



April 13, 2017

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

Regarding: *Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies, and Licensing Manual Supplement for Evaluating Charter Applications From Financial Technology Companies*

Dear Comptroller Curry:

The Community Bankers Association of Illinois (“CBAI”), which proudly represents approximately 340 Illinois community banks, appreciates the opportunity to provide our observations and recommendations regarding the Office of Comptroller of the Currency (“OCC” or “Agency”) *Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies* (“Summary of Comments”), and *Licensing Manual Supplement for Evaluating Charter Applications From Financial Technology Companies* (“Licensing Manual Supplement”).

CBAI acknowledges that the OCC has determined in its discretion that it is in the public interest

**CBAI is dedicated to exclusively representing the interests of Illinois community banks and thrifts through effective advocacy, outstanding education, and high quality products. CBAI’s 340 members hold more than \$70 billion in assets, operate 860 locations statewide, and lend to consumers, small businesses, and agriculture. For more information, please visit [www.cbai.com](http://www.cbai.com).**

to consider applications for special purpose national bank (“SPNB”) charters (“Charters”) from financial technology (“Fintech”) companies. We also acknowledge the OCC’s statement that it has carefully considered the issues outlined in the comments received from the OCC’s white paper titled *Exploring Special Purpose National Bank Charters for Fintech Companies*, regarding which the CBAI commented on January 13, 2017. We appreciate that the OCC has decided to issue for public comment the *Licensing Manual Supplement* which will provide guidance to any Fintech that may want to file a charter application.

However, CBAI remains disturbed by the decision that the OCC will be moving forward with chartering Fintechs as we have many concerns with the Agency issuing SPNB Charters. **CBAI again respectfully requests that the Agency delay moving forward with considering applications for Charters for Fintechs until these concerns are thoroughly addressed and completely resolved, and limit its activities in this area to providing resources, information, and guidance to community banks in their understanding of the risks and benefits associated with emerging technologies and new approaches to financial services.**

### **OCC’s Capability**

CBAI remains concerned about the OCC’s capability to charter, supervise, examine and enforce against perhaps hundreds of Fintechs, notwithstanding the Agency’s past efforts to gain a better understanding of various innovations and the creation of a stand-alone Office of Innovation within the Agency. CBAI is primarily concerned with how the OCC will successfully supervise and regulate companies that have a significantly different professional orientation and risks than banks without interfering with the Agency’s current responsibilities to carefully regulate national banks and federal savings associations. The OCC will need to prepare itself for these new responsibilities which we are concerned will distract the Agency from its primary responsibilities, and it will take time and cost to acquire these new skills. **Before expanding into this new risk area, CBAI urges the OCC to clearly demonstrate that it is capable of assuming the many new responsibilities for supervising, regulating, examining and enforcement against Fintechs. The responsibility to pay for that preparation should not be placed on community banks and savings associations.**

### **Legal Authority / Acting in Haste**

The legal authority of the OCC to Charter Fintechs has been challenged by the Conference of

State Bank Supervisors (“CSBS”) in a December 2, 2016 media release, and by Sherrod Brown, United States Senator and Ranking Member of the Senate Banking Committee, in a January 9, 2017 letter to the Agency. A March 10, 2017 letter to the Agency, signed by thirty-four members of the United States House Financial Services Committee, expressed concern about the OCC “proceeding in haste” and “rushing to finalize the charter” without providing the [specific] details of the charter, and cautioned “please be aware that we will work with our colleagues to ensure that Congress will examine the OCC’s actions and, if appropriate, overturn them.”

The OCC’s legal authority and pace of progress should be mutually agreed before the Agency issues Charters for Fintechs. It would be harmful to all parties for questions on these fronts to cloud the legitimacy, or for subsequent legal challenges to distract the Agency and put the question of its rights and actions in limbo for an extended period of time. **CBAI urges that the issue of legal authority and pace of progress be resolved before the OCC moves forward with considering applications for Fintechs.**

### **Coordination of Agency Efforts**

With Fintechs being disruptive and transformative for the financial services profession, a single regulator acting unilaterally in chartering, examining, supervising, regulating and enforcing against Fintechs is not in the best interests of the profession, consumers and the economy. The cooperation and coordination of all the various national and state banking regulators is needed as well as Congressional concurrence. The Agency’s general statements in the *Summary of Comments* and the *Licensing Manual Supplement* about the OCC “continuing to engage”, “leveraging the channels of communication and collaboration”, and “coordinate as appropriate” in our opinion falls well short of a rigorous and coordinated agency effort that is required regarding Fintechs.

The OCC regulates 1,400 national banks and federal savings associations (including nearly 1,200 community banks and savings associations) which represent only one-quarter of the total number of financial institutions. The Federal Reserve, FDIC and the various states regulate the other approximately 4,500 financial institutions. **CBAI recommends that the national banking regulators (FDIC and Federal Reserve) and the CSBS (on behalf of state bank regulators) be included in formal and public outreach meetings about Fintechs around the country, as they may be involved in supervising and regulating these companies, and all financial institutions will be impacted by SPNB Charters.**

An added benefit of public discussions and joint rulemaking with other regulators will be that the collective expertise and unique perspectives of all agencies will be brought to bear on these important issues. These collective discussions must take place before the Agency considers Fintech applications for Charters. **CBAI recommends that these meetings result in formal joint proposals and rulemaking, and be made available for extended comment periods, to cooperatively and clearly establish the various areas of responsibility in chartering Fintechs for each of the regulators.**

### **Specific Requirements, Transparency, and Accountability**

A review of the *Summary of Comments* and particularly the *Licensing Manual Supplement* revealed a continued surprising and disturbing lack of specificity regarding all aspects of how the OCC will be managing the application, regulation, examination, and the enforcement process for Fintechs. CBAI is not insensitive to the need for flexibility in regulating financial institutions, but greater specificity is required for new Fintech Charters.

Equally important as specific requirements is transparency and accountability in the chartering and regulation of Fintechs which is required to identify and avoid any playing field distortions for all regulated institutions including community banks. CBAI cannot support any Charter approvals whereby Fintechs would have a competitive advantage over community banks.

The OCC proposes imposing additional conditions on Fintechs with operating agreements, but CBAI has concerns with this plan. These concerns include consistency within the Fintech industry and between Fintechs and community banks. The Agency proposes using operating agreements presumably because of a lack of existing regulations for Fintechs which can be rectified by promulgating formal rules and regulations and made available for comment, and not with ad hoc agreements. **CBAI urges the OCC not to regulate Fintechs through operating agreements but through specific, established and transparent rulemaking to ensure clear guidance and consistent application of rules and regulations. In the event the Agency disregards this recommendation, the operating agreements should be made public in their entirety, not just the disclosure of the existence of an operating agreement in the approvals. Also, any subsequent waivers the OCC grants Fintechs for deviations from the terms of the operating agreements should also be made public.**

Depending on their business model Fintechs may not be subject to Community Reinvestment Act (CRA) compliance as are community banks. For these SPNB Charters the OCC proposes to

utilize a Financial Inclusion Plan (“FIP”) as an alternate method of assuring fair access to financial services consistent with safe and sound operations, meeting the credit needs of entire communities, and fair treatment of customers. CBAI is concerned that FIPs will result in a lesser regulatory requirement and burden for Fintechs than are required of community banks under the CRA.

CBAI believes that, for the requirements and burden to be equivalent, the OCC’s expectations should be clearly established by a proposal. Those expectations should mirror to the greatest extent possible the CRA and the proposal should be subject to formal rulemaking together with an extended comment period. The proposal should specifically include but not be limited to: annual FIP Policy review and approval by the board of directors; the naming of a FIP Officer; enumerated senior management and FIP Officer responsibilities; periodic reporting to the board of directors; examination scope and frequency; a rating system comparable to CRA; a requirement for the rating and selected other information (similar to the CRA examination results) to be disclosed in a public section of the report of examination; and the significant regulatory repercussions of a less than satisfactory examination rating (delivered in a timely manner) must be clearly stated. **CBAI urges the OCC to establish FIP requirements that are no less stringent, and repercussions for non-compliance that are no less severe, for Fintechs than the CRA compliance requirements for community banks.**

### **Comingling of Banking/Commerce and Concentrations of Economic Power**

In the Standards and Policy Considerations section of the *Licensing Manual Supplement* the OCC states that it will not “approve proposals [applications] that would result in inappropriate comingling of banking and commerce” and proposals that would “foster anti-competitive effects and undesirable concentrations of economic power.” (emphasis added) CBAI unfortunately takes little comfort in these statements by the Agency considering the current extent of the mixing of banking and commerce that has been allowed since the repeal of the Glass-Steagall Act and that the four largest domestic banks, all of which are regulated by the OCC (and presumably do not now exceed its threshold of undesirable concentrations of economic power), control more than 50% of the nation’s banking assets. CBAI is also concerned about whom and how will the decisions be made in determining what is considered inappropriate comingling and undesirable concentrations, and the uncertainty of how those determinations may change over time resulting in further harm community banks. **CBAI urges the OCC to establish in consultation with the other banking regulators, and through formal rulemaking, comingling and concentration standards for Fintechs that do not result in the decline in the**

**number of community banks which regrettably now control only approximately 17% of the nation's banking assets yet importantly make 50% of small business loans and 90% of agricultural loans.**

## **Level Playing Field**

The unfortunate reality is that Fintechs, by the very nature of their limited-purpose business models, will enjoy a competitive advantage over full-service community banks. For example, Fintech lenders that do not accept deposits will not be subject to deposit regulations, and a similar advantage would accrue to Fintechs that only pay checks or receive deposits but do not lend money. CBAI is concerned with the OCC moving forward with chartering Fintechs because it will institutionalize an inconsistent regulatory framework which will ensure that Fintechs will have a competitive advantage over community banks. This competitive advantage for Fintechs should be addressed by the OCC and all of the banking regulators, and a way must be found to level the playing field so there is fair and equitable competition between all types of banking charters and within the financial services profession.

Fintech charters with a competitive advantage must not be allowed to occur, particularly by the very regulator [the OCC] that is tasked with ensuring the safety and soundness of the 1,200 community banks and savings associations that it regulates. Additionally, these competitive imbalances should not go unchallenged by the FDIC, the Federal Reserve and state banking regulators, as it impacts the safety and soundness of the many thousands of community banks they regulate.

**CBAI urges the OCC to guarantee that Fintechs will comply with all banking laws, rules and regulations, and be held to the same rigorous safety and soundness, and supervision and regulation and enforcement standards currently required of community banks and bank holding companies. These standards must include but not be limited to substantial capital and liquidity levels and robust buffers, frequent regulatory examinations, CRA compliance or its equivalent, compliance with laws to protect consumers, regulatory actions for noncompliance, sanctions and prohibitions, and personal liability for Fintech directors and officers.**

**Fintechs cannot and must not have the advantages of being a national bank with limited requirements, regulations and liability.**

## **Conclusion**

CBAI has a number of concerns which must be addressed and resolved regarding the OCC issuing Charters for Fintechs.

One concern relates to the wisdom of the OCC chartering hundreds or perhaps thousands of Fintechs at this time. Any proposal to regulate Fintechs must be carefully analyzed and not interfere with the OCC performing its current regulatory responsibilities which should be focused on regulating the largest banks and community banks and holding Fintechs to the same regulatory standard.

It is also important to know who will bear the cost of getting the OCC fully prepared to assume these new responsibilities. Community banks certainly do not want to, nor should they be required to, bear any of those costs.

The legal authority of OCC chartering Fintechs and the pace of progress must be mutually agreed upon. The OCC should join with the other national banking regulators, and the CSBS on behalf of the state banking regulators, and a consensus must be reached regarding responsibilities for chartering, regulating and supervising Fintechs. The regulators' responsibilities and the requirements for Fintechs must be specific. The process must be public, transparent, and include the promulgation of formal rules including extended comment periods – and not by ad hoc regulation through operating agreements.

Finally, community banks must not be placed at any competitive disadvantage with Fintechs and Fintechs must comply with all of the banking laws, rules and regulations, regardless of the limited scope of their activities.

CBAI urges the OCC to thoughtfully consider the afore mentioned observations and recommendations and thanks you for the opportunity to comment on the *Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies*, and *Licensing Manual Supplement for Evaluating Charter Applications From*

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*Financial Technology Companies.* If you have any questions or need additional information, please do not hesitate to contact me at (847) 909-8341 or [davids@cbai.com](mailto:davids@cbai.com) .

Sincerely,

/s/

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Vice President Federal Governmental Relations

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