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The Honorable Thomas J. Curry, Esquire
Comptroller of the Currency
Office of the Comptroller of the Currency
U.S. Department of the a Treasury
400 7th Street, SW
Washington, D.C. 20219
(specialpurposecharter@occ.treas.gov)

Re: Comments about Special Purpose Bank Charters for Fintech Companies

Dear Mr. Curry:

I am submitting these comments as an individual and not as a representative of the community bank of which I am chairman (The Freedom Bank of Virginia, a state chartered bank based in Fairfax, Virginia), nor as a patent attorney and technology lawyer acting on behalf of my law firm or any client.

I have 37 years of experience as a lawyer. I came to Washington, DC in 1979 after receiving my law degree, cum laude, from the University of Miami. I received an LL.M in Patent and Trade Regulation Law from George Washington University in 1980, and have had keen interest since then in the effect of technology disruption on economic growth. My law practice is primarily focused on supporting initiatives to facilitate innovation based economic development in emerging economies. Since 1995 I have been a director of three community banks.

I have experience with technology innovators, bankers, regulators and investors. I am also a bank customer. My comments herein are from a unique perch. I see financial technologies as being disruptive technologies, which could "uberize" the traditional community banking system. However, if harnessed effectively, fintech could bolster our community banking system to better serve consumers and small businesses, and to reestablish the trust and confidence that the public should have in America's banking system.

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

One of the benefits of the OCC's progressive thinking about charters for fintech companies is that it sends a signal to America's traditional community banks that it is now acceptable to integrate state-of-the-art technologies with the banking services offered by regulated financial institutions. The mentality of many bankers has been to play it safe and not adopt technology that may trigger questions from regulators. Technology, however, will make the banking system better for customers, reduce operating costs, provide greater cybersecurity and make banking services more accessible and user friendly for both individuals and small and medium sized business enterprises.

Community banks under a billion in assets are quickly becoming extinct. However, they do have a role in the growth and prosperity for America in the 21st century. I believe the government should provide a nurturing environment for regulated financial institutions to embrace disruptive technology that is changing virtually everything in our world. Having these financial institutions as technology laggards when America is moving to regain its global posture as the leader in innovation and entrepreneurial progress just doesn't make sense. Our financial institutions should be catalysts for economic growth, rather than 20th century "bricks and mortar" institutions saddled by legacy technologies.

The question is not whether fintech companies should be chartered as banks but how our country's traditional community banks should be encouraged and rewarded for integrating technology to help people and businesses handle their money in a technology driven economy. We need to get rid of the "stinking thinking" pervasive at many banks that new technology is bad and that the same old approach that worked in past decades is the approach to take now. This regressive thinking has caused community banks to be swallowed by bigger banks and those banks swallowed by even bigger ones. I feel we need to redefine community banking. We should transform banks into technology-centric companies providing products and services to consumers and small businesses rather than create financial technology companies as special purpose banks. Although I am an advocate for "fast tracking" fintech adoption, I truly believe traditional banking experience is needed to mitigate risks.

Technology is the "great equalizer" and community banks that already have acceptable regulatory compliance should be at the forefront of implementing technological innovation. This will reduce the risks to the public of a fintech company being a "square peg in a round hole" in trying to satisfy traditional banking standards. A "community bank partner model" will speed up the already fast moving and changing technological disruption without the likely problems which will arise when technology companies try to conform to traditional banking requirements.

Our traditional community banks need to become technology savvy companies. America's banking system should use technology as sustainable energy for stimulating business ingenuity in the financial services sector, improving the value of the banking relationship, and providing for better regulatory compliance to ensure safety and soundness of our financial institutions.

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

America's banking system has had its challenges and the public has lost confidence in the trustworthiness of our financial institutions. The last thing we need is to allow for companies that are inexperienced in handling banking compliance as we know it today to be the guinea pigs for the banking enterprises of the next decade. We do not want these technology based financial institutions to fail. We do not want to see them have any problems with capital and liquidity. This is why I think we need to have a system which partners today's traditional community banks with the emerging technology companies that are now transforming financial services.

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, 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 services in a virtual or physical community demonstrate its commitment to financial inclusion?

The best way to demonstrate commitment to financial inclusion is to provide transparency and to enable customers to control their banking experience. What we need to have is a system in which traditional banks make sure that all is well with regulatory compliance and customer inclusion. There should be incentives for collaborative relationships between community banks and these technology companies resulting in the convergence of fintech and banking. We need a new hybrid type of bank which offers both technology and traditional banking in a synergistic way within the boundaries of the regulatory framework provided for by the OCC and other regulators. It is more of a shift in thinking. We shouldn't require a fintech company to be something it really isn't. We should encourage banks to embrace technology disruption and be the stewards of adopting technologies which foster financial inclusion. Providing incentives for collaboration to bring forth such technologies to the public should be considered.

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?

Financial inclusion is of course one of the core objectives of our banking system. Technology which enables people to bank using mobile applications on their smart phones and at other points of engagement are here and now. People can interface with banks through voice and other biometric recognition technology and handle financial matters of all types by integrating banking with the growing Internet of Things. Banking will be more accessible through the use of household devices and office equipment, as well as intelligent systems in vehicles and wearable technology. We will be able to communicate 24/7 with our financial institutions and handle financial transactions in a real time, safe and seamless way which reduces current inefficiencies in our banking system and enables people to manage their financial matters more efficiently and more effectively.

We need to encourage our community banks to adopt this kind of technology and be at the forefront of the increased availability of banking services to ensure that the financial inclusion offered by this technology is done in a way which complies with regulatory requirements. Many traditional bankers may be old-fashioned, but they are our best stewards of safety and soundness for the offering of fintech by our financial institutions.

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

We need to realize that the definition of what constitutes banking services must change with the implementation of new technologies. We will need to ensure financial inclusion by encouraging these companies to provide products and services which achieve that objective. Most of these businesses will be interested in doing that as part of their business model because making money from these enterprises requires people to use these technologies and the more these technologies are available, the more money these businesses can make for their investors. So there is an alignment of interests.

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

The issuance of charters with certain requirements along these lines is worth considering, but technology by itself is not a solution to making banking services available and addressing gaps in protection. Technology offers a way to provide safeguards to ensuring that the gaps in protections afforded individuals versus small business borrowers are closed. Technology can ensure that desired business processes are followed. The bottom line is that it is important to clearly articulate what we want this technology to accomplish and to encourage fintech companies to achieve those results.

7. What are potential challenges in executing or adapting a fintech business model to meet regulatory expectations, and what specific conditions governing the activities of special purpose national banks should the OCC consider?

For the charter to have any value in governing the way these companies do business, the regulatory framework should provide the safeguards to prevent unsafe and unsound practices and ensure other regulatory requirements are followed. To the extent that a business model is something outside of these requirements, the system should be flexible enough to allow for progress. We need to be careful not to stifle innovation by ensuring that everything fits neatly within the regulatory box. An applicant should be able to demonstrate that the business model is compliant even if it is totally new.

With this said, it is of paramount importance that financial technologies are implemented by regulated financial institutions. The banking system has suffered an erosion of public trust. There should not be any relaxation of regulatory expectations for fintech companies unless it makes good sense for financial institutions generally.

We should encourage the human capital the country has developed in growing its community banking system to join together with the technology experts to create a safe, sound and effective money management system for the current era. Technology-centric community banks need to be America’s success story. It is the launchpad for economic growth.

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?

The best approach to ensuring safety and soundness is to encourage fintech companies to partner with traditional banks which are experienced in ensuring safety and soundness. The approach from a 30,000 foot strategic viewpoint is to provide economic incentives for investment in these technologies and incentives for banks to partner with fintech innovators.

The vitality of the community banking system is highly relevant. They should be an effective catalyst to grow the economy. There is a need for knowledgeable bankers. There is a need for new technology. We should encourage these for-profit entities to operate in a safe and sound matter and in the public interest, but to do it together, because experience in banking will help mitigate the risks. Our banking system should have the best and most leading edge technology. Bank investors need to be encouraged to support the growth of this important platform. We need enhanced tax benefits for investors. We need a system that offers proprietary rights for innovative financial technologies.

If the OCC can work together with other government entities and the private sector, America will have a "banking ecosystem" unmatched throughout the world.

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?

The competitive landscape is changing rapidly. Full-service banks are challenged by credit unions, non-bank lenders and intermediaries that operate outside the traditional banking system. Add to that regulatory compliance and a low interest rate environment. It is very difficult in 2017 for community banks under 1 billion in assets to be competitive and to provide the level of investor return that attracts capital. Community banks need a boost. To preserve the community banking system we need to blend technology into traditional banking to decrease operating expenses, provide more effective means for regulatory compliance, and provide improved products and services that add value to the individuals and businesses that are the customers of the banks.

If we treat technology companies as separate from traditional banking, we are putting traditional banking at risk for extinction. We need banking and we need technology. We are doing a disservice to the public if we allow for standalone technology companies to function as banks, and have a regulatory culture which discourages banks from benefiting from this technology disruption. Ultimately, consumers and businesses will benefit if we allow banks and technology companies to become partners. This can take different forms, but the safeguards to the public are best provided by experienced bankers and we should not lose sight of the value of this human capital.

We should not look at technology as something outside of our traditional financial institutions. They need to be fully integrated. We will increase the value and relevance of our banks by fostering combination rather than competition. There needs to be convergence of the financial technologies with the human element of community banking, and community banking needs to be redefined away from geographic boundaries to banking that serves today's transient population and global business environment.

Small businesses do business throughout the country and throughout the world. The wonderful life today is not a bank in a small town that serves just the needs in that town, but a bank that serves people in small towns and large towns and everywhere, and provides a global opportunity to use the banking platform to be part of a larger economic ecosystem. State lines are no longer relevant. Even national boundaries are becoming less relevant. We need a regulatory approach which does not put a fintech special purpose national bank pitted against the already dying industry of community banking. That is equivalent to putting nails in the coffin of community banking at a time we need to bolster the public trust in our banking system. We need to help these community banks really reach out to customers and businesses and grow this economy through lending money, providing better depositing technologies, and offering innovative integration of financial technologies with other aspects of day-to-day life.

It is a different world today than it was five years ago. It is a world of technological disruption. We need to recognize that and provide for a pathway for that technological disruption to enhance the American community banking system rather than to turn it into something in which we just talk about in 2020 as as an industry from yesteryear. Taxi companies, travel agencies and many retailers are going out of business. We cannot and should not allow fintech companies to put our community banks out of business. In fact, this is an opportunity for the OCC to take a different path and bolster the American economy by encouraging the marriage of fintech and community banking to serve the growing world of tomorrow.

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?

The regulatory authorities should be open to new technologies and new ways to mitigate risk. It is a changing world and we should not judge technological disruption by regulatory schemes developed organically over past decades. We need to take a fresh look at what risks are so significant that we need to have specific requirements and what risks we need to allow companies to mitigate against with technology. We should be satisfied if the consumers or businesses who work with these fintech companies are not mislead or somehow cheated by unscrupulous business practices, but we should not dictate how they employ technology that is so new and perhaps so significant to our future growth that we just can't put regulatory safeguards in place fast enough. Regulation should not be an obstacle to future innovation.

It is a global economy and innovation based economic development requires a banking system which needs to redefine itself as a relevant stakeholder and a catalyst to the fast changing approach to money management, handling transactions, lending money, and making life easier for people and businesses to get more value from their banking relationship.

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?

Having been on the board of a bank for 20 years I am sure I am not the only one who wonders why we have so many different regulatory bodies that are looking at banks. Regulatory oversight is certainly needed to protect the public, but the ability of financial institutions under 1 billion in assets to effectively provide the returns that investors want is becoming impossible to achieve. Unless we want to have a system in which we have a barbell with large financial institutions with financial technologies of their own at one end, and fintech companies with special purpose national bank charters at the other, we need to consider a streamlined uniform approach to regulating and growing our financial institutions. We need an environment that will encourage innovation. We need to develop more advanced financial technologies. We won't have that environment unless we encourage the widespread implementation through our full service banks of promising technologies offered by artificial intelligence and the Internet of Things, among other emerging areas of technological disruption. We need to have a banking system that supports the economic platform required to grow the American economy.

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?

The best way to mitigate against these risks is to involve experienced bankers in the process. Fintech companies are often early stage technology companies without financial safeguards in place. We need to make sure fintech companies have boards and management with banking experience. We should not rely on technology experts to manage risk. Board and management experience in banking should be required.

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

There should be a comprehensive national approach to the development of our banking system for the impending fast tracked growth of the American economy. The banks in our country need to provide the banking expertise and the fintech companies need to provide the technology expertise. An approach is needed to make sure that the regulatory burden is not so overwhelming that we stifle innovation and foreclose the implementation of high-value technology that can be a catalyst to the growth of the economy. I suggest that the OCC work together with Congress and other regulatory agencies such as the Internal Revenue Service to enable a clear path to progress.

One suggestion is to provide enhanced returns through tax credits for community banks which partner with fintech companies to bring these new technologies to individuals and small business customers. We need to encourage the private sector to invest capital in community banks which partner with fintech companies.

Incentives for innovation are required. The patent system is not awarding patent rights for many computer related technologies. Without the patent system providing exclusionary rights to many types of fintech innovation, OCC regulatory approval could provide approval of rights to deploy submitted technologies like FDA does with drugs. Whatever the solution, it should be a fast tracked approach. We need to encourage innovation and investment and that starts with rewarding innovators, investors and community banks that bring technology to the public.

There is an unfair playing field in our banking system today. We have credit unions which pay no taxes and which have expanded their scope to be the same as community banks, which pay taxes. With increased regulation and the low interest rate environment, many community banks have disappeared. We have also seen non-bank lenders, non-bank mortgage companies, and other non-bank financial intermediaries take the place of banks in serving the needs of consumers and businesses.

Banks have historically been the foundation for the American way. People use them for depositing and saving money, handling financial transactions, and borrowing money for home purchases and business growth. We should not lose sight that we have a banking system and we have regulators like the OCC for a very good reason. We need to bring into the banking system the companies that operate outside of the banking channels.

Banks have made American exceptionalism what it is today. There is an opportunity here for the OCC to strengthen America's community banks by streamlining the regulatory approach for financial institutions and encouraging these banks to work with technology innovators. We need to reward investors who create technology that provides value for the American public. That is what we need and that is what I suggest the OCC consider in moving forward with this leading edge initiative.

Please let me know if you would like additional input.

Respectfully submitted,

/S/RCL

Richard C. Litman