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April 14, 2017

VIA ELECTRONIC SUBMISSION

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

Re: Comptroller's Licensing Manual Draft Supplement – Evaluating Charter Applications From Financial Technology Companies

Dear Comptroller Curry:

The Electronic Transactions Association ("ETA") submits these comments in response to the Office of the Comptroller of the Currency's ("OCC's") request for comment on its Comptroller's Licensing Manual Draft Supplement – Evaluating Charter Applications From Financial Technology Companies. ETA and its members support the OCC's announcement that it will consider applications for special purpose national bank charters from "FinTech" companies that offer bank products and services that meet OCC standards and chartering requirements. We hope that these comments will assist the OCC in further tailoring its application and evaluation process for the FinTech industry.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include financial institutions, mobile payment service providers, mobile wallet providers and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives. As a result, ETA applauds the OCC's innovation initiative and its efforts to develop a comprehensive framework to improve its ability to identify and understand trends and innovations in the financial services industry and the evolving needs of customers of financial services.

General Comments

As explained in the comments below, ETA encourages the OCC to take a flexible, business case specific approach to reviewing charter applications, including assessment of the types of products and services that involve banking functions (as previously done in the area of "paying checks," now understood to include its modern equivalents, such as issuing credit and debit cards or any other method of facilitating electronic payments).[1] Taking a flexible approach will ensure that the

[1] A special purpose national charter bank must engage in one or more "core banking" functions. These include (1) fiduciary activities; (2) receiving deposits; (3) "paying checks"; or (4) lending money.

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OCC and FinTech industry are able to work together collaboratively with FinTech applicants while satisfying the OCC's regulatory expectations.

The Public Policy Benefits of a FinTech National Bank Charter

The OCC's decision to consider issuing charters to FinTech companies offers a number of public policy benefits for consumers and small business proprietors that are increasingly relying on these innovative products and services. As a starting point, a FinTech company that obtains a bank charter will have the benefit of a regular and consistent regulatory framework in which to provide services to customers. Operating under a bank charter will provide a uniform set of rules and regulatory expectations that will allow FinTech companies to grow and innovate new products and services that benefit customers. This type of clarity benefits everyone by ensuring that industry, customers, and regulators are operating from the same rules and expectations.

The OCC's decision to consider issuing charters to FinTech companies will also further industry's existing efforts to expand consumer access to innovative and affordable financial products and services. The FinTech industry is leading the way in using technology to address the financial needs of underserved consumers. Take for example, that there are currently more cell phones in the United States than that are bank accounts. By creating an app or on-line application, a financial service or product can become available to anyone with a cell phone across the country or the world.

It is important to recognize, however, that these benefits are most likely to be realized if the OCC tailors its application and evaluation process for the FinTech industry. The term FinTech covers a broad spectrum of companies, including payment processors, money transmitters, and online consumer and business lenders. To ensure the public policy benefits noted above, the OCC should develop an approach for the FinTech charter process that recognizes the unique characteristics of the different types of entities that fit under the FinTech umbrella. A rigid regulatory framework could stifle innovation and ETA urges the OCC to provide flexible regulation tailored to each FinTech company's business model and risks. This approach should account for differences such as the nature of business (*e.g.*, payment processing, lending), type of product, and risk profile (both financial and from a regulatory compliance perspective). In particular, we urge the OCC to consider that the three-to-five year window expected for business planning may not be appropriate or even particularly useful for potential FinTech charter applicants. We encourage the OCC to avoid solutions that impose rigid, uniform timeframes and requirements related to the business planning process. A less flexible approach could significantly hamper innovation and stand in the way of necessary adjustments due to ever-evolving technology. We firmly believe that it is possible to develop a framework for evaluating business plans that acknowledges the unique characteristics of each FinTech charter applicant while continuing to emphasize the stability that is the hallmark of a national bank.

In sum, the OCC's proposed FinTech charter offers a number of potential public policy benefits, and those benefits are most likely to be realized if the program is tailored appropriately for the FinTech industry. ETA is encouraged by the OCC's use of the Office of Innovation to work openly

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and collaboratively with the FinTech community throughout the proposed application process. The OCC must be sensitive to the risk that applying a uniform application and evaluation process for all products and services, without any appreciation of differences in products and services and consumer needs, will likely stifle creativity, consumer access, financial inclusion and innovation in the market. A program that is not designed around the unique needs of this industry is unlikely to garner much interest in the FinTech community.

Capital and Liquidity Requirements

The issue of capital and liquidity requirements is a primary example of how the proposed FinTech charter process should be tailored for the FinTech industry. FinTech companies are often narrowly focused on specific services and market segments but often serve customers across the country. It is critical for the OCC to approach this process with the understanding that applicants are not traditional banks, and should not, be held to all of the same expectations and requirements currently in place for traditional banks, specifically capital and liquidity requirements intended for deposit taking institutions.

When it comes to capital and liquidity requirements, the factors that the OCC considers must be viewed through the unique lens of the FinTech industry. The traditional elements that determine the current definitions of capital adequacy do not capture the full scope and nature of FinTech activities, funds management, risk diversification, and strategic planning that defines a nationally operating technology company engaging in one of the core banking areas. Risk is diversified generally, across multiple customer profiles, geographies, product availability and features. FinTech companies generally have a low risk profile and have an availability of current capital sources and market experience, proven business strategies, and data driven insights to guide capital risk management. FinTech companies are not unproven operations. The capital markets have assessed the business models and risk profiles with the extensive performance data that better informs FinTech on business risk and product risks than most financial instructions. The business modeling is predictable and validated against macroeconomic risks and trends. Markets and investors around the world agree deference should be given to a FinTech's proposed capital and liquidity requirements with flexible standards tailored to the specific business model. In addition to assessing the quality and source of capital, the OCC also considers on-and-off balance sheet composition, credit risk, concentration, and market risks. As such, the OCC's capital and liquidity expectations should carefully consider the unique structure of different types of FinTech companies. ETA appreciates the OCC providing much needed flexibility in its expectations on minimum capital requirements. In the OCC Summary of Comments and Explanatory Statement, Special Purpose National Bank Charters for Financial Technology Companies, the OCC acknowledges the need for flexibility for different types of business models and risks is in minimum capital requirements.[2] ETA encourages the OCC to apply this flexible business case specific approach to reviewing charter applications.

[2] "The OCC acknowledges that the minimum capital requirements set forth in 12 CFR 3, which measure regulatory capital levels relative to an entity's assets and off-balance-sheet exposures, may not be sufficient for measuring capital adequacy for some SPNBs [Special Purpose National Banks]", Office of Comptroller of the Currency, OCC Summary of Comments and Explanatory Statement, Special Purpose National Bank Charters for Financial Technology Companies, p. 10-11 (March 2017).

Further, as FinTech applicants do not have depositors and therefore are likely to present a low risk profile, the OCC should adjust its expectations for assessing risk to the financial system and the wind-down of operations. As such, ETA recommends that the OCC take a case-by-case approach to capital and liquidity requirements when reviewing applications to account for the differences between traditional banks and FinTech companies, as well as the variation in business models within the FinTech community.

Financial Inclusion

One of the goals of our financial system is to provide quality, affordable financial services and products. An inclusive financial system is one that provides all consumers and businesses with access to a variety of financial products and services at competitive prices. A key driver of financial inclusion is the deployment of new technologies that allow the underserved to access financial services – a process that is being led by the FinTech industry. ETA's members are at the forefront of using technology to broaden financial inclusion for underserved consumers by creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions, and lending alternatives that are available to a broader set of consumers. The OCC's proposed FinTech charter aligns with these goals, and if implemented in a way that is tailored for the FinTech industry, has the potential to further these goals in a significant and meaningful way.

One of the benefits of FinTech is the industry's leveraging of the Internet and other new technologies to provide products and services that are inherently inclusive and democratic. These products and services are focused on increasing access to financial services for all consumers. In this way, FinTech companies have transformed the financial landscape through the introduction of new technologies that expand the number, ease, and utility of financial offerings for consumers, lower costs, improve financial management, and increase transaction security. These products and services have also expanded, and are continuing to expand, financial opportunities for underserved consumers.

For example, while small businesses are the backbone of the American economy, creating more than 60 percent of net new jobs and employing approximately half of the workforce in the private sector, may have trouble accessing traditional credit for purposes of growing their businesses. Fortunately for small businesses, ETA's members and other new and innovative technology companies are expanding access to credit and offering attractive alternatives to traditional loans. Using sophisticated, data-driven processes to assess the creditworthiness of potential borrowers, lenders are able to reach funding decisions quickly and efficiently and provide access to capital to approved borrowers expeditiously, in some cases within 24 hours, or even a matter of minutes. These data-based processes are creating new opportunities for borrowers and lenders. Fintech platforms have also been used by Community Development Financial Institutions ("CDFIs") and other non-profit community lenders and development organizations to help increase efficiency in the lending process and better identify creditworthy small businesses. It's clear that online small business lending is reaching a broad market, and that providing quick access to capital allows small businesses to invest in their employees, purchase more inventory, expand their services, and ultimately grow their businesses.

The FinTech industry is naturally focused on financial inclusion and ETA encourages the OCC to take this point into account when considering financial inclusion in the course of reviewing a FinTech charter application. While the OCC expects applicants that intend to engage in lending or providing financial services to consumers or small business to include a financial inclusion plan as a component of its business plan as part of the application process, it is important that these requirements be tailored for the FinTech industry and appreciate the role that these companies are already playing in helping the underserved and promoting financial inclusion. We encourage the OCC to consider that FinTech, by its very nature is inclusive, by providing low cost financial services and products, and making them widely available via a mobile app or on-line application to anyone with a cell phone or access to the internet.

ETA encourages the OCC to take a case-by-case approach to the application process that is based on requirements tailored for the unique attributes and variable business models of the FinTech industry. Under this approach, the OCC should not seek a blanket financial inclusion commitment from uninsured special purpose national banks that do not engage in lending. These types of FinTech companies, which may include payment processors, money transmitters, and others, do not raise the same financial inclusion concerns as may be presented by FinTech companies engaged in lending (and, which, as noted above, are inherently focused on expanding financial inclusion through the leveraging of technology).

FinTech companies that do not engage in lending, such as payment processors, money transmitters, and others, promote financial inclusion by providing consumers access to traditional, mobile, and other forms of payments. These services promote financial inclusion by providing all consumers the ability to make payments, transfer funds, and engage in other financial transactions, often using mobile and other convenient technologies that suit the needs of consumers. It is also important to recognize that these types of FinTech companies often partner and work with other established FinTech companies or financial institutions (lenders, for example) that are focused on promoting financial inclusion. Additionally, processors, money transmitters and other non-lending FinTech businesses may also provide small business or 'micro-merchants' with accepting electronic payments and/or access to the card payments networks. This is an important segment of commercial activity that has been historically underserved.

FinTech Regulation

Although FinTech has received considerable attention as a beneficial and "new" technology, it is not, as some have suggested, an unregulated industry. Online FinTech lending, for example, involves many of the same steps as traditional commercial lending – the marketing, underwriting, closing, servicing, securitization (in some cases), customer care, and collection of loans. In this regard, online FinTech lending is subject to various federal and state laws and regulations. Depending on circumstances, such as the nature of the product and lending model, these laws may include requirements related to fair lending, licensing, interest rates, credit reporting, and debt

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collection, among other requirements. Additionally, FinTech companies should be given credit for existing regulatory expectations. On a related note, it is important for the OCC to appreciate that any new regulatory expectations should be designed in a way that does not discourage FinTech companies from engaging in innovation, such as the development of new products and services that benefit consumers.

Small Business Lending

Commercial and consumer credit are distinctly different types of credit. Given the comparison of apples to oranges, the dollar amount should not be used as a distinguishing factor when deciding whether TILA should apply to a loan, as some FinTech small business customers have annual revenue as little as $50,000. Rather the use of funds should determining whether or not TILA should apply to a loan. ETA supports a system that provides small business borrowers with clear information on their rights and responsibilities. ETA cautions, however, that a regulatory approach that would simply apply existing requirements for consumer lending to small business loans would have detrimental effects for both online small business lenders and the small business community. Small business borrowers have different needs and objectives in obtaining credit than consumers, and small business lenders have developed credit products specifically designed to answer those needs and objectives.

For example, application of TILA's many provisions to commercial lending would cause significant disruption and confusion, while limiting the ability of small businesses to access the varied types and sources of capital they need to grow. To provide just a few examples, it would make no sense to apply TILA's billing and error resolution procedures for open-end credit to commercial lending. Similarly, application of TILA's rescission rights to commercial lending would upend long-established legal precedent and rules of commercial practice, while similarly raising costs.

Furthermore, small business owners will always applied funds towards revenue or ROI generating activities. The conflation of commercial and consumer credit risks adversely impacting the borrowers' personal cost of borrowing if commercial trade lines are entered as consumer transactions in a credit report. It means that a failed business operation would forever impede an individual's ability to borrow for commercial or consumer purposes in the future.

While ETA supports transparency in small business credit, we encourage the OCC to be sensitive to the prospect that enhanced regulation may limit lenders' ability to answer such needs by stifling creativity and innovation. For these reasons, ETA encourages federal policy makers to avoid applying legacy regulations that were written for consumer financial products to online small business lending.

Regulatory Harmony

One of the expected benefits of a charter is that it will provide FinTech companies with a regular and consistent regulatory framework in which to provide services to customers. ETA encourages

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the OCC to take this important point into consideration when addressing coordination with other regulators that may have jurisdiction over a FinTech-chartered bank. Given the number of possible regulatory agencies that could have jurisdiction over a FinTech-chartered bank, it is imperative that the OCC and the other federal and state regulatory agencies work in tandem to ensure a smooth process for application and beyond.

One specific example of where OCC would be the primary prudential regulator and supervisor of a FinTech chartered bank, but where another regulator would need to have an oversight role would be the Federal Reserve. In the white paper published by the OCC in December 2016, the agency stated that, "With rare exemptions, all national banks […] are required to be members of the Federal Reserve System. National banks become member banks by subscribing for the stock of the appropriate Federal Reserve Bank."[3] However, these requirements are administered by the Board of Governors of the Federal Reserve System and the Federal Reserve Banks. ETA believes that additional clarity is needed on whether the requirement to obtain stock of the appropriate Federal Reserve Bank would apply to potential applicants of the FinTech charter. This information would help potential applicants to do a cost/benefit analysis regarding the cost of applying for the proposed charter.

Additional Resources

In line with ETA's other comments, we encourage OCC to provide guidance to industry that is tailored for specific FinTech models, products, and services, so that industry can better assess the pros, cons, and other considerations of applying for a FinTech charter. In addition to written guidance, the OCC would also do well to provide guidance in other mediums including a website, webcasts, templates, and videos to encourage a better understanding of its expectations.

Moreover, we would encourage the Office of Innovation to gather and disseminate information that aims to quantify the costs that the OCC expects FinTech companies to incur in pursuing a charter, given that the charter application process is a new avenue for FinTech companies.

* * *

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

[3] Office of the Comptroller of the Currency, Exploring Special Purpose National Bank Charters for FinTech Companies, p.6-7 (December 2016).

Respectfully submitted,

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