



January 17, 2017

Via electronic submission to: specialpurposecharter@occ.treas.gov

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

Re: Comments on the OCC’s December 2, 2016 White Paper Regarding Special Purpose National Bank Charters for FinTech Companies

Dear Comptroller Curry:

The Chamber of Digital Commerce (“the Chamber”) wishes to thank the Office of the Comptroller of the Currency (“OCC”) for its continued focus on the Financial Technology (“FinTech”) sector. The Chamber is the world’s largest trade association representing the blockchain industry. Our membership is comprised of a wide range of companies innovating with and investing in blockchain-enabled technologies, including financial institutions, exchanges, software companies and cutting edge startups.¹ Our mission is to promote the acceptance and use of digital assets and blockchain-based technologies.

After having reviewed and discussed the OCC’s December 2, 2016 announcement and white paper, *Exploring Special Purpose National Bank Charters for FinTech Companies* (the “white paper”),² with the members of the Chamber, I write on behalf of the Chamber to provide feedback on the white paper from our viewpoint as an industry association for companies involved in blockchain initiatives.

The Chamber is impressed with the OCC’s commitment to supporting and fostering responsible innovation and its concrete efforts to initiate a dialogue with the blockchain and broader FinTech communities. The OCC’s continuing commitment to understanding these technologies is

¹ A list of representative members can be found on the Chamber website at: www.digitalchamber.org/membership.html

² Office of the Comptroller of the Currency, *Exploring Special Purpose National Bank Charters for FinTech Companies* (Dec. 2016), available at <https://www.occ.gov/topics/bank-operations/innovation/special-purpose-national-bank-charters-for-FinTech.pdf> (“white paper”).

underscored by the creation of the Office of Innovation, with full time staffing by professionals tasked with, among other things, developing a better understanding of the impact of emerging technologies on the banking sector. The Chamber and its members believe that the Office of Innovation promises to serve as a vehicle for education. The Chamber is hopeful that the result will be a thoughtful regulatory framework that appropriately balances and promotes the OCC's goals of respecting FinTech companies, fostering innovation and protecting consumers.

In response to the OCC's request, the Chamber and its membership have comments on several key issues in the white paper, which fall in the following categories:

- The Establishment and Goals of the Office of Innovation
- Uniformity Benefits of Issuing National Bank Charters to FinTech Firms
- Applying Regulatory Expectations and Safeguards to a FinTech Business Model
- Additional Recommendations

The Chamber would be pleased to further discuss the comments below with the OCC and answer questions at the OCC's convenience.

I. The Establishment and Goals of the Office of Innovation

The Chamber understands the OCC has established the Office for Innovation with the goal of acting as a central clearinghouse for questions and issues regarding financial innovation³ and that it is intended to be a non-supervisory forum where the OCC can make candid regulatory advice more accessible. In the Chamber's view, the Office for Innovation presents its members with a unique and desirable opportunity to interact with knowledgeable regulators and to receive timely feedback. Moreover, to the extent that FinTech companies are providing vendor services to OCC-regulated institutions, the Office of Innovation may provide a forum where industry participants can discuss and vet appropriate third-party vendor best practices.

However, without some kind of regulatory "sandbox" or other form of safe harbor, interaction with the Office of Innovation could put FinTech companies at risk of inadvertent public disclosure of unique business models, waiver of certain legal rights or admission of inadvertent regulatory violations. While the Chamber understands that the OCC is currently opposed to the notion of a regulatory sandbox, the Chamber nonetheless encourages the OCC to initiate interagency dialogue to further explore sandbox options and reconsider its opposition. In the Chamber's view, the potential benefits to innovation from "sandboxes" outweigh the regulatory risks, and other financial regulatory agencies have indicated receptiveness toward the concept.

³ Evan Weinberger, *OCC to Open Innovation Office to Boost FinTech at Banks*, LAW 360 (Oct. 26, 2016), available at <http://www.law360.com/articles/856117/occ-to-open-innovation-office-to-boost-FinTech-at-banks>.

But without a full regulatory sandbox, the Chamber recommends creating some form of safe harbor protections for entities interacting with the Office for Innovation as the most efficient way to encourage honest and meaningful interactions. The Chamber is not seeking a sandbox that would exempt participants from enforcement actions for consumer fraud or other criminal conduct. Rather, the Chamber seeks a regulatory sandbox that would provide flexibility in meeting regulatory requirements and a safe harbor for inadvertent regulatory violations.

Other leading jurisdictions, such as Singapore, have made significant (yet prudent) efforts to provide welcoming and flexible environments for FinTech companies to start and grow. The Chamber commends such efforts and, in the interest of U.S. competitiveness in the financial services industry, urges the OCC to consider them as well.⁴

II. Uniformity Benefits of Issuing National Bank Charters to FinTech Firms

In the Chamber's view, the key benefit of the Special Purpose Charter lies in uniform regulation and supervision.

FinTech companies attempting to offer services in all fifty states currently face a costly and time-intensive application process for obtaining money transmission (or other) licenses. And after licensing, this route presents additional burdens and complications, with fifty different state renewal requirements, tax expectations and implications, bonding, and multiple and duplicative reviews and audits. Many of these state requirements were designed with non-FinTech business models in mind, and often do not apply squarely or clearly to use cases in the FinTech space. Having a single point of contact would alleviate many of these burdens. What is more, under the Special Purpose Charter, only one agency needs to stay current with cutting edge technologies, instead of all fifty states attempting to keep up with the constant evolution of this space (which many states simply fail to do). And to the extent additional clarity is needed on how certain laws or regulations apply to a FinTech use case, guidance need only be sought from one agency rather than many.

The Chamber recognizes that the uniformity benefits of a Special Purpose Charter do not necessarily reach to substantive regulations; as the OCC noted in the white paper, there are a number of areas, particularly involving consumer protection, where state substantive law would continue to apply.

With simplified and uniform entrance standards, and clear nationwide authorization to offer services, a Special Purpose Charter also offers those businesses that qualify for it a clearer path to entry into the market and a quicker path to profitability and success for emerging companies. This dynamic will help the industry accommodate expanding and changing modes of financial

⁴ See, e.g., Singapore Financial Centre, *Setting up your FinTech Business in Singapore*, <http://www.mas.gov.sg/Singapore-Financial-Centre/Smart-Financial-Centre/Setting-up-your-Business.aspx> (offering a regulatory "sandbox" and startup grants).

activity among the U.S. population, especially young consumers who do not use traditional financial services in the same way today as previous generations did.⁵

In sum, these uniformity benefits of the Special Purpose Charter are appealing to the Chamber's members and to the industry at large. As the OCC notes, the number of FinTech companies in the United States and the amount of money invested in FinTech has grown significantly over the past few years.⁶ These trends have caused the benefits and stakes of uniformity to increase commensurately, as well. In particular, uniformity will help minimize regulatory arbitrage and mitigate the risk that FinTech-related investment and innovation will migrate to non-U.S. jurisdictions.

III. Applying Regulatory Expectations and Safeguards to a FinTech Business Model

While the Special Purpose Charter option should not lower the substantive bar for becoming a national bank, some specific requirements may need tailoring to fit specific FinTech models, and the Chamber strongly recommends continued dialogue between the OCC and the emerging FinTech industry stakeholders to continue to adapt and tailor its approach to accommodate innovation and change.

In this regard, the Chamber urges the OCC to undertake risk-based tailoring of requirements where a new activity has no clear analogue in OCC precedent. The Chamber anticipates that much of this tailoring can be achieved through OCC guidance and interpretations, but urges the OCC to consider using notice and comment rulemaking where broad-based industry input would be particularly beneficial or appropriate. Beyond these general principles, the Chamber has specific comments about regulatory expectations in the following key areas: A) Capital Requirements; B) Bonding Requirements; C) Financial Inclusion; and D) Material Changes in Business Activity. Each of these key areas are addressed below.

A. Capital Requirements

The Chamber understands that companies obtaining the Special Purpose Charter, as national banks, are subject to minimum capital requirements as set forth in 12 C.F.R. Part 3. However, those requirements were designed with depository institutions in mind, and it is not immediately clear how they would apply to certain FinTech companies that are structured much differently. For instance, and as relevant to a number of the Chamber's members, guidance is needed on how

⁵ Thomas J. Curry, Comptroller of the Currency, OCC, Remarks at Georgetown University Law Center regarding Special Purpose National Bank Charters for Fintech Companies, at 1-2 (Dec. 2, 2016), *available at* <https://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-152.pdf> (hereinafter "Curry Remarks").

⁶ *Id.* at 1. ("The number of FinTech companies in the United States and United Kingdom has ballooned to more than 4,000, and in just five years investment in this sector has grown from \$1.8 billion to \$24 billion worldwide.")

digital currency and other blockchain-based assets would be treated for purposes of capital regulations.

More generally, to provide flexibility for OCC regulators in addressing such scenarios, the Chamber would recommend including a discretionary band for supplemental capital that regulators could require of FinTech companies whose business models are not adequately addressed by the framework under 12 C.F.R. Part 3. In the Chamber's view, the OCC's capital approach to special purpose trust banks provides a useful precedent for how to approach such FinTech business models. Recognizing that traditional capital measures under 12 C.F.R. Part 3 would not adequately address the risk of off-balance sheet asset management activities, the OCC reserved the right to specify a separate minimum capital level using an analysis of certain qualitative and quantitative risk factors.⁷ If the OCC applied a similar approach in the Special Purpose Charter context, the Chamber urges the OCC to clearly specify the relevant factors and calculation mechanism so as to provide adequate guidance to prospective applicants.

B. Bonding Requirements

To the extent possible, however, the OCC's discretionary powers with respect to capital and liquidity should take into account bonding options. This would be particularly relevant in the context of digital currency and blockchain-focused companies, whose financial structures may not be conducive to traditional capital measures. We understand from industry conversations that surety bonds have not been difficult for digital currency companies to obtain (i.e., in the course of money transmitter licensing) and that the number of insurers that will issue such bonds to FinTech companies is increasing.⁸ While securing bonds to satisfy all fifty state bond requirements can serve as a barrier to entry in a state licensing regime, an adequate single-bond requirement in the Special Purpose Charter context would be far more efficient to obtain and still address consumer protection risks. Further, a fidelity bond requirement may provide the ability to manage risk of loss from larceny or theft, which are among the key risks that digital currency companies face.

In response to the OCC's specific question regarding digital currency, the Chamber notes that there is a widespread (but inaccurate) perception that digital currency activity is inherently high risk and must be addressed with correspondingly onerous capital and similar regulatory requirements. Such a presumption would be factually inaccurate and would have the effect of increasing, rather than reducing, risk to the public.

Based on the Chamber's experience and conversations with leading and respected companies in this industry, the Chamber emphasizes the materially counterproductive consequences of this

⁷ OCC, Description: Revised Guidance: Capital and Liquidity, OCC Bulletin 2007-21, *available at* <https://www.occ.gov/news-issuances/bulletins/2007/bulletin-2007-21.html>

⁸ In our experience, surety bond premiums are typically around 1.5-5% of the bonded amount.

approach. For instance, the most secure custodians attract most of the digital currency deposits; but an unduly high capital requirement would result in those companies scaling back the volume of deposits they hold (e.g., companies would have to impose higher storage fees, which would be prohibitive for certain customers). Many of those displaced customers may disperse to less secure, smaller entities based in unregulated jurisdictions, ultimately resulting in a counterproductive consumer protection impact.

C. Financial Inclusion

As the OCC noted in the white paper, the Community Reinvestment Act (“CRA”) does not by its terms apply to institutions not insured by the Federal Deposit Insurance Corporation. However, the OCC has requested comment as to whether it may impose similar requirements on uninsured institutions that obtain a Special Purpose Charter.

It is not as clear how CRA principles would apply to other kinds of FinTech companies, since analogous concerns (i.e., lack of access to financial services) are not necessarily present in other markets. In this regard, the Chamber emphasizes that the animating rationale of many FinTech companies—including members of the Chamber—is already rooted in financial inclusion. Decentralization of financial and commercial activity, for instance, is the lodestar of many Chamber members, with goals of minimizing reliance on costly intermediaries and providing users with more control over their financial activities and data. These efforts are inherently “inclusive,” and likely do not require any additional regulatory mandates with respect to inclusion.

D. Material Changes in Business Activity

The Chamber recommends that the OCC adopt regulatory expectations and specific plans to address a FinTech company’s material changes (to both goods and services offered) from its Special Purpose Charter application. This is an important issue, given the speed at which technological change occurs in the FinTech industry. In order to ensure that unnecessary regulatory hurdles do not hamper innovation, one option the Chamber recommends would be to introduce a negative consent procedure. Under that procedure, an entity with a Special Purpose Charter would notify the OCC of a material change, and if the OCC did not reply within a certain period of time, the entity could proceed. In the event the OCC found the particular request presented a novel or complex issue for consideration, the OCC could hold over the application for further review. Lengthy approval processes for new activities could place FinTech companies with Special Purpose Charters at a material disadvantage to competitors in other jurisdictions and such a procedure would mitigate that risk.

IV. Additional Recommendations

The Chamber recommends that the OCC clearly communicate the following three items through its website, through the Office of Innovation or as an addendum to the licensing manual that the OCC publishes:

1. A specific and clear description of the responsibilities, requirements and rights that a Special Purpose Charter would afford a FinTech company. Because there are so many different business models, the Special Purpose Charter may work well for some models and not at all for others. The industry would greatly benefit from knowing beforehand whether submitting an application is a sensible option.
2. A detailed description of any tailored application process and/or examination process that it plans to use to evaluate applications.
3. The Chamber requests guidance from the OCC as to FinTech applications that might be modern equivalents of deposit taking, check cashing, or lending money.

In conclusion, the Chamber thanks the OCC for the opportunity to provide comments on the draft Charter. Should you have any further questions about these or other topics, please do not hesitate to contact us at policy@digitalchamber.org.

Respectfully submitted,

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