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Via electronic mail to: specialpurposecharter@occ.treas.gov

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

Re: Special Purpose Charters for Fintech Companies

Dear Comptroller Curry:

I am writing to comment on the proposal by the Office of the Comptroller of the Currency ("OCC") to grant special purpose charters to qualified financial technology ("fintech") companies. These comments are made in a personal capacity and not on behalf of any other person or entity. I support the issuance of special purpose charters for fintech companies and urge you to move forward on this important initiative.

The OCC's whitepaper explains the history of its chartering process, detailing the purposes and benefits of authorizing the formation of national banks. The whitepaper, however, does not address one of the important rationales for the granting of national charters to financial institutions – the creation of entities to act as depositaries of public money and to serve as financial agents of the United States. Like existing national banks, entities granted special purpose fintech charters would be eligible for designation by the Secretary of the Treasury to serve as depositaries and financial agents of the United States. 12 U.S.C. § 90.

Even before the passage of the National Bank Act, Congress chartered financial institutions, in part, to provide financial services to the government. The Second Bank of the United States, for example, collected tariffs and disbursed funds on behalf of the Treasury. When Congress' authority to charter such an institution was challenged, the Supreme Court held that the bank was constitutional because, as a depositary and agent of government, its creation was a legitimate exercise of power under the necessary and proper clause. McCulloch v. Maryland, 4 Wheat. 316, 324 (1819) ("A bank is a proper and suitable instrument to assist the operations of the government, in the collection and disbursement of the revenue; in the occasional anticipations of taxes and imposts."); see also, Osborne v. Bank of the United States, 9 Wheat. 708 (1824).

When Congress drafted the National Bank Act, it wisely decreed that all national associations chartered under the statute would, when designated by the Secretary of the Treasury, serve as depositaries and financial agents of the United States, and "perform all such reasonable duties, as depositaries of public money and financial agents of the

Government, as may be required of them." 12 U.S.C. § 90. When Congress' authority to create national banks was challenged, courts followed McCulloch and held that the necessary and proper clause authorized the chartering of institutions to serve the needs of the government. Farmers' National Bank v. Dearing, 91 U. S. 29, 33-34 (1875) ("The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end."); see also, Easton v. Iowa, 188 U.S. 220, 229-30 (1903).

Treasury has made significant use of its authority to designate national banks to act as depositaries and financial agents. National banks serving in these capacities collect taxes and duties, sell savings bonds, process payments to federal agencies and facilitate government disbursements to vendors and federal benefit recipients. As the business of banking has evolved over the last century, Treasury has made great efforts to provide modern and efficient fiscal services to the government. Consequently, depositaries and financial agents of the United States have increasingly been called upon to provide services using electronic means. Tax collections and lockbox processes are now electronic. Checks have largely been replaced by electronic fund transfers. Millions of Social Security recipients receive their payments on prepaid debit cards. Cash aboard Navy ships and in forward-deployed Army bases has been replaced with stored value.

Courts have upheld the modern Treasury's use of depositaries and financial agents to provide financial services using electronic means. "In this day and age, commercial banks must employ [automated data processing equipment] to be of value to Treasury as financial agents." United States v. Citizens & Southern National Bank, 889 F.2d 1067, 1069 (Fed. Cir. 1989). The one time a court concluded that Treasury did not have authority to designate a national bank as a financial agent to provide electronic benefit transfer ("EBT") services (Transactive Corp. v United States, 91 F.3d 232 (D.C.Cir. 1996), Congress immediately acted to overturn the decision, amending the National Bank Act to expressly state that financial agents may provide EBT services (12 U.S.C. § 90) and further directed Treasury to carry out the EBT program as envisioned (31 U.S.C. § 3336). Congress has been very supportive of Treasury's use of depositaries and financial agents, even when those banks' services employ new technology.

It seems likely that emerging financial technologies such as marketplace lending, virtual currencies and blockchain could be of great use to the government. It would be prudent to ensure that these innovations are available to the Secretary should he choose to make use of them. Consequently, I support the proposal to grant charters to fintech companies and urge the OCC to acknowledge the value such entities could provide as depositaries and financial agents serving at the request of the Treasury.

Thank you for this opportunity to provide my thoughts on this important initiative. If you have further questions, you may contact me at 202-492-6853 or at stm@aol.com.

Sincerely yours,

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Stephen T. Middlebrook