OMIDYAR NETWORK
A WORLD OF POSITIVE RETURNS

January 17, 2016

To:
Thomas J. Curry
Comptroller of the Currency
400 7th St. S.W.
Washington DC 20219

RE: Comments on Exploring Special Purpose National Bank Charters for FinTech Companies

Dear Comptroller Curry,

Omidyar Network is pleased to collaborate with the Comptroller and the OCC and submit a response to the request for comments on "Exploring Special Purpose National Bank Charters for FinTech Companies."

The OCC's innovation approach—the Office of Innovation with its acting Chief Innovation Officer, a broader framework for innovation, pilots, and the special purpose national bank charter for FinTech companies—ranks among the more progressive and innovation-friendly regulators in the world. Financial services are fundamentally changing. Increasingly, all financial services will be technology-enabled and, as some have argued, the word "FinTech" may fade from usage. Regulators globally are exploring new ways to regulate and supervise so they are not just responsive but proactive to this rapidly transforming industry and can better protect the interest of consumers. Despite the pace of innovation in the financial services industry in the U.S., until now, the regulatory environment has struggled to update its tools and solutions.

A. Who we are

Omidyar Network is a philanthropic investment firm. We support entrepreneurs and their innovative ideas through impact investing and philanthropic grants. Our hybrid model allows us to partner with the most innovative changemakers, regardless of whether they lead for–profit or nonprofit organizations.

B. Importance of technology-led business models to drive financial health

We believe that when people can save, send and receive money safely, and have access to affordable credit and insurance services, they are better positioned to achieve greater financial health, protecting themselves from economic shocks, building assets, and investing in a better future.

Full financial inclusion means providing people with convenient, secure, and affordable tools that meet their needs and help them develop a better relationship with their finances and become valuable members of the global economy. We believe that this end state can be achieved through the use of new approaches to better understand and cater to underserved consumers—such as behavioral insights and human-centered design—and technology-led business models that are more cost-effective and easily scalable than antiquated brick-and-mortar models.

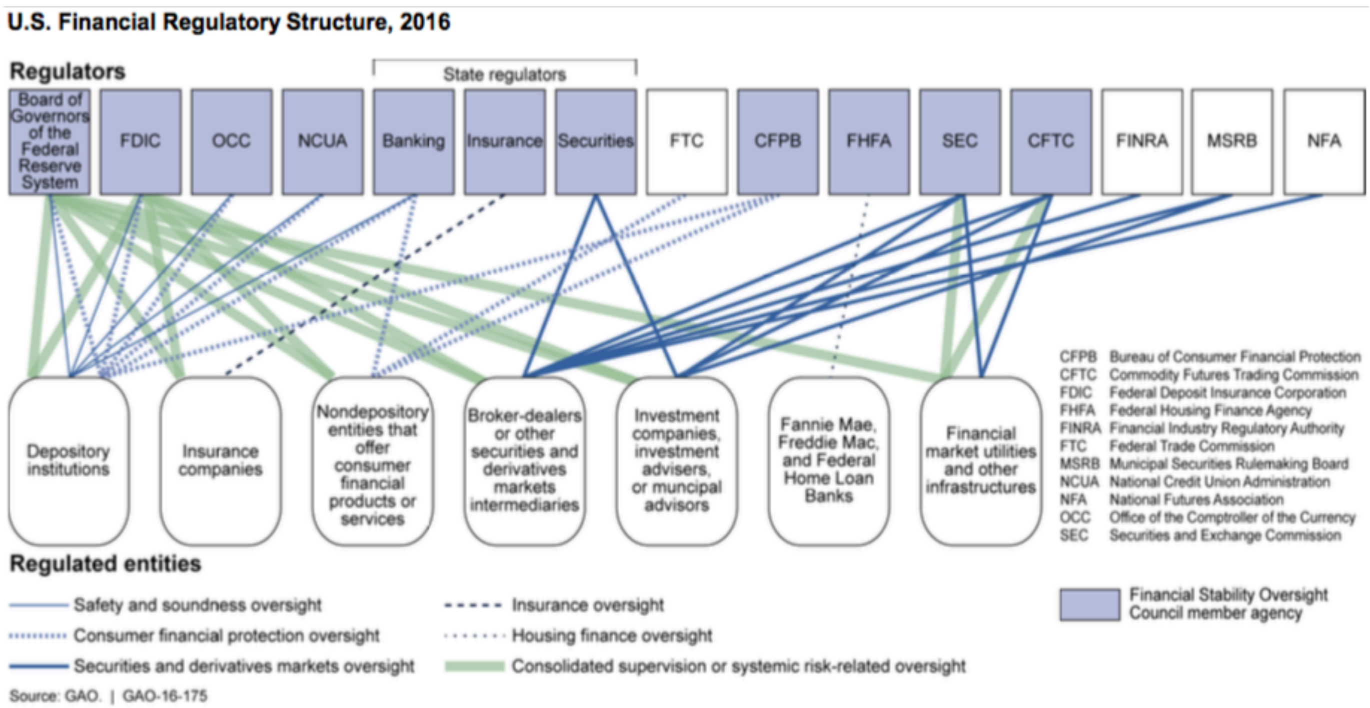
In the U.S. and other developed countries, we invest in solutions that leverage new technologies and approaches to help low- and middle-income families to better manage day-to-day cash flows and build long-term savings and assets that can improve their ability to weather financial shocks and invest in their future. We invest in the pioneering use of technology to massively increase reach, usage, and scale impact of financial inclusion solutions, working closely with entrepreneurs and collaborating with institutions that address policy to ensure that these innovations are responsibly and successfully brought to market.

C. Responses to questions

C.1. Response to question 1: What are the public policy benefits of approving FinTech companies to operate under a national bank charter? What are the risks?
Among the public policy benefits of approving FinTech companies to operate under a national bank charter, we believe that the increased potential for interagency coordination on regulation and supervision, both between federal agencies and between federal and state agencies, is a key. The need for coordination is even greater when there is lack of clarity around business models, technologies, and potential risks to consumers. Arguably, all agencies, federal and state, share the burden of finding ways to coordinate and collaborate to better regulate and supervise.

The U.S. regulatory structure is fractured and a key source of regulatory uncertainty. Many agencies have overlapping authority to write and interpret regulations and oversee financial companies (see Figure 1 below). According to a GAO study, "extensive fragmentation and overlap in the regulatory structure create various inefficiencies and inconsistencies in regulators' oversight activities (…). Inconsistent practices can result in different conclusions about the safety and soundness of an institution, difficulties tracking violations and identifying emerging trends, and different levels of protection provided to consumers."

Figure 1. U.S. Regulatory Structure



FinTech innovators find it difficult and expensive to determine what regulations and regulators affect their businesses. Banks often fear to innovate in areas where formal guidance does not yet exist. The absence of a common framework for financial products—especially nonlending services—between state regulators and between state and federal regulators create challenges for startups in those rapidly innovating areas of FinTech.

We understand that the OCC recognizes the need for FinTech companies considering a special purpose national bank charter to engage with regulators other than the OCC and proposes to continue to “coordinate and communicate” with other agencies. In addition, the OCC could consider working with other agencies to create a more robust framework and mechanism for coordination. Establishing this framework alone would be an important and far reaching public policy benefit for the industry.

C. 2. Response to 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?

According to research conducted by the Center for Financial Services Innovation (CFSI), 57 percent of adult Americans, representing around 138 million people, are struggling financially. These Americans make-up more than the proportion of the "unbanked" or "underbanked," making the lack of financial health a much more widespread challenge.

These Americans are struggling in different ways. Based on research by CFSI and others: 59 percent live paycheck-to-paycheck, 53 percent don't have enough liquid savings to cover three months of expenses, and 45 percent have less than $10,000 in retirement savings. The 2015 FDIC Survey of Unbanked and Underbanked Households also showed that about one in five U.S. households had income that varied somewhat or a lot from month-to-month. Households are more likely to be unbanked and underbanked when they face volatile income, regardless of income levels. The U.S. Financial Diaries show that households deal with "substantial swings" in income often in ways that are outside of their control.

Addressing this financial health challenge imposed on millions of Americans could become an important basis to measure the success of FinTech companies operating under a national bank charter, regardless of whether they are engaged in lending or nonlending activities.

There are different ways companies can show how they are improving the financial health of their consumers. For example, CFSI has established a simple framework with four components and eight indicators that the OCC and financial services industry could consider as a starting point:

1. Spend: (1) Spend less than income; (2) Pay bills on time and in full
2. Save: (3) Have sufficient living expenses in liquid savings; (4) Have sufficient long-term savings or assets
3. Borrow: (5) Have a sustainable debt load; (6) Have a prime credit score
4. Plan: (7) Have appropriate insurance; (8) Plan ahead for expenses.

The OCC could consider coordinating with state-level regulators, where in some cases consumer protection laws barring unfair and deceptive acts and practices are stronger than federal laws, to develop a common measurement framework for financial health. Under such a framework, a new bank would need to go further than showing that it would not be engaged in unfair and deceptive acts. It would need to demonstrate how it will improve the financial health of Americans, along the lines of the metrics mentioned above.

C.3. Response to 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?
Improved coordination between agencies could be one of the most important public policy benefits of the proposed national charter for FinTech banks.

One way the OCC and other agencies, including state regulators and the Conference of State Bank Supervisors, could improve coordination and communication on national charter for FinTech banks would be through an interagency RegLab or sandbox.

The RegLab would be primarily a live testing environment where regulators can evaluate and answer technology, business model, and customer adoption questions raised by new financial sector innovations, ensuring that appropriate mechanisms are built prior to licensing or granting a national charter. It would be a "lab" as agencies would drive the learning agenda and would emphasize collecting empirical data. In addition, its lab function could meet the need for rapid learning and analysis, while its interagency design would foster collaboration.

Not all applicants to national charter for FinTech companies would need to participate in a RegLab. The need for a lab environment and for coordination between regulators is greater when there are uncertainties around business models, technologies, and greater risk to consumers through unfair, deceptive or predatory practices. The RegLab could be a mechanism for the OCC to coordinate and collaborate with state-level regulators. While the OCC is already proposing to conduct pilots, a RegLab or sandbox would further foster coordination and communication between agencies.

The Financial Conduct Authority (FCA) in the UK has a widely emulated model in its innovation hub launched in 2014 and a sandbox added in 2016 that has already received 69 applications for its first round of testing and selected 24 applicants. Hong Kong has launched a sandbox and at least nine more regulators are reportedly implementing or considering them:

- The Australian Securities and Investments Commission initiated a consultation about adding a sandbox to supplement its Innovation Hub
- The Monetary Authority of Singapore issued a consultation paper
- The Financial Services Regulatory Authority of the Abu Dhabi Global Market released a consultation paper.

A U.S. RegLab could have the following features:

- Professional staff working under direction from agency staff
- Empirical testing for both customized pilots and those driven by a learning agenda
- Protect customers from potential harm

- Limit protection from enforcement action
- Mechanism for shared policy development

Kind regards,

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