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By electronic submission to specialpurposecharter@occ.treas.gov

Office of the Comptroller of the Currency
U.S. Department of the Treasury
400 7th Street, SW
Washington, DC 20219

Re: Exploring Special Purpose National Bank Charters for Fintech Companies – Request for Comment

Dear Comptroller Curry:

We write to you on behalf of a fintech client in the payment processing space serving the healthcare industry. We welcome the opportunity to comment on the proposal of the U.S. Office of the Comptroller of the Currency ("OCC") to grant special purpose national bank charters to fintech companies.

We note that in the EU, there are special licenses available to entities that focus exclusively on providing payment processing services called Payment Institutions. See S.I. No. 383 of 2009 European Communities (Payment Services) Regulations 2009, which became effective in Ireland on 1 November 2009. The Central Bank of Ireland ("Central Bank") is the authority for the purpose of implementation of the Directive. Other countries such as Malta also allow Payment Institutions to operate in the EU.[1] We think that these types of

[1] The term "Payment Institution" refers to a category of payment service providers which came into being as a result of the enactment of the Payment Services Directive (PSD). The five main objectives of the PSD were to:

- achieve a single payment market in the EU;
- provide the regulatory framework for a single payment market;
- create a level playing field and enhancing competition;
- ensure consistent consumer protection and improving transparency; and
- create the potential for more efficiency of EU payment systems.

The Directive therefore aimed to remove legal barriers to the provision of payment services in the EU, to allow citizens and businesses to make all kinds of payment easily, safely, timely and cost efficiently, and to open the specialized institutions could easily fit within the OCC Special Purpose Charter and enable payment processing companies in the United States to operate in a safer, more regulated manner than what exists today without the concern of having to comply with the various state money transmission laws that some payment processors need to confront under current laws.

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

Making national bank charters available to companies focused on payment processing services would benefit both consumers and the fintech industry. For consumers, the primary advantages would include a high degree of confidence that products or services obtained from a chartered fintech meet the same high standards as those received from a traditional bank. In addition, a fintech bank would increase the trust in the strength of the US Dollar as well as trust in the US financial system. The ability of a fintech processing bank to avoid having to comply with the almost universally adopted money transfer laws in almost all states is an important factor in fintech payment processors wanting to obtain a bank charter. The costs of complying with these varying laws in very high and results in having to pass these high compliance costs on to customers that use the processing services offered by these fintech companies or deters some from entering into the space or hastens their exit from it. Efficiency and controlling costs is a primary driver in the attractiveness of a bank charter. Finally, because OCC supervision centers on the bank's ability to identify, measure, monitor, and control risks, the risk of fraud and data breaches would be significantly reduced in the fintech industry.

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market to new entrants such as payment institutions. It established a set of specific rules for all payment service providers, including banks and payment institutions. The new category of payment institutions can offer their customers the following services:

- Executing payment transactions (including credit transfers, direct debits, through payment cards or a similar device);
- Issuing and/or acquiring of payment instruments;
- Money remittance;
- FX services;
- Ancillary services; and
- Credit can be granted for a maximum of 12 months if this credit is closely linked to a payment service provided.

For fintechs, an appropriately structured national bank charter would provide a stable, predictable framework for delivering innovative and affordable products and services on a nationwide basis. In addition, the increased structure and operational discipline that results from ongoing federal oversight and examination would help position the chartered fintech for future growth and expansion.

The risks of a national bank charter for fintechs include the possibility that uniform supervision could stifle innovation and cause disruption in the industry until players get used to operating as a national bank. For example, in the absence of flexibility that recognizes the unique nature of a fintech, supervisory expectations for a three-year business plan that "provides a full description of proposed actions," and which attempts to take into account all related business and legal risks, including the predicted "effects of severe stress," could dissuade fintechs from applying for a charter.

2. *What elements should the OCC consider in establishing the capital and liquidity requirements for an uninsured special purpose bank that limits the type of assets it holds?*

Capital and liquidity requirements should be different for payment processing fintech companies than for those companies engaged in lending or other activities. As a processing entity, the liquidity and capital requirement should reflect the risks that payment processing companies face in making sure that the transfer of funds are done without transfer risk to companies or consumers. For payment processing companies that obtain a fintech charter, the OCC needs to focus on ensuring that the controls for payment processing adequately focus on the risks involved to the institution, and that adequate reserves are required to deal with any disruption in the flow of payments when moving money from one bank account to another. Fintech processing banks should not be permitted under any circumstances to comingle funds with operating funds and should not be permitted to borrow or leverage payment processing funds for any purpose. The integrity and safety of our payment system needs to be a primary focus for any fintech chartered payment processing company.

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? For instance, what new or alternative means (e.g., products and services) might a special purpose national bank establish in furtherance of its support for financial inclusion? How could an uninsured special purpose bank that uses innovative methods to develop or deliver financial products or service in a virtual or physical community demonstrate its commitment to financial inclusion?*

A key distinction exists between depository institutions that are subject to the Community Reinvestment Act and special purpose banks that are not insured depository institutions and which do not accept deposits. Namely, as was noted by the Federal Reserve Bank of Chicago in its December 2013 edition of *Profitwise News and Views:*

> The CRA has its roots in the Seventh Federal Reserve District. In the 1970s, activists in Chicago and across the country worked steadfastly and aggressively to compel banks to lend more equitably to communities *from which they drew deposits, but to which they did not typically lend* (emphasis added).

A chartered fintech processing company would not draw funds from any community. Financial inclusion for payment processing banks should be primarily measured against the underwriting policies and procedures of the fintech's customers that accept payments from consumers and other businesses. The fintech companies underwriting policies and procedures should first comply with best practices for AML, KYC, and other applicable laws and regulations in place today. Furthermore, the fintech companies underwriting policies and procedures should not evidence any signs of discrimination or financial exclusion.

4. *Should the OCC seek a financial inclusion commitment from an uninsured special purpose national bank that would not engage in lending, and if so, how could such a bank demonstrate a commitment to financial inclusion?*

The appropriate way for nonlending fintechs such as payment processors to demonstrate their commitment to financial inclusion is to ensure that their products and services are offered in fair and transparent manner, consistent with the requirements of Section 5 of the FTC Act and Section 1036 of the Dodd Frank Act. This would include a commitment to seek out ways within its business model to make sure disadvantaged or underserved consumers are able to have reasonable access to products and services taking into account safety and soundness concerns and the developmental stage of the fintech business.

5. *How could a special purpose national bank that is not engaged in providing banking services to the public support financial inclusion?*

A payment processing focused fintech bank can support financial inclusion by offering different levels of service (i.e. 24-hour funding vs 48-hour funding vs 72-hour funding) based on its underwriting policies and procedures, which will allow the fintech company to increase financial inclusion of merchants while at the same time balancing the risks involved. The fintech company can contractually secure commitments from higher risk merchants to increase financial inclusion for disadvantaged or underserved consumers that the merchant deals with.

6. *How should the OCC use its chartering authority as an opportunity to address gaps in protections afforded individuals versus small business borrowers, and if so, how?*

This question is inapplicable to our client since it focuses on lending fintechs.

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 special purpose banks should the OCC consider?*

As stated above, the capital and liquidity requirements of a payment processing focused fintech bank should be markedly different from those of an insured depository institution. Fintech companies should be chartered based on the lines of business that the fintech charter pursues. The biggest challenge for the OCC will be maintaining high standards for technical security to deal with data breaches and compliance with KYC, AML, and other regulatory requirements. The best example of this in the private sector is the PCI Council associated with Visa, MasterCard, American Express, Discover card. For payment processing fintech banks, adherence to these standards and other standards promulgated by the prudential banking regulators will be key to insuring that confidence in fintech processing banks is maintained.

Given the many significant differences between fintech companies and traditional banks, we encourage the OCC to consider creating specialized teams of examiners to oversee the activities of chartered fintechs.

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?*

We believe that supervision for purposes of safety and soundness should focus on ensuring that the chartered fintech maintains a strong compliance infrastructure. For fintech processing banks, the OCC should assess the adequacy of the fintech processing bank's technical security and compliance processes and procedures, the level of oversight, and its business processes, including the adequacy and completeness of its policies and procedures (i.e. underwriting, monitoring, disaster recovery, etc.). The OCC should insure that all fintech payment processing companies adequately protect the payment processing funds of its customers from internal and external fraud. The OCC should insure that the financial operating performance of a fintech payment processing bank is sustainable at all times for at least a 24 month period (i.e. a fintech company may have short term operating losses if it is investing in technology or market expansion, but it must have the operating capital to sustain reasonably forseeable losses for a 24 month period).

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

As compared to full service national banks, fintech special purpose national banks will always have a competitive disadvantage due to the ability of full service banks to cross sell other products and the scale inherent that full service banks have that supports multiple lines of businesses.

10. *Are there particular products or services offered by fintech companies, such as digital currencies, that may require different approaches to supervision to mitigate risk for both the institution and the broader financial system?*

As is noted in the proposal, fintech companies vary widely in their business models and their product offerings. We agree with the OCC's stated intent to approach the specific activities presented by applications for charter on a case-by-case basis. The OCC will need to broadly monitor and understand the development of new technologies such as digital currencies to be conversant with the risks and challenges that they present for their proper supervision of fintech banks that employ then. Only if the OCC is able to demonstrate that it fully understands such technologies and is flexible in their application to the new fintech banks using them will fintechs be comfortable in coming to the OCC to apply for a charter. Having a knowledgeable and sophisticated staff that understands new technologies is critical to getting fintechs comfortable with a fintech charter and the oversight and supervision that will come with it.

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?*

There should be a clear pathway for consumers to be able to report issues to their state regulators and well as the OCC and have the OCC provide those complaints or inquiries to the national bank in an efficient and organized fashion.

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?*

By their nature, fintech companies are highly-specialized and offer a limited array of products and services. The best way to ensure the risks presented by a narrow range of product offerings are effectively mitigated is to establish a risk management program that is well-tailored to the institution's activities. Quarterly financial reporting plus strict business continuity and "going concern" standards such as maintaining 24-months of operating capital will help mitigate risk. To the extent that there are failures by fintech payment processing banks, the new OCC resolution power and plan will enable an orderly transitioning of customers to other fintech payment processing companies without any costs to taxpayers or, because no deposits are involved, to the Bank insurance fund.

13. *What additional information, materials, and technical assistance from the OCC would a prospective fintech applicant find useful in the application process?*

Because fintech processing companies make proportionally greater capital investments in technology, their primary consideration in assessing the application process for an OCC fintech chartered bank will be capital requirements. Security, compliance, and great business practices should be table stakes for all fintech processing companies applying for an OCC limited purpose charter. However, the need to raise and maintain capital will be the primary consideration in the application process.

Respectfully,

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Richard P. Eckman