



January 13, 2017

Comptroller Thomas J. Curry
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Re: Special Purpose National Bank Charters for Fintech Companies

Dear Comptroller Curry:

The Financial Services Roundtable (FSR) and its technology policy division, BITS, appreciate the opportunity to comment on the proposal by the Office of the Comptroller of the Currency (OCC) to create a special purpose national bank charter for Fintech companies.¹

Our member firms support the convergence of finance and technology and are committed to financial innovations that can better serve the needs of consumers and businesses. We recognize that this convergence has the potential to address financial inclusion, improve financial literacy, and lead to the development of new financial products and services. We also recognize that much of the existing framework for financial regulation was established before the development of the Internet, mobile banking, and other technological developments that define our modern age.

We commend the OCC for its development of this proposal. Just as the financial industry needs to evolve with technology and changing customer preferences, so, too, must financial regulations and the regulators themselves. A special purpose national bank charter for Fintech companies would be an important step in that process. It must be recognized, as well, that the innovation driving the need for this proposal is not isolated to the microcosm of nonbank Fintech firms. National banks are actively engaged in the digital transformation and, as such, their regulatory and supervisory treatment must be holistically considered and reexamined in any update of regulatory standards intended to address innovation and Fintech.

Our comments on the proposed special purpose charter are divided into two parts: First, we address some general themes that should guide the development of a special purpose charter

¹ About FSR and BITS: As advocates for a strong financial future™, FSR represents the largest integrated financial services companies providing banking, insurance, finance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. BITS is the technology policy division of FSR and addresses emerging threats and opportunities, particularly those related to cybersecurity, fraud reduction, critical infrastructure protection and innovation. Working with CEOs, CIOs, heads of IT Risk and other senior members of member companies, BITS identifies key issues at the intersection of financial services, technology and commerce and facilitates collaboration to improve the ecommerce environment for member companies and their customers through the development of policies and practices.



for Fintech companies. We then address the specific questions posed by the OCC in its paper entitled “Exploring Special Purpose National Bank Charters for Fintech Companies.”

Guiding Themes

A special purpose charter for Fintech companies should be based upon the principle of responsible innovation.

In announcing this proposal, the OCC noted that Fintech companies “hold great potential to expand financial inclusion, empower consumers, and help families and businesses take control of their financial matters.”² The OCC also acknowledged that innovation carries risks, and that these risks should be addressed through appropriate supervisory standards. The OCC previously has labeled this approach to regulation “responsible innovation.”³

We agree that a special purpose charter for Fintech companies should be based upon the principle of responsible innovation. Financial regulation should accommodate innovations that can benefit the customers of financial products and services. At the same time, it is important for the OCC to maintain the integrity of the national banking system, which has operated for over 150 years.

In other words, this initiative should not result in a two-tiered national banking system under which special purpose Fintech banks are subject to compromised supervisory standards. The OCC’s Licensing Manual for Chartering acknowledges this potential risk. The Manual states that “Special purpose banks must meet the same statutory and regulatory requirements as other banks, unless applicable laws or regulations provide otherwise.”⁴ We urge the OCC to adhere to this policy as it authorizes special purpose Fintech banks.

To ensure parity among national charters, we support the application of regulatory standards to special purpose Fintech banks that are consistent with standards applicable to full-service national banks and federal thrifts. Such standards should include capital, liquidity, and risk management standards. They must also include consumer protection standards, privacy standards, and data security standards for customer and business information.

Special purpose Fintech banks also should be subject to the same supervisory expectations applicable to full-service national banks. This should include expectations on matters such as underwriting standards for loans and the qualifications of management. Board members and management for special purpose Fintech banks should receive the same scrutiny for fitness as board members and management for full-service banks. This also should include

² Special Purpose National Bank Charters for Fintech Companies, Remarks of Thomas J. Curry, Comptroller of the Currency, Georgetown University Law Center, Dec. 2, 2016.

³ OCC, *Recommendations and Decisions for Implementing a Responsible Innovation Framework* (Oct. 2016), 3 (Responsible innovation is “the use of new or improved financial products, services, and processes to meet the evolving needs of consumers, businesses, and communities in a manner consistent with sound risk management and aligned with the bank’s overall business strategy.”).

⁴ OCC Licensing Manual, Charters, 50.



compliance with the OCC's guidance on third-party vendors, whether the special purpose Fintech bank is acting as a principal or as a vendor to another bank.⁵

The importance of parity among the charters should not be understated. Parity in regulatory and supervisory treatment ensures appropriate consumer and other protections, and ensures the continued integrity of the national banking system. Although we support the notion of providing Fintech companies with access to a limited purpose national bank charter, we suspect the OCC will hear significant opposition from those who believe that the provision of such a charter is an end run around state laws. This allegation begins to carry weight if Fintech companies are permitted to enjoy the advantages of a national bank charter without the corresponding responsibilities. Parity in regulation and supervision with full service national banks avoids this potential problem and ensures the integrity of the national banking system and the National Bank Act.

To be clear, however, parity does not mean identical regulation and supervision in all respects. We appreciate that special purpose Fintech banks may be engaged in only limited lines of business and that some regulations and supervisory policies naturally may not apply to the special purpose Fintech bank. The regulatory and supervisory standards applicable to such a bank should be based upon the business model and risk profile of the bank and its services, just as they are with any full-service national banks.

Furthermore, the stated goal of this proposal is to encourage the entry into federally regulated financial services of Fintech companies that can help meet the financial needs of consumers, families, and businesses. We strongly support this goal. Yet, depending on how the OCC addresses and defines this notion of parity, it is possible the small pool of Fintech firms with the scale and resources to even consider applying for an OCC charter may find such regulatory and supervisory standards difficult to achieve, or more likely, not worth the cost. In that case, the purpose of this initiative would be frustrated, and this critical goal not met. To avoid that result, yet ensure parity in regulation and supervision, the OCC may find it necessary to re-evaluate some standards applicable to full-service national banks and, as mentioned previously, examine the existing regulatory constraints inhibiting national banks from engaging in responsible innovation.

Finally, in our response to the OCC's paper on responsible innovation, we made several recommendations for creating a space for innovation that both serves the financial needs of consumers and businesses and maintains the integrity of the national banking system. We believe these recommendations should apply to the development of a special purpose charter for Fintech companies. Specifically, the OCC should:

- Remain measured in its enforcement of statutes and regulation, addressing obvious violations but providing a degree of latitude to allow for innovation through targeted experimentation;

⁵ OCC Bulletin 2013-29; Bank Service Company Act.



- Refrain from holistic, comprehensive rulemaking as a first order, and instead look to formulate an environment with clear rules and expectations in which innovation can occur;
- Approach new guidance or rulemaking, in collaboration with industry stakeholders, and with an eye toward filling overt regulatory gaps that could expose consumers or the broader economy to manifest harm;
- Coordinate and synchronize all efforts designed to support innovation with peer agencies in a way that is based on principles that can evolve with changes in technology and customer preferences, remains technology agnostic, and ensures uniform prudential regulation and supervision of financial products and services, regardless of the legal status of the provider; and
- Develop a consistent, yet adaptable, common language and approach to improve efficiencies, reducing regulatory arbitrage and providing legal clarity in many circumstances.⁶

Fintech firms should have a choice between a full-service national bank charter and a special purpose charter, but the OCC needs to define more clearly the powers of special purpose Fintech banks.

In announcing this proposal, the OCC stated that Fintech companies “should have the choice to become national banks if they wish to do so.”⁷ Again, we agree. A national charter should be an option for Fintech companies, just as a national charter is an option for banks and thrifts. The dual banking system has promoted both financial innovation and improvements in financial supervision, and we could envision similar public benefits from the creation of a special purpose Fintech charter. The OCC, however, needs to define more clearly the powers of a special purpose Fintech bank.

Special purpose banks normally offer only a small number of products, target a limited customer base, incorporate nontraditional elements, or have narrowly targeted business plans.⁸ Additionally, certain special purpose banks (i.e., CEBA credit card banks and trust banks) are subject to activity limitations under the terms of the Bank Holding Company Act,⁹ and the OCC

⁶ Letter from Richard Foster, Senior Vice President & Senior Counsel for Regulatory and Legal Affairs, Financial Services Roundtable and Christopher F. Feeney, President, BITS to Comptroller of the Currency, May 31, 2016, <http://fsroundtable.org/letter-to-occ-on-responsible-innovation/>.

⁷ Special Purpose National Bank Charters for Fintech Companies, Remarks of Thomas J. Curry, Comptroller of the Currency, Georgetown University Law Center, Dec. 2, 2016, 4.

⁸ OCC Licensing Manual, Charters, 50.

⁹ 12 U.S.C. § 1841(c)(2)(D) (the deposits of a trust bank must be held in a fiduciary capacity; no insured deposits can be offered or marketed by or through an affiliate; the trust bank cannot accept demand deposits that can be withdrawn by check; and the trust bank cannot obtain payments services from a Federal Reserve Bank or borrow from the discount window); 12 U.S.C. § 1841(c)(2)(E) (a credit card bank that accepts deposits under \$100,000 as collateral for loans may only engage in credit card activities; may not accept demand deposits that can be withdrawn by check; cannot accept savings or time deposits of less than \$100,000; and may not engage in making commercial loans).



may require a special purpose bank to specify the nature of its business in its articles of association or charter, and not deviate from that business without OCC approval.¹⁰

Yet, the paper detailing this proposal does not explain what makes a special purpose Fintech bank special. The paper notes that, under existing OCC regulations, a special purpose bank that conducts activities other than fiduciary activities must conduct at least one core banking function (receiving deposits, paying checks, or lending money), but the paper does not indicate if a special purpose Fintech bank would be permitted to engage in just one of the functions, or all.¹¹ Moreover, the paper states that a Fintech company could use a special purpose charter to accept insured deposits.¹² If a special purpose Fintech bank accepts insured deposits, it would be no different than a full service national bank. The parent of the bank would be subject to the Bank Holding Company Act,¹³ and the bank would be subject to the Federal Deposit Insurance Act, the Community Reinvestment Act, all federal consumer financial protection statutes, and the Bank Secrecy Act.

Since Fintech companies already have the ability to apply to the OCC to become full-service national banks, we assume the OCC intends that the special purpose Fintech charter would be subject to some activity limitations, like other existing special purpose banks. While special purpose banks may not be “banks” for purposes of the Bank Holding Company Act, the OCC should be sensitive to longstanding policies related to the separation of banking and commerce.

Additionally, the term “bank” may not be appropriate for these special purpose entities, depending on the nature of their activities. In an effort to reduce potential confusion in the general public, we ask the OCC to consider not identifying these entities as “banks” if they do not accept insured deposits.¹⁴

Clarity on the scope of authority for a special purpose Fintech bank is needed to distinguish special purpose Fintech banks from both full-service national banks as well as other special purpose banks.

State laws should apply to a special purpose Fintech chartered bank in the same manner that they apply to a full service national bank.

We fully support the application of state laws to special purpose Fintech chartered banks in the same manner as state laws apply to full service national banks. The preemptive power of

¹⁰ OCC Licensing Manual, Charters, 50.

¹¹ OCC, *Exploring Special Purpose National Bank Charters for Fintech Companies* (Dec. 2016), 3 (citing 12 C.F.R. § 5.20(e)).

¹² *Id.* at 7 (“A Fintech company that proposes to accept deposits other than trust funds would be required to apply to, and receive approval from, the FDIC.”),

¹³ Absent an amendment to the Bank Holding Company Act, a special purpose Fintech bank that accepts insured deposits would be treated as a “bank” for purposes of that Act, and the parent of the bank would be subject to the activity restrictions of the Act.

¹⁴ We recognize that 12 U.S.C. § 22 which requires a national bank’s name to include the word “national” would apply to these entities.



the National Bank Act is central to the national charter, and should apply to any entity chartered by the OCC. The OCC's preemption regulation provides detailed guidance on the categories of state laws that apply to national banks, and the categories of state law that do not apply to national banks. That regulation is based upon a series of decisions by the U.S. Supreme Court and the enactment of amendments to the National Bank Act as part of the Dodd-Frank Act. The OCC should strongly resist any efforts to alter the application of its preemption regulation to special purpose Fintech banks.

Full service national banks should be able to receive credit under the Community Reinvestment Act (CRA) for engaging in the same type of financial inclusion activities the OCC requires of special purpose Fintech banks.

In the paper entitled "Explaining Special Purpose National Bank Charters for Fintech Companies," the OCC states that it will expect a special purpose Fintech bank that engages in lending activities to meet CRA-like obligations, even though the special purpose bank is not subject to CRA. Given the variety of Fintech business models, this requirement is likely to result in financial inclusion credit for activities that do not fall within the existing CRA lending, investment or service standards. In order to equalize the financial inclusion obligations of special purpose Fintech banks and full service national banks, we urge the OCC to permit full service national banks to receive CRA credit for engaging in the same type of financial inclusion activities that the OCC recognizes for special purpose Fintech banks. Additionally, we recommend policymakers begin a process to review and reassess the overall features of CRA to determine whether the current requirements need to be updated for all national banks to ensure this important statute keeps pace with today's increasingly digital financial world and changing consumer preferences.

OCC should establish a procedure for monitoring and evaluating the impact of special purpose Fintech banks on the national banking system and financial markets.

The creation of a special purpose charter for Fintech companies not only will have a direct impact on consumers and businesses, but also will have unknown and unintended impact on the national banking system and financial markets. We recommend that the OCC establish a procedure to monitor and evaluate such unanticipated effects to ensure the continued integrity of the national banking system and financial markets. This should include an assessment of systemic risks that might arise based upon new entrants into the national banking system.

Responses to Questions

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

The principal public policy benefit of a national bank charter is uniform supervision and regulation by an experienced regulatory agency that can ensure the safe and sound operation of the institutions it charters.



As for risk, a Fintech charter would present the same risks as any other national bank charter. Those risks include solvency risk since the failure of one or more special purpose Fintech banks could damage public confidence in the national banking system. Other risks include operational risk and compliance risk. Additionally, expanding the entry point into the financial system represents an increased cyber risk. As the OCC recently noted, cybersecurity risk is one of the major risks facing the national banking system.¹⁵ Accordingly, it will be important for the OCC to manage and monitor appropriately the expanded scope of cyber risk associated with the chartering of special purpose Fintech banks.

Fintech charters also may carry some unique risks based upon their business models. For example, if a special purpose Fintech charter is permitted to accept uninsured deposits, there is the risk that depositors will confuse uninsured deposit accounts with insured deposit accounts. Likewise, a special purpose bank that engages in a narrow range of activities may pose a level of concentration risk that is not associated with a full service bank.

- 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?*

Capital and liquidity standards should be aligned with risk of the assets and the overall risk profile of the bank. Additionally, these standards should be based upon potential stress events, just as the capital and liquidity standards for national banks are based upon potential stress events.

- 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?*

Full service national banks are subject to HMDA reporting requirements and CRA examinations, both of which are public. Special purpose Fintech banks that are involved in lending should be subject to comparable reporting and examination requirements tailored to the Fintech bank's business model.

- 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?*

Any firm chartered as a special purpose national bank should be subject to a financial inclusion commitment. Its portfolio should demonstrate a commitment to serve all consumers, especially those of low- and moderate-income.

¹⁵ OCC, *Semiannual Risk Perspective* (Fall 2016), 20.



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

CRA currently includes standards for so-called “wholesale banks.” Those standards may be a model for a special purpose bank that is not engaged in providing banking services to the general public.

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?*

We believe that this is a policy matter for Congress. We also believe Congress should address the regulation of innovation across the financial services and Fintech industries by reevaluating existing regulatory regimes to determine whether their scoping and requirements are appropriate in today’s competitive and changing technology landscape.

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?*

As noted above, we believe that the OCC needs to more clearly define the structure and powers of a special purpose national bank to distinguish it from a full purpose national bank. This would include guidance on governance criteria, operational and business policy development, operational staffing and concomitant training, organizational readiness of the charters, and effective review and reporting.

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?*

See our discussion of responsible innovation, above (p.2), in which we reference such items as liquidity and capital requirements and operational and risk management standards.

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?*

Again, as noted above, we believe it is critical that the OCC take every effort to ensure against the creation of a two-tiered national banking system. Comparable regulatory standards and supervisory standards can address this concern. Our proposal for the establishment of a system to monitor and assess the indirect impact of these special purpose charters on the banking system and financial markets also is intended to address this concern.

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?*



Yes, we anticipate there will be products and services that pose special risks, and digital currencies may be one such product because of fluctuations in value and potential legal risks. For example, the OCC, like the other federal banking agencies, has focused a significant amount of attention to model risk management and testing. Presumably, the OCC might need to apply new model risk standards to a product such as a digital currency.

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?

Coordination among regulators is vital, and we have two suggestions toward that end.¹⁶ One is to create a special subcommittee within FFIEC to serve as a clearinghouse for information on Fintech developments. The other suggestion is for the OCC to create a Fintech Advisory Committee that would consist of industry representatives and other stakeholders in this space.

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?

See our discussion of regulatory and supervisory standards, above (pp.2-3).

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

The application procedures outlined in the OCC's paper are directed at a de novo business enterprise. That is inappropriate to apply to existing Fintech companies. More specifically, the paper speaks to issuing a preliminary charter approval, but explicitly states that a preopening examination will be conducted at the second stage following preliminary charter approval. We do not believe it would be appropriate to provide an existing Fintech company any preliminary approval without a full scope examination of their operations and compliance systems to ensure that they will be prepared to comply with OCC laws and regulations. We recommend that, in the case of an existing Fintech company, the OCC follow the application procedures currently applicable to charter conversions.¹⁷ That process generally requires a full scope examination prior to application decision in order to ensure that an applicant meets all applicable safety and soundness, risk management, and consumer protection requirements.

¹⁶ Our response to the OCC's paper on responsible innovation includes other suggestions on coordination among regulators and is available at <http://fsroundtable.org/letter-to-occ-on-responsible-innovation/>.

¹⁷ OCC Licensing Manual, Conversions.



Respectfully submitted,

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