question 8)*

We believe that a robust regulatory and supervisory framework that is closely tailored to the business of the special purpose national bank will promote fairness to consumers and investors. Such oversight should include minimum capital and liquidity ratios and regular examination and supervision of risk management and compliance. These provisions must, however, be tailored to the individual applicant based on size, complexity, operational, balance sheet risk and business model considerations. Consideration should be given to the distinctions between the marketplace model versus a balance sheet lending model. Keeping in mind that a marketplace platform like ours distributes credit risk off of its balance sheet to the investors who enjoy the returns on the investment, it will be critical to tailor capital requirements to the retained risk. It is also critical to calibrate these requirements to conform to the risk that a particular special purpose charter applicant would pose to the banking and financial system. Absent access to the Deposit Insurance Fund, these risks should be materially lower than the risks posed by a deposit-taking institution. We address the prudential benefits of the special purpose national bank charter and the appropriate regulatory protections in turn below.

Systemic Risk and Diversification: Benefits of Marketplace Lending (Responsive to Questions 2, 8, and 10)

As an initial matter, we strongly believe that the marketplace lending model can offer improvements to systemic risk management and financial stability. Our online platform is designed efficiently to connect borrowers and investors so that both benefit financially. This model can support financial stability by (i) matching the maturity terms of assets and liabilities so that a "run on the bank," in which the bank is unable to meet its liabilities, is extremely unlikely, (ii) replacing the traditional banking model of concentrating risk on leveraged balance sheets of money-center banks with a model that distributes risk throughout a diverse network of investors; and (iii) benefiting from diversified capital sources.

First, as discussed above, the Lending Club marketplace reduces systemic risk by matching the maturities of assets and liabilities. A traditional bank performs term transformation, by turning short-term liabilities (deposits) into long-term assets (loans). This creates the risk of a "run on the bank" type liquidity crisis, where liabilities must be met before the assets mature. This is the reason for FDIC insurance.

No such "run on the bank" is possible in Lending Club's marketplace model. Lending Club issues securities in transactions registered under the Securities Act of 1933 and, where

appropriate, sells whole loans to investors to raise the capital needed to acquire loans from the originating bank and then subsequently sells the loan to an investor who is looking to hold the assets, such as a community bank. The securities are limited obligations that require Lending Club to make payments to investors *only* if the borrower makes a payment on the underlying loan, thereby matching the asset (the borrower promissory note) with the liability (the obligation of Lending Club, as the security issuer, to pay the investor). As a result, there is no possibility of a "run on the bank" where Lending Club is unable to meet those liabilities, no need for FDIC insurance, and reduced systemic market level risk related to the volume of lending.

Second, our marketplace model allocates risk through a distributed network of hundreds of thousands of investors, in contrast to the traditional model of concentrating risk on the leveraged balance sheets of traditional lenders or a money-center banks. Balance sheet lending generally relies on leverage, which amplifies risk. During periods of financial crisis, a small decline in the value of the asset can erase a significant portion of a lender's equity position. As Lending Club's marketplace connects borrowers with investors, the marketplace model has no inherent leverage on the platform which would amplify the marketplace's exposure to risk. Investors on the Lending Club platform may at times employ leverage, though the vast majority do not.

Third, the diversity of the investor base on the Lending Club platform creates stability. Investors range from individual retail investors to high net worth individuals, managed funds, foundations, endowments, community banks, and large banks. Retail investors purchase notes registered with the SEC, in increments as small as twenty-five dollars in order to diversify, and enjoy democratized access to an asset-class previously not available to them. Large investors may purchase hundreds of millions of dollars of whole loans with through a model that provides exceptional transparency to the underlying assets. Banks invest through the Lending Club platform as a way to leverage our technology, efficiency, and customer experience to better serve their customers and to deploy assets. There are hundreds of thousands of investors and each type behaves differently. This diversity can create a stability of funding generally not shared by traditional balance sheets reliant on leverage from a small number of warehouse lines of credit. Additionally, the diversity of investor risk/return preferences allows diversification of credit risk. Working with an exceptionally broad range of borrowers, from super-prime to near-prime, reduces concentration risk of narrow credit market exposure.

As a result, the OCC should recognize the ways in which marketplace lending platforms are subject to different risks than depository firms and other types of institutions whose failure can lead to market contagion and other disruptions in the event of their failure. The ongoing services and obligations of a marketplace lending platform can easily be taken over by a successor institution if properly structured. For example, disruption to ongoing servicing requirements in the cases of outstanding loans can be prevented by ensuring that a well-vetted and reputable back-up servicer is contractually engaged and ready to step in if needed. For this reason,

resolution planning is less complex for a marketplace lending platform charterholder, and largely limited to ensuring that a credible and workable plan is in place to prevent disruption to servicing of existing loans. A marketplace lender could be resolved with minimal cost or administrative burden to the OCC.

Capital and Liquidity (Responsive to Questions 2, 8, and 10)

We agree that the oversight of safety and soundness of special purpose national banks, as with all banks, begins with minimum capital and liquidity standards. We believe that it is crucial that these standards be tailored closely to the business model of the individual applicant. As described above, marketplaces operate a "matching" business that reflects some significantly reduced risks. The functional purpose of capital and liquidity requirements for marketplace should be to (i) ensure the marketplace can continue operations through temporary disruptions, and (ii) execute an orderly resolution plan to transfer serving to a backup servicer.

With respect to the regulation of marketplace lending platforms seeking special purpose national bank charters, we support the prudential standards proposed by the MLA as part of its Marketplace Lending Best Practices. While these standards are appropriate for the marketplace model, other business models may be suited to different requirements commensurate to the specific risk they present. We recommend that the OCC adopt standards that take into account the following guidelines with respect to minimum capital and liquidity of special purpose charter marketplace lending platforms:

- *Operating Liquidity*. We believe that marketplace lending platforms should maintain internal policies and procedures to preserve stability if faced with unexpected pressures, including maintaining a cash operating reserve (liquid cash and short term assets) in an amount sufficient to continue necessary and contractual operations for at least six months.

- *Business Continuity Plan*. Marketplace lending platforms should maintain a plan that adequately addresses possible risks to the business, designed to enable the marketplace to resume reasonable operations without material disruption to investors or borrowers.

- *Orderly Wind Down*. Marketplace lending platforms should ensure investors have access to a backup loan servicer, if they choose, able to assume full servicing responsibility for existing loans issued through the marketplace without material disruption in the event that the marketplace is unable to continue performing servicing functions.

Examination and Supervision (Responsive to Questions 8, 11, and 12)

We also agree with the OCC's proposed approach to examination and supervision of special purpose national bank charters. The OCC White Paper aptly notes that "applying the OCC's uniform supervision over national banks, including fintech companies, will help promote consistency in the application of law and regulation across the country and ensure that consumers are treated fairly."[20] Indeed, we strongly support the OCC's position that "fintech companies vary widely in their business models and product offerings,"[21] and believe that such companies should be supervised in a manner commensurate with their business model, size, risk, and complexity. Fintech charterholders should of course be "held to the same rigorous standards of safety and soundness, fair access, and fair treatment of customers that apply to all national banks and federal savings associations,"[22] and such standards should be modified only to accurately reflect the risks presented by the specific business under supervision. We also support the standards promulgated by the MLA in the context of examination and supervision of marketplace lending platforms. We recommend that the OCC adopt standards that take into account the following guidelines with respect to examination and supervision of special purpose charter marketplace lending platforms:

- *Robust Business Plan.* We think that the proposal for a robust review of the charter applicant's business plan provides a significant opportunity for the OCC to evaluate the particulars of the applicant's business and to determine whether the business presents risks that differ from full-service banks. The applicant's business plan should explicitly address the specific risks presented by the proposed business model, including risks related to the source of funds, securitization, and matching of assets and liabilities. And we agree that a well-developed business plan is "a key component" of any charter proposal that should facilitate the identification of the individualized standards necessary for the particular business model. That said, we do not believe that applicants who will not accept deposits should be required to adhere to the growth caps applicable to such institutions, as businesses that do not require a deposit base (such as marketplace lending platforms raising capital through securities offerings) are able to grow more quickly in a safe and sound manner and without risk to the Deposit Insurance Fund.

- *Risk Management and Compliance*. We also agree that a strong compliance infrastructure "contributes to a national bank's safe and sound operation, as well as the provision of fair access to financial services, fair treatment of customers, and compliance with applicable laws."[23] In our view, managing risk is a core function of the marketplace lending model. Applicants should therefore be required to maintain robust programs to manage the specific risks they face (and to identify those risks in a proactive manner). Marketplaces should maintain an effective model governance program including regular and periodic monitoring and validating credit risk and fraud risk models, and using recent and

[20] OCC White Paper at 2.
[21] *Id*.
[22] *Id*.
[23] OCC White Paper at 11.

appropriate data in model development. When developing and evaluating risk models, applicants should conduct appropriate analysis to consider the potential impact of economic cycles on loan performance.

The OCC should also require applicants to demonstrate a "culture of compliance" and a "top-down, enterprise-wide commitment to understanding and adhering to applicable laws and regulations,"[24] including laws related to customer authentication, fraud detection, and money laundering prevention. Like all banks, special purpose national banks should be required to maintain a robust customer identification program to protect investors, borrowers, and unaffiliated consumers from fraud and identity theft, and should establish and follow a rigorous anti-money laundering compliance program. The applicant should also demonstrate the ability to identify and report suspicious activities and to conduct training to ensure compliance.

- *Internal Controls*. We also strongly support a review of an applicant's proposed internal controls to ensure compliance with laws and the integrity of their investment programs and the applicant's proposed financial transactions. Similarly, applicants should demonstrate compliance with regulatory requirements and maintain a compliance framework appropriately designed to address the size and risk profile of the proposed business. The applicant should of course also designate one or more executives responsible for overseeing compliance (*e.g.*, a chief compliance officer). Internal controls procedures should reflect a commitment to manage customer funds appropriately, including appropriate segregation of investor funds from company operating funds. Such controls should be designed to ensure that the charterholder takes appropriate steps to protect investor assets from possible business disruptions to the marketplace. And charterholders should be required to undergo a financial statement audit conducted by an independent accounting firm at least annually.

- *Cybersecurity and Information Security*. We view cybersecurity as a vital risk element that must be appropriately managed for all online finance transactions, whether the transaction is facilitated by a marketplace or traditional bank. Applicants should maintain a comprehensive information security program based on appropriate standards[25] to ensure confidentiality, integrity, availability, and privacy of the marketplace members' information. Charterholders should also be required to have in place extensive security policies, standards, procedures, and processes to address physical security, access controls, encryption, segregation of duties, continuous monitoring, incident response, personnel security, and service provider oversight. Similarly, an applicant should maintain a detailed privacy policy, which complies with applicable rules and regulations, including the Gramm–Leach–Bliley Act. The charterholder should have in place robust security controls to safeguard the personal information of borrowers and investors and to prevent

[24] *Id*.

[25] Such as ISO27001

unauthorized access of information. Security controls should include recurring penetration tests and remediation within a reasonable period.

- *Inter-agency Coordination*. We have consistently applauded regulators for enhancing regulatory clarity and regulatory consistency by working with other agencies to create standardization. Standardized guidance, supervision and examination would be valued by special purpose national banks who may be subject to different expectations from the FDIC, OCC, FRB, CFPB, state regulators and others, depending on their business models. Although the OCC is the primary prudential regulator of national banks, including uninsured special purpose banks, we appreciate and support the OCC's proposal with respect to coordination among regulators, including through the FFIEC, where appropriate.

Thank you for the opportunity to comment on this important initiative. We remain available to provide additional input or answer any questions regarding our comment letter. Please do not hesitate to reach out to me directly at 202-772-3170 or by email at rneiman@lendingclub.com. We look forward to the continued progress of the OCC's support for responsible innovation.

Sincerely,

//S//

Richard H. Neiman
Head of Regulatory & Government Affairs
Lending Club