



April 14, 2017

**Submitted Electronically: [specialpurposecharter@occ.treas.gov](mailto:specialpurposecharter@occ.treas.gov)**

The Honorable 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 Consumer Bankers Association (“CBA”)<sup>1</sup> appreciates the opportunity to comment on the Draft Supplement to the Comptroller’s Licensing Manual, *Evaluating Charter Applications from Financial Technology Companies* (“Draft Supplement”).<sup>2</sup> In our letter to you in response to the Office of the Comptroller of the Currency’s (“OCC” or “agency”) White Paper<sup>3</sup> proposing to offer nonbank financial technology (“Fintech”) companies with a national bank charter, we shared our strong reservations about pursuing this course of action without greater dialogue between industry and the OCC. As we stated in our letter:

*Although CBA is not opposed to expanding the scope of companies eligible for a national bank charter, we believe fundamentally important decisions such as this should be based on well-developed policy positions that have weighed the risks*

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<sup>1</sup> The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

<sup>2</sup> Office of the Comptroller of the Currency (“OCC”), Comptroller’s Licensing Manual, Draft Supplement, Evaluating Charter Applications from Financial Technology Companies (Mar. 2017), at <https://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf>. [Hereinafter “Draft Supplement”]

<sup>3</sup> OCC, Exploring Special Purpose National Bank Charters for Fintech Companies (Dec. 2016), at <https://www.occ.treas.gov/topics/bank-operations/innovation/special-purpose-national-bank-charters-for-fintech.pdf>. [Hereinafter “OCC Whitepaper”]

*and rewards to all stakeholders in the banking industry. Unfortunately, we do not believe the White Paper meets these standards. As a result, CBA cannot support the inclusion of fintech companies into the federal banking system without more clarity from the OCC about the regulatory and supervisory framework that will be applied to these companies.*<sup>4</sup>

CBA is therefore pleased to see the OCC has acceded to our request and has issued the Draft Supplement providing more information about the fintech chartering process for public comment, as well as an explanatory statement (“OCC Statement”)<sup>5</sup> responding to some of the comments the agency received on its proposal. However, we still believe the OCC has not provided a clear rationale or justification for offering a national bank charter to fintech companies, and the standards and conditions for granting these charters have yet to be fully developed. Therefore, we repeat our recommendation for the OCC to conduct an in-depth study of the fintech sector. And, if the OCC still concludes the public would benefit from a fintech charter, then we ask the agency to issue a formal charter proposal for public notice and comment.

## **I. The OCC’s Updated Fintech Charter Proposal**

### **A. The OCC has Provided More Information About Its Fintech Charter Proposal**

The OCC has done a commendable job of elaborating on its original fintech charter proposal in the OCC Statement and Draft Supplement. In combination, these two documents provide a clearer picture about the OCC’s goals and intentions with respect to chartered fintechs – or special purpose national banks (“SPNB”) in the nomenclature of the Draft Supplement. More specifically, CBA appreciates the greater level of detail provided by the OCC regarding issues such as chartering authority, SPNB eligibility standards, and coordination among the federal regulatory agencies. And we welcome language in the Draft Supplement emphasizing the OCC’s commitment to “not approve proposals that would result in an inappropriate commingling of banking and commerce.”<sup>6</sup>

In addition, CBA supports the new conditions and requirements that would place SPNBs on a more equal footing with traditional banks. We concur with the OCC that all national banks, including SPNBs, should be subject to appropriate capital standards, including the minimum leverage and risk-based capital requirements set forth in 12 CFR Part 3.<sup>7</sup> CBA also supports the

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<sup>4</sup> Letter from Dong Hong, CBA, to Thomas Curry, Comptroller, Office of the Comptroller of the Currency (January 14, 2017), at <http://consumerbankers.com/cba-issues/comment-letters/cba-comment-letter-re-occ-fintech-charter-white-paper>.

<sup>5</sup> OCC, OCC Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies (Mar. 2017), at <https://www.occ.treas.gov/topics/responsible-innovation/summary-explanatory-statement-fintech-charters.pdf>.

<sup>6</sup> Draft Supplement, at 7.

<sup>7</sup> *Id.* at 11.

application of tangible and concrete financial inclusion requirements for SPNBs; we would encourage the OCC to make this a mandatory obligation for all SPNBs – not just those engaged in lending activities or the provision of financial services to consumers and small businesses – as all traditional banks are subject to the Community Reinvestment Act.

#### B. The Updated Fintech Charter Proposal Still Leaves Many Important Questions Unanswered

Although the OCC Statement and Draft Supplement have been helpful in allaying some of our concerns related to SPNBs, several important issues remain outstanding. For instance, while SPNBs would be subject to 12 CFR Part 3 with respect to minimum capital requirements, the OCC offers no guidance on how these companies are to set capital levels if they have limited on-balance-sheet assets or off-balance-sheet exposures. The agency also provides no information about how much additional capital, and in what form, an SPNB would have to hold to execute its recovery plan or exist strategy in the event of market or enterprise stress.

Moreover, while the OCC seeks to impose regulatory capital standards on SPNBs, it falls silent with respect to the liquidity standards set out in 12 CFR Part 50. In our earlier letter, CBA recommended SPNBs be required to maintain high-quality liquid assets sufficient to cover a minimum of 180 days of operating expenses. We reiterate our recommendation and would suggest the OCC establish minimum liquidity standards instead of dealing with each company on a case-by-case basis; such standards are necessary and of utmost importance because of the unique risk profiles presented by many of these untested business models.

Finally, CBA would argue the OCC has yet to establish whether a fintech charter is in the public interest. The agency’s first two justifications for chartering fintech companies – “an SPNB charter provides a framework of uniform standards and supervision for companies that qualify” and “an SPNB charter supports the dual banking system”<sup>8</sup> – both assume fintechs should be treated as banks without addressing the unstated question of why. The second two justifications focusing on improving the banking industry (as well as the OCC) and promoting “innovative ways to promote financial inclusion”<sup>9</sup> speak to the potential outcomes of chartering fintechs rather than the rationale for chartering them in the first place. None of these arguments would seem to provide a sufficient basis for fundamentally altering the nature of the national banking system.

Given the outstanding questions and concerns shared by industry regarding the fintech charter proposal, CBA repeats our request for the OCC to adopt a more deliberative approach to determine whether fintechs should be incorporated into the national banking system. Below, we offer recommendations from our previous letter to provide a roadmap for the OCC to engage in a collaborative dialogue with industry and its stakeholders.

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<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.*

## II. CBA Recommendations

### A. The OCC Should Produce a Fintech Study

CBA recommends the OCC utilize its new Office of Innovation and Responsible Innovation Framework to conduct a thorough study of the fintech sector. This study should provide sufficient information to evaluate the need for and public benefits of a fintech charter by answering the following questions:

- What is Fintech?
- What are the various business models being pursued by these fintech companies?
- How do these fintech companies interface with the U.S. banking system?
- Who supervises these fintech companies and to what laws, regulations and rules are they subject?
- What are the potential implications of allowing more commercial firms to control a bank subsidiary?
- What gaps in the several states' licensing, regulatory, and supervisory systems require the OCC to develop a federal licensing framework?
- What process will the OCC implement to address chartered fintech companies that choose to switch charters or de-charter?
- What are the public benefits, costs, and risks of providing fintech companies with a special purpose national bank charter?

An OCC study of the fintech sector such as this could significantly improve the public's understanding of these companies and how technological innovation more generally is refashioning the relationship between consumers and their financial service providers.

### B. If Warranted by the Evidence, the OCC Should Issue a Formal Charter Proposal for Public Notice and Comment

Once the Fintech Study has been delivered for public examination, the OCC may still conclude a fintech charter is in the public interest and that it is in the best position to ensure these companies operate in a safe and sound manner, consistent with consumer protection, fair access, and financial inclusion. CBA would then recommend the OCC issue a formal charter proposal for public notice and comment. In contrast to the OCC's stated preference for a case-by-case method of evaluating different "activities" for a national bank charter,<sup>10</sup> we respectfully suggest clear rules would provide the banking industry, fintech companies, and the public with more confidence in the new regime. Furthermore, while it is appropriate to tailor rules to align with a bank's business model and risk profile, we believe chartered fintech companies should

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<sup>10</sup> OCC White Paper, at 4.

be required to meet the same minimum standards applicable to all national banks; doing so will promote a level playing field and preserve a safe banking system.

CBA believes a comprehensive charter proposal would provide the public with information and clarity regarding the following subject matters:

- *Charter Authority.* The OCC should explain the specific authority it would rely on to offer fintech companies a national bank charter. The agency suggests it has the authority to charter fiduciary activities and core banking functions: receiving deposits, paying checks, or lending money. However, it is unclear how these functions are defined, or the process that will be used to evaluate new “permissible” functions.
- *Conditions for a Charter.* The proposal should identify the conditions fintech companies must satisfy to be eligible for a charter. These should include:
  - Capital – We agree with the Comptroller’s Licensing Manual that new banks must be able to meet a minimum tier 1 leverage ratio of 8 percent for the first three years of operation.<sup>11</sup> Therefore, fintech companies should be required to meet this standard and any additional capital necessary to address their unique risk profiles.
  - Liquidity – Fintech business models pose risk factors that are quite different from traditional full-service banks. In addition, many of these firms have never been through a full credit cycle. Therefore, it would be appropriate to impose higher liquidity standards. We would support a requirement that fintech companies “maintain high-quality liquid assets sufficient to cover a minimum of 180 days of operating expenses.”<sup>12</sup>
- *Conditions to Maintain a Charter.* The proposal should identify the conditions fintech companies must satisfy to maintain a charter. These should include:
  - Capital – as noted above.
  - Liquidity – as noted above.
  - Financial Inclusion – As stated in the White Paper, uninsured financial institutions are not subject to the Community Reinvestment Act (“CRA”). However, we would support imposing financial inclusion obligations on chartered fintech companies, perhaps through an operating agreement, to ensure they share similar requirements to that of insured depository institutions

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<sup>11</sup> OCC, Comptroller’s Licensing Manual: Charters (Sep. 2016) at 22, at <https://www.occ.gov/publications/publications-by-type/licensing-manuals/charters.pdf>.

<sup>12</sup> *Id.* at 56, n. 45.

under the CRA. The OCC should consider the CRA strategic plan as a viable model for these types of companies.

- Third-Party Relationship Management – Chartered fintech companies should be subject to the OCC risk management guidance on third-party relationships<sup>13</sup> to the same extent as all national banks.
- Compliance with Applicable Federal Banking Laws, Regulations, and Guidance – In addition to complying with the capital and liquidity requirements noted above, BSA/AML, OFAC sanctions, and cybersecurity standards seem particularly relevant to technology-based companies. OCC should also provide details on how it would supervise chartered fintech companies. A fair examination process would subject these companies to the same level of scrutiny as all national banks.
- Compliance with Consumer Protection Law – Chartered fintech companies with consumer-facing business activities should be subject to the same consumer protection laws applicable to all national banks. These would include the laws and regulations under the purview of the Consumer Financial Protection Bureau (“CFPB”), and the Unfair, Deceptive Acts and Practices and Unfair, Deceptive, and Abusive Acts and Practices provisions set out in the Federal Trade Commission Act and the Dodd-Frank Act, respectively.
- Credit Risk Retention – Chartered fintech companies that operate a lending business model should be subject to the credit risk retention rule.<sup>14</sup> Application of this rule would incentivize fintech lenders to monitor and ensure the quality of the assets underlying a securitization transaction.
- *Resolution.* The proposal should provide a comprehensive framework to resolve failed chartered fintech companies. Resolution rules would be particularly important to detail at the outset given that many of these companies have never gone through a full credit cycle. An effective resolution framework would include a living will requirement – mandating a sale, merger, or liquidation – to mitigate losses to the OCC acting as a receiver when a chartered fintech firm’s condition deteriorates beyond a certain threshold. It would also incorporate special assessments on chartered fintechs, and not on insured national banks, to allocate the OCC’s receivership costs to the right parties. The framework would also impose subservicing arrangements, where relevant, in order to protect consumers when a chartered fintech fails.

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<sup>13</sup> OCC Bulletin 2013-29, Third-Party Relationships, Description: Risk Management Guidance (Oct. 30, 2013), at <https://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html>.

<sup>14</sup> 12 CFR Part 43.

- *Regulatory Agency Coordination.* The proposal should explain how the federal banking regulators would coordinate with one another to ensure that chartered fintech companies are comprehensively supervised. If a fintech company engages in deposit-taking activities, then the Federal Deposit Insurance Corporation may play a supervisory role to protect the deposit insurance fund. If the fintech company is controlled by a holding company, then the Fed’s role as the consolidated supervisor is implicated. Finally, if the fintech company engages in consumer-facing activities, then the CFPB may have supervisory or enforcement responsibilities with respect to that company.
- *Membership in the Federal Reserve System.* The OCC should offer direction on whether chartered fintech companies will be members of the Federal Reserve System with access to the payments system and the discount window.

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Thank you for the opportunity to share our thoughts and comments on the Draft Supplement with you. We would appreciate a chance to meet with you to review our concerns and to address any matters you would like to raise regarding the national banking system.

Sincerely,



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