COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

January 17, 2017

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW, #3E-218
Washington DC 20219

Dear Comptroller Curry,

The Pennsylvania Department of Banking and Securities (the Department), appreciates the opportunity to comment on the Office of the Comptroller of the Currency's (OCC) proposal for a special purpose national bank charter for "fintech" companies. The Department is responsible for regulating financial services and works to ensure consumers and businesses are well-informed about the financial marketplace in the Commonwealth of Pennsylvania.

On December 2, 2016, the OCC announced plans to accept applications from "fintech" companies in consideration of granting a special purpose national bank charter[1]. The Department has serious concerns that the OCC approach will jeopardize necessary and appropriate state consumer protection laws, destabilize existing state and federal regulatory frameworks, and introduce unintended consequences within the financial services industries the Department and the OCC regulate.

Before the OCC moves forward with its proposed charter process, the Department expects the OCC will address the following three concerns:

First, the OCC needs to fully address concerns and questions about the broad application and ambiguity of the term "fintech." Second, the Department has serious concerns about issuing charters before the OCC has vetted and implemented an adequate regulatory scheme. Third, the Department asserts that the approach of regulating "fintech" companies and the possible federal preemption of existing state consumer protection laws will significantly harm consumers.

Regulatory Ambiguity and Preferential Treatment for Fintechs

In prepared remarks last year, Comptroller of the Currency Thomas Curry advised that the OCC's consideration of a special purpose national bank charter for "fintech" companies is in the public interest and that the OCC has taken steps in order to advance responsible innovation

[1] OCC to Consider Fintech Charter Applications, Seeks Comment. Press Release. December 2, 2016. https://www.occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-152.html

efforts. While Comptroller Curry identified more than 4,000 "fintech" companies, the characteristics of a "fintech" company were not defined.[2]

The concept of "fintech" recognizes that technologies change and create innovation. While utilizing "fintech," however, the fundamentals of underlying financial transactions remain constant. The underlying financial transaction should be the basis of regulation, not the vehicle by which those services are delivered. An entity making a loan should be regulated on the basis of lending money and not the method used to make the loan.

Without clear definitions, under a 'fintech" charter a wide range of entities could qualify for the special purpose national bank charter by merely utilizing the assistance of technological advancements, or even through traditional delivery methods with merely the presence of a technological aspect. The OCC has not communicated to what extent and what application of technology will be a prerequisite for obtaining a special purpose national bank charter. The Department is concerned that, without a clear definition of "fintech," the OCC may not be able to apply uniform standards based on the underlying activities[3].

The financial institutions the Department regulates require and demand from their regulators clarity in guidance and interpretation. The broad, overgeneralization of the term "fintech" lends itself to disorderly dialogue among regulators and between regulators and the companies they supervise. As the OCC contemplates granting special purpose national bank charters for "fintech" companies, the OCC should take no action until it clearly enumerates and communicates its definition of "fintech" to other regulators, the financial services industry, and other stakeholders.

Proper regulation and oversight mandates that the parameters for defining a "fintech" company be clearly established prior to regulation and, if those standards are to remain dynamic, the OCC must establish a functional framework that allows it to adequately address and regulate the introduction of future technological advances into the financial services marketplace. At this time, the OCC proposal introduces ambiguity and uncertainty where clarity and precision are required.

Supervision, Examination, and Regulation of "Fintechs"

The OCC has stated that it will consider granting charters to "fintech" entities that engage in at least one of three core banking functions: taking deposits, lending money, or cashing checks. However, under the OCC proposal, entities that are engaged in only one core business area may qualify for this charter, presenting an unnecessarily high concentration risk that can threaten the business' ability to withstand deteriorating market conditions without a stable funding base.

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[2] Remarks by Thomas J. Curry Comptroller of the Currency Regarding Special Purpose National Bank Charters for Fintech Companies. https://occ.gov/news-issuances/news-releases/2016/nr-occ-2016-152.html

[3] Clozel, Lalita. FinTech Charter Q&A: OCC Answers Skeptics. American Banker. January 3, 2017. http://www.americanbanker.com/news/law-regulation/fintech-charter-qa-occ-answers-skeptics-1093157-1.html

The Department questions the OCC's ability to enforce strict safety and soundness standards for "fintech" companies, given that "fintech" companies predominantly offer unsecured loans and by the nature of their business have a high concentration risk that has seen an increase in loan defaults and delinquencies[4]. The OCC recognized this type of risk on the issue of the rent-a-bank model of payday lending.

The Department notes that, in 2012, then OCC Deputy Comptroller for Compliance Policy Grovetta Gardineer testified before the House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit, advocating against a bill that would grant the OCC authority to grant charters to non-depository entities lending money to consumers. The OCC expressed concern with providing "special status and federal benefits to companies and third-party vendors that would primarily engage in offering credit products and services that the OCC has previously found to be unsafe and unsound and unfair to consumers."[5] The Department seeks guidance on this apparent shift of policy.

It is important the OCC resolve the unanswered question about the federal benefits available to a special purpose national bank charter, including but not limited to discount lending, prior to issuance of a charter. The Department requests additional information about how the OCC intends to ensure "fintech" entities will mitigate funding risk in the event access is granted to the Federal Reserve System and how the agency plans to account for accelerated systemic risk to the banking system. Any failure of a special purpose national bank charter institution would increase the likelihood of contagion among similar entities and place consumers with uninsured deposits at risk, demonstrating a need for how the OCC plans to determine whether an applicant has a plan to sufficiently mitigate those risks.

Additionally, as the OCC contemplates extending special purpose national charters to "fintech" companies, it is important the OCC address concerns about Bank Secrecy Act/Anti-Money Laundering (BSA/AML) exposure resulting from several products and services, which could be reasonably deduced to be "fintech" products, and which do not have the benefit of direct customer contact and traditional long-term customer relationships.[6] The OCC has stated that BSA/AML requirements would apply to a special purpose national bank charter but questions remain regarding the proper management of BSA/AML risk given the limited business focus and the high exposure from relying on Internet and indirect consumer interfacing operations[7].

The Department, along with other regulators, state attorneys general, consumers, and the financial services industry cannot understand the actual scope and implementation of OCC's plans to supervise and examine "fintech" companies. The OCC needs to fully disclose details

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[4] Survey of Online Consumer and Small Business Financing Companies. California Department of Business Oversight. http://dbo.ca.gov/Press/press_releases/2016/Survey%20Response%20Summary%20Report%2004-08-16.pdf

[5] Testimony of Grovetta Gardineer. Deputy Comptroller for Compliance Policy. Office of the Comptroller of the Currency. Before the Subcommittee on Financial Institutions and Consumer Credit. Committee on Financial Services. U.S. House of Representative. July 24, 2012. https://www.occ.gov/news-issuances/congressional-testimony/2012/pub-test-2012-113-written.pdf

[6] Ibid, 7-8.

[7] Ibid.

concerning its supervision and examination of these "fintech" companies and must carefully define the true scope of the proposed charters and allow time for concerned entities to comment on specifics instead of undefined concepts so that the OCC can receive meaningful feedback prior to implementation of this proposal.

Preemption of State Consumer Protection Laws and State Sovereignty

The Department is concerned that consumers will be harmed by the proposed charter through the preemption of state consumer protection laws.

Given the uncertainty surrounding which kinds of companies might become eligible for a special purpose national charter, the OCC's proposal could invite companies currently licensed by state regulators to seek a national charter, thereby effectively preempting and negating many of the most effective consumer protection laws in a number of states, including Pennsylvania. The OCC's proposal raises serious issues about unintended consequences on consumers most likely to utilize the products and services offered by these "fintech" companies. Additionally, the Department is concerned about the ability of some populations to gain fair access to credit based on reports that some "fintech" companies rely solely on computerized modeling for underwriting loans.[8]

States already have in place existing, robust regulatory and supervisory frameworks for companies engaged in lending money, taking deposits, and cashing checks, some of which use advanced technology to deliver their services. The products and services offered by these companies are subject to licensure requirements or regulatory protections through state regulators' authority as well as the Consumer Financial Protection Bureau (CFPB). The Department notes that OCC has as recently as 2012 stated that the oversight in this area by state regulators and the CFPB is adequate.[9]

Additionally, the relationship between states and federal regulators has always centered on the states' keen awareness and understanding of local, regional, and community needs, as well as the states' ability to be best positioned to more efficiently respond to those needs through public policy. As Justice Brandeis wrote in *New State Ice Co. v. Liebmann*: a "state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." The OCC's proposal could effectively close down that "laboratory" by presenting a rigid, inflexible framework that could ultimately harm state and federal regulators' ability to encourage and respond to innovative approaches in finance.

Conclusion

The Department opposes the OCC issuing "fintech" charters as currently proposed due to serious questions, concerns, and lack of clarity regarding the regulatory framework and treatment of these charters. It is premature for the OCC to proceed in the issuance of a charter under this approach. Before this endeavor progresses further, the OCC must issue and implement clearer and expanded guidance. This process has important implications for the financial services

[8] Vinik, Danny. "Can Washington control high-tech lending?" Politico. September 28, 2016

[9] Gardineer Testimony, 10.

industry, the regulatory community, and consumers, requiring more thoughtful deliberation about the intended and unintended consequences that will result from such an apparent departure from the OCC's current policy and scope of supervision.

Moreover, while the Department appreciates the effort to foster financial innovation, the Department asserts the proposed OCC "fintech" charter is unnecessary since the Department and other state regulators are currently positioned to continue supervision and examination of innovative and technologically advanced companies engaged in the financial services industry. State regulators will continue to serve a vital role in ensuring that robust consumer protections are offered to consumers, and that industry can continue to innovate and deliver traditional financial services products through adaptive and innovative delivery channels.

Respectfully Submitted,

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Secretary Robin L. Wiessmann
Pennsylvania Department of Banking and Securities