January 17, 2017

By Electronic Submission

Office of the Comptroller of the Currency
400 Seventh Street, SW
Washington, DC 20219

Re: *Exploring Special Purpose National Bank Charters for Fintech Companies*

Ladies and Gentleman:

BAFT (Bankers Association for Finance and Trade) appreciates the opportunity to comment on the December 2016 paper issued by The Office of the Comptroller of the Currency ("OCC") entitled *Exploring Special Purpose National Bank Charters for Fintech Companies* (the "White Paper").[1]

BAFT is an international financial services trade association whose membership includes banks headquartered in roughly 50 countries around the world, financial services providers, as well as a growing number of non-bank and financial technology companies. BAFT provides advocacy, thought leadership, education and training, and a global forum for its members in the areas of transaction banking including trade finance, cash management, payments, liquidity, and compliance. For nearly a century, BAFT has played a unique role in expanding markets, shaping legislative and regulatory policy, developing business solutions, and preserving the safety and soundness of the global financial system.

In 2016, BAFT established an Innovation Council which brought together financial institutions and financial technology companies to provide awareness, education, and guidance with regard to emerging technology impacting the transaction banking industry. The Council channels its expertise to: (1) promote innovation, (2) drive regulatory change commensurate with the evolution of the transaction banking business through the delivery of new technology, and (3) develop industry best practices and standards. The comments included in this letter are reflective of both the bank and non-bank members of the BAFT community.

[1] OCC. *Exploring Special Purpose National Bank Charters for Fintech Companies*. December 2016. https://www.occ.treas.gov/topics/bank-operations/innovation/special-purpose-national-bank-charters-for-fintech.pdf

I. Introduction and Main Themes

BAFT would like to thank the OCC for continuing the thoughtful dialogue it began in March 2016, with the issuance of its consultative paper, *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*.[2] BAFT offered comments to that paper in a May 2016 letter.[3]

We were pleased to see a number of our comments and recommendations reflected in the final paper, *Recommendations and Decisions for Implementing a Responsible Innovation Framework*,[4] issued by the OCC in October 2016. Those include, among others: 1) the establishment of a central office for innovation; 2) the establishment of an "Innovation Fellows" program; 3) a commitment to increase dialogue with the private sector; 4) a pledge to review and modify some regulations and guidance, and; 5) the creation of a central web portal for relevant resources and guidance. We believe these initiatives will help create a more nurturing environment for financial services innovation in the United States, and that the OCC's White Paper exhibits a continued commitment towards that end.

In this letter, we offer recommendations and comments around five key themes:

1. We believe the sum of the proposal offered by the OCC is positive and will result in greater innovation, competition and improved products for customers.

2. The OCC should recognize that the fintech industry and its relevant companies and applications are widely varied and thus demand a nimble approach focused on the risk of the activity engaged in.

3. We urge the OCC to provide greater detail as to how a special purpose national charter, which - until this point - has only been used for trust activities or credit card banks, could be tailored for the unique and varied products offered by fintech companies.

4. The special purpose national charter for fintech companies will only reach its full value and potential if there is agreement among, and clear lines of responsibility between, the full community of federal financial regulators.

5. We strongly suggest that the OCC recognize the pragmatic challenges in introducing new formal financial inclusion requirements to fintech companies and make clear what impacts this may have on existing national banks. Further, the OCC should consider the vast benefits that new technology applications have for financial inclusion.

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[2] OCC. *Supporting Responsible Innovation in the Federal Banking System.* March 2016. https://www.occ.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf

[3] BAFT Letter to OCC re: Supporting Responsible Innovation in the Federal Banking System of 31 May 2016. http://www.baft.org/about-baft/news-and-press-releases/2016/05/31/baft-responds-to-occ-letter-on-innovation

[4] OCC. *Recommendations and Decisions for Implementing a Responsible Innovation Framework.* October 2016. https://www.occ.gov/topics/bank-operations/innovation/recommendations-decisions-for-implementing-a-responsible-innovation-framework.pdf

II. Granting special purpose national charters for fintech companies

The OCC's White Paper notes that much has changed in how financial services are formulated, delivered, and consumed, since the national banking system was created by President Abraham Lincoln over 150 years ago.[5] Personal computing, the creation of - and greater access to - the internet, and the advent of mobile computing have dramatically shifted how businesses and consumers behave. As the white paper observes, "Responding to those market forces are thousands of technology-driven nonbank companies offering a new approach to products and services."[6]

If fintech companies provide financial services and products, and are engaged in bank-related activities[7], a natural question occurs as to how they should be included (or not) into the well-developed legal, regulatory, and policy frameworks built for banks. Further, it is necessary to consider how we will evolve definitions and traditions of thinking regarding what constitutes "bank-related activities" as technology continues to change established products. We believe tremendous care should be taken with these definitions. BAFT can – and would like to – work with the OCC and others to convene thinking and drive consensus around these issues that the OCC intends to tackle. We believe the fundamental policy questions identified in the OCC's White Paper are correct:

- *Is the nation better served when banking products are provided by institutions subject to ongoing supervision and examination?*
- *Should a nonbank company that offers banking-related products have a path to become a bank?*
- *What conditions should apply if a nonbank company becomes a national bank?*[8]

In response, we believe the answers to those questions are clear:

- The nation *is* better served when banking products are provided by institutions subject to ongoing supervision and examination.
- A nonbank company that offers banking-related products *should* have a path to become a bank.
- The conditions applied to a fintech company should be the same as those applied to a national bank, with the an eye for equity and creating a level playing field that bolsters competition, innovation and improved service to customers.

We offer some general comments on the OCC's White Paper below and offer feedback on a number of the questions raised. We also detail further considerations that we'd urge you review as the process towards granting special purpose national charters for fintech companies moves forward.

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[5] See OCC, page 1.

[6] Ibid.

[7] See OCC, page 3. The OCC notes that, "A national purpose national bank charter that conducts activities other than fiduciary duties must conduct at least one of the following three core banking functions: receiving deposits, paying checks, or lending money."

[8] Ibid.

III. A rationalized national framework for financial technology is necessary

Overall, we believe the OCC's willingness to grant special purpose national bank charters to fintech companies is a welcomed option to entrepreneurs – both new and established – to offer better, more responsive, and more agile solutions that consumers want and demand. As the OCC is likely aware by this point, "Financial Technology", known affectionately as fintech, has become a sort of Rorschach test for the financial services industry: it's perceived meaning depends on the individual observing the term. To some, it's a mobile phone application that allows for peer-to-peer payments. For others, it is a direct user interaction with a decentralized digital currency protocol. And for some still, it is an Automated Teller Machine (ATM).

While none of these interpretations are necessarily wrong, it does reinforce the need for regulators (and industry) to be more sophisticated and hygienic with its use of terminology. What's good for an ATM might not be good for a bitcoin wallet, and so on, and so on. Further, it also necessitates a need to be clear and coherent as to the possible policy problems presented (or not), by some financial technology solutions and applications. We believe this White Paper and its predecessor[9] contribute greatly by providing clarity as to the OCC's thinking and in beginning a discussion as to what guardrails entrepreneurs large and small should expect as they develop their solutions.

As the OCC moves forward, however, we would reiterate one point of caution as detailed in our May 2016 letter:

> *A rush to judgment or action on the part of regulators, without cause or evidence of harm, would have a chilling effect on financial innovation from which the U.S. financial sector would likely have difficulty recovering. It is important to remember that these products and services are, in many cases, in their infancies. Like most innovation spurred by technology, these new financial services and applications are iterative and rapidly evolving. The U.S. government can play a crucial and positive role in fostering a nurturing environment for growth and investment in innovation that can improve the lives of its citizens and the economic strength of the country. Alternatively, uninformed or rash policy decisions can stifle and even suffocate solutions before they can be brought to market.* [10]

It is abundantly clear that the national framework for non-bank companies that provide financial services needs to be rationalized. Again, as we have articulated before, the patchwork of state-based licensing regimes that many innovators in payments and lending confront is expensive, daunting, and confusing.[11] There is a great deal of duplication and cost sunk into multiple exams with no clear evidence of a commensurate consumer and financial stability benefit. Instead, the U.S. should be aiming to craft a national framework and set of rules that maintains consumer protections and the safety and

[9] See OCC. *Recommendations and Decisions for Implementing a Responsible Innovation Framework.*

[10] See BAFT Letter. Page 5.

[11] See BAFT Letter. Page 6.

soundness of the financial system, but is more consistent and easier to navigate. We believe this is crucial to narrowing the competitiveness gap between the United States and other jurisdictions, such as the European Union, which makes available a passport-like license to non-banks offering "e-money" products and payment services.

We believe it is worth noting that a special purpose national charter is not a shortcut for companies or a "budget-rate" charter. It's a path for fintech companies to become banks, with all of the requirements and responsibilities therein.

We believe the option for a special purpose national charter would be a move in a positive direction towards such rationalization. It provides a certain degree of regulatory certainty, the ability to launch products (which, by their nature, are often global) at a national scale, and puts in place necessary guard rails in order to protect consumers and the overarching financial system. That said, the framework laid out in the White Paper presents a number of questions and concerns that should be addressed in subsequent guidance, if it is intended to truly make the U.S. a welcoming home for financial services innovation.

IV. Benefits of a national bank charter for fintech companies

There are a number of public policy benefits that can be derived from approving fintech companies to operate under a national bank charter. First, as stated earlier, it is a positive development to have additional options for fintech companies offering bank-like products and services on a national scale to be able to operate in the United States. The current alternatives (seeking a license in each state or a national bank charter usually pursued by full-service banks) may be ill fitting for the company's business plans and products. The simplicity of one charter to operate at a national level presents enormous advantages as compared to a 48-state money transmission license scheme, which creates friction and consumes enormous amounts of capital. We believe the OCC's proposed construct, if implemented correctly, could unlock that capital and result in greater innovation and a focus on results-based compliance rather than paperwork exercises. In short, options are good, as is regulatory clarity.

Further, we believe principles based guidance, rather than highly prescriptive or tightly tailored regulations, fits well with financial technologies' iterative and evolutionary nature. Principles allow for growth and change over time, functioning as a force multiplier for both innovation and the important work that regulators, such as the OCC, are mandated to engage in. We believe this proposal will lead to a greater focus on consumer protection, long-term research and development, as well as greater economic sustainability, rather than a myopic infatuation with short term profits. While we do not believe this proposal will solve all concerns as they continue to emerge, we certainly view it as positive, constructive development upon which a solid framework can be established.

Finally, we believe the availability of a special purpose national bank charter will result in increased competition among all manner of financial services companies, resulting in better quality, lower cost, and more innovative products for consumers. If a fintech company is to satisfy the scrutiny of the OCC and obtain a special purpose national charter, this will most assuredly be a signal to banks and others that the company can be a healthy, reliable partner. In addition, it can serve as a signal to other companies and banks that the product(s) the company

intends to offer are safe to launch, thus increasing the potential for improved, competitive products to enter the marketplace. Moreover, to the extent that more viable financial technology applications begin to perpetuate and increase in number, businesses and regulators alike will have a greater ability employ regulatory technology ("regtech") to ensure compliance with laws and regulations.

V. More details are needed if the proposal is to reach its full potential

We do not believe the OCC proposal is without some risks, however. We would urge the OCC, to the extent it wishes to "level the playing field" between banks and non-bank companies in terms of regulatory responsibilities and expectations, to keep the principle of equity at the forefront of their thinking and implementation. "Special purpose" should not mean special risk, nor should it require special supervision or scrutiny. Financial institutions regardless of model or underlying technology should be judged on their relative merits and deficiencies when being examined by the OCC or other regulators.

We would note that the OCC has a great deal of case-by-case discretion in setting the requirements for a charter, determining if those requirements are met, and attaching conditions to the issuance of a charter. We urge the OCC to develop a consistent and transparent process that ensures applicants are treated fairly and the charter itself is protected from undue criticism.

The White Paper makes clear that the OCC believes that a special purpose national bank charter is adaptable to fintech and bank innovation. We are hopeful that is the case, but the OCC has so far only utilized the special purpose bank charter authority for trust and credit card banks. We would urge the OCC to provide greater detail as to how the requirements for a special purpose national bank charter could be adapted to the business activities of these various companies. For example, it is still unclear how the requirements of the charter might be applied to a fintech payments company, especially those involving virtual currencies or distributed ledgers. Another example where greater detail is needed concerns the potential data protection and security requirements for a special purpose national bank. We recommend the OCC, either as a part of the national special purpose charter regime or it's announced centralized Office of Innovation, to create a formalized process to help fintech companies decide if a national special purpose bank charter is appropriate for their business or not.

This leads us to our greatest observed risk: that the requirements of each national special purpose bank charter may not be properly calibrated to the risk and activity of each applicant, jeopardizing the value of such a charter. If the qualifications for a national special purpose charter are made so onerous (e.g., requirements for capital, governance model, resolution plan) that only a handful of established companies can reach the threshold, and those companies already possess most (if not all) of the benefits (i.e., via state money transmitter licenses), the charter's value becomes unclear.

Conversely, if new entrants, such as smaller startups who would find benefits of a special purpose charter most useful, cannot meet the requirements, the charter's potential of improving financial inclusion and innovation will not be fully realized. We understand these are difficult questions, but offer them as very consistent observations made from both banks and non-banks alike. The OCC must make very clear who the intended audience is for this charter and ensure a customer friendly manner to communicate with companies who may be left scratching their heads as to whether this is right for them or not.

We encourage the OCC to pursue direct engagement with a broad representation of industry organizations to tackle the concerns outlined above. As stated earlier, organizations such as BAFT can play a meaningful role in convening expertise from practitioners and other professionals to drive consensus around these important issues. We welcome the opportunity to partner with the OCC to do so. This is important because if these concerns can be addressed, we believe strongly that this proposal, or something similar, could have immeasurable benefits. It is because of this faith that we strongly urge the OCC to ensure the requirements that come with the charter are properly calibrated to ensure the full potential of this effort can be realized.

VI. Coordination among agencies is critical to success

With these benefits and risks in mind, we would urge the OCC to consider how to make a national special purpose charter as attractive and useable as possible. We would note that many of the benefits of a national special purpose charter are only fully actualized if the entirety of the U.S. financial regulatory community are "on-board" and in agreement with its mission and intent. A fintech company will only take on the burden of increased scrutiny if the promised benefits are real and iron-clad. We'd note (and the OCC recognizes in its White Paper) that the full menu of benefits is not the sole provenance of the OCC, but involve others, including but not limited to the Federal Reserve and the FDIC. The OCC should ensure that all of the relevant bodies are at the table and that they provide concrete assurances that this is the direction that the federal financial regulatory community intends to take.

Finally, we believe the OCC will also need to ensure that any new charter provisions are beyond constitutional challenge by state authorities or others who may be opposed to federal governance in this area.

VII. Thinking about financial inclusion for fintech companies

The OCC correctly notes the responsibility of financial institutions to "treat customers fairly and [to] provide fair access to financial services."[12] We fully agree and embrace this responsibility and are glad that the OCC is willing to engage in a necessary conversation on how financial technology can improve financial access and services for citizens across the country. We believe, if executed correctly, entirely new levels of customer service and access can be provided by technology applications, some of which may not even have been conceived yet. Further, it is in the interest of both banks and non-bank companies to have more customers.

To the extent that financial inclusion is considered, and we agree it should be, it obviously begs the question as to how financial technology affects consumer expectations, behavior, and other dynamics for which financial inclusion policies are intrinsically tied. Again, we would urge the OCC to focus on the underlying policy goals rather than retrofitting (perhaps, poorly) outdated ways of thinking to new ways of operating. For example, rules which are underpinned by geographical focus and constraints become

[12] See OCC. Page 11.

less relevant when financial technology provides the potential for access uninterrupted by jurisdictional borders or "open and closing" times.

Further, as detailed earlier, financial technology products can differ *greatly* in terms of their intended purpose, targeted customer base, and very implementation. This being the case, there should be recognition of the pragmatic challenges in introducing new formal financial inclusion requirements to fintech companies. Poorly calibrated targets can potentially generate perverse incentives, introduce distortions, and encourage reckless or unsustainable levels of service. Care should be given to ensure that the benefits of the technology can be utilized to increase financial inclusion, while not jeopardizing the safety and soundness of the broader financial ecosystem.

As a practical matter, banks and fintech companies will need to formally build financial inclusion elements into their business plan, and material departures may require approval or non-objection from the OCC. All of these various factors will be meaningful for how we consider financial inclusion relative to these products, and managing the goal may require a more nuanced and agile approach. Thus, we think it important that the OCC carefully define the goals within the scope of the product identified, and work with the companies to develop meaningful and nimble metrics to accomplish them.

In addition, we believe the OCC should make clear whether or not modified financial inclusion requirements or metrics for payment companies holding a special purpose national bank charter may be retroactively applied to the payment activities of other national banks. If that's the case, the repercussions would have serious implications for capital flows, investment, and ultimately, innovation in the United States. It is important that definitions of activities are well-formed and clear so as to not create an un-level playing field. As the OCC makes these important policy decisions, it should move cautiously and deliberately to ensure equity and innovation remain the guiding principles as these topics are considered.

Finally, it is important to recognize that there are many different ways that companies can contribute to financial inclusion, beyond providing financial services directly to customers. A few examples include: enabling payment service providers to provide new or enhanced services that are valuable to customers (e.g., cross-border payments), improving infrastructures used by traditional payment service providers to lower barriers to access financial services and achieve cost savings, and furthering interoperability of payment systems (enable seamless interaction of payment systems and service providers).

VIII. Digital currencies supervision

The OCC asks for specific comments regarding how digital currency related companies, products, and services "may require different approaches to supervision to mitigate risk for both the institution and the broader financial system."[13] Again, as we detail in our earlier letter, "regulation of innovative financial services should be driven by the risk of the activity rather than the technology utilized to deliver those services."[14] That said, we recognize that the legal/regulatory/policy framework that has

[13] See OCC. Page 16.

[14] See BAFT Letter. Page 5.

developed around financial services is primarily based on entity type and is not easily dismantled. Further, all companies are not created equal and the robustness of the provider should be weighed heavily alongside the risk of the activity being pursued. It is the industry's interest, from an operational as well as a reputational perspective, to ensure bad actors do not damage individual participants or the larger financial system.

Digital currency companies range from exchanges, to hosted wallet providers, to enterprise-level solutions providers, to companies crafting applications that may use digital currency in some manner but are totally non-financial in nature. While many digital currency exchanges and hosted wallet providers appear to be functioning and performing a modern equivalent of one of the core banking functions, check paying, other digital currency companies are not. Direct to consumer services are likely the first iteration of this technology, with some of the future uses still nascent or, in some cases, not even imagined yet. With that in mind, we would urge the OCC to use functionality as a guiding principle in their approach to crafting a national framework. All digital currency applications are not created equal and the treatment and risks of an exchange service will not be the same as a financial institution who may simply be using digital tokens for reconciliation. An agile approach is the greatest way to nurture innovation, provide regulatory clarity to entrepreneurs and create a level playing field between digital currency companies and other fintech entities. It would also provide clearer lines of responsibility that would assist with the necessary coordination between other federal regulators.

Again, for digital currencies or other more "novel" financial technology applications, the OCC's specialized attention and guidance will be critical to helping these companies mitigate the risks of their specific business models, providing greater protection for customers and the larger financial system. If the OCC hopes to foster greater innovation in the U.S. financial system, this is one clear way they could do it.

IX. Conclusion

In closing, we thank the OCC for its thoughtful consideration of our comments and for pursuing a process to increase innovation in financial services in the United States. BAFT appreciates the opportunity to provide our thoughts on the OCC's White Paper. We welcome the opportunity to advance the dialogue on these issues as topics are considered and further developed. If you have any questions or need further information please contact John Collins, Vice President of International Policy, at jcollins@baft.org or (202) 663-5514.

Very truly yours,

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