

April 14, 2017

By electronic submission to: SpecialPurposeCharter@occ.treas.gov

Office of the Comptroller of the Currency
400 Seventh St., S.W.
Washington, D.C. 20219

Re: *Draft Licensing Manual Supplement for Evaluating Charter Applications From Financial Technology Companies*

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ welcomes the opportunity to comment on the March 2017 Draft Supplement to the Comptroller's Licensing Manual of the Office of the Comptroller (OCC), "*Evaluating Charter Applications From Financial Technology Companies.*"²

The ABA supports the initiative of the OCC to facilitate responsible financial innovation.

ABA believes that innovation in financial services continues to have tremendous potential to benefit customers as it has throughout the history of banking. Innovation can give customers improved transparency into the financial products they use every day, make it possible to extend credit to many more borrowers, and promote financial inclusion, giving greater access to financial services.

These benefits are only realized when innovations are delivered responsibly. **ABA supports the OCC's intent to consider special purpose charter applications from fintech companies as long as the same rules and oversight are applied consistent with those for any national bank.** Any such charter option must be implemented thoughtfully to ensure that the policy determinations underlying our bank regulatory framework are maintained. As national banks currently expect, this means applicable rules will be applied evenly and fairly, and the OCC will perform effective oversight to assure safe and sound operation and consumer protection.

A bank charter is a clear signal to customers that they are dealing with a trusted partner. The title of "bank" carries significant weight in the mind of customers and should not be taken lightly. Any fintech company that is granted a national bank charter will receive the instant credibility that comes with being a bank. Likewise, any missteps by a fintech company operating through a national bank charter will inevitably reflect on all banks. As such, it is important to ensure that all companies receiving special purpose charters are held to the same high regulatory standards as full-service national banks. Thus, the OCC should continue to ensure that all national banks – even special purpose national banks – meet the same high standards that customers have come to trust and expect.

¹ The American Bankers Association is the voice of the nation's \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

² <https://www.occ.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf>

ABA previously submitted comments in response to the OCC's December 2016 Whitepaper on the same topic.³ This OCC supplement builds on the Whitepaper and provides some important clarifications that ABA and others requested in their comments. In particular, we were happy to see the following clarifications:

- ***Affirmative Responsibilities to Communities:*** The OCC has clarified that special purpose national banks (although possibly not subject to Community Reinvestment Act (CRA) responsibilities) will be held to standards similar to those imposed by the CRA by requiring a Financial Inclusion Plan (FIP). ABA agrees that any limited purpose banks should have an affirmative responsibility to the communities they serve, just as full-service national banks do today under the CRA. While the CRA needs to be adapted to modern technology and new delivery channels that have appeared since the statute was adopted forty years ago, the expectations set forth by Congress when the CRA was enacted should apply universally.
- ***No Inappropriate Comingling of Banking and Commerce:*** The OCC clarified that it “will not approve proposals that would result in an inappropriate comingling of banking and commerce.” ABA believes that the special purpose national bank charter should not alter Congress's policy determinations regarding permissible mixing of banking and commerce as expressed in the National Bank Act and the Bank Holding Company Act, among other legislation.
- ***Deposit Taking Qualifies as Full-Service Bank:*** The OCC clarified that special purpose national bank charters for fintech companies will be limited to non-depository business models. ABA believes that any bank that seeks to accept any form of deposits would qualify as a full-service bank and should be subject to the same licensing procedures as all insured depository national banks.

Effective implementation is of utmost importance and is critical to ABA's support of this new charter. The OCC must ensure that the appropriate regulations apply consistently to all national bank charters and that no regulatory gaps emerge. We agree with statements by the OCC that requiring robust regulatory compliance and an affirmative responsibility to the communities these newly chartered institutions would serve – backed by vigorous examination and enforcement – can facilitate innovation in the banking system in a way customers can trust.

ABA encourages the OCC to continue to proceed carefully, deliberately, and transparently. We applaud the effort to seek public comment on this supplement and urge continued dialogue. The very nature of innovation means that we cannot predict exactly what business models will seek these charters in coming years. New charters will necessarily be evaluated one at a time. The strength of this approach is that regulation can be tailored to activity and risk; however, it also leaves room for regulatory gaps if an individual charter application is not carefully considered to ensure that it meets underlying policy objectives.

This individual approach adds complexity that will require significant resources to reliably and effectively examine and supervise these newly chartered institutions. ***As such, the OCC must take steps to ensure that the public has sufficient notice and a meaningful opportunity to comment, prior to approval, on any special purpose charter application that is filed.*** Notice of these applications should be prominently displayed on the OCC's website immediately after the

³ <http://www.aba.com/Advocacy/commentletters/Documents/ABA-Comment-On-OCC-Charter.pdf>

applications are filed, with a clear indication of how much time the public has to comment on the application. Public comment should be carefully considered as these new approaches are untested and may inadvertently lead to different treatment of similar business lines.

Working with the other agencies carefully and cooperatively is important *before* any new special purpose charter is approved to ensure all regulators have a full understanding of how such charters will impact the financial system as a whole and that no current policy lines are directly or inadvertently moved as a consequence of this action.

The OCC has carefully considered many important questions and provided thoughtful answers. Despite this, difficult questions remain and should be answered publicly before granting any special purpose charter, including how to ensure that regulations and consumer protections are applied evenly; what protections must be in place to assure compliance with existing laws regarding the separation of banking and commerce; and how enforcement of operating agreements would be accomplished, particularly those related to financial inclusion or other CRA-like responsibilities.

ABA acknowledges that bringing new entrants into the system is one way to accomplish innovation in the banking industry, but the OCC should not lose sight of empowering traditional banks to innovate. The priority of resources should be to help facilitate innovation in the 1,417 existing national banks. Banks are the original fintech companies and have a long history of bringing innovative services to customers in a responsible manner. There are a number of steps that the OCC can take to help facilitate this, including enabling banks to undertake limited-scale tests of innovative products and making it easier for banks to partner with fintech companies.

As the OCC considers ways to bring technology in banking forward, it should also look for innovative ways to modernize its approach to regulation and supervision. Many existing rules, regulations, and practices were established well before the recent wave of technological innovation and may inadvertently inhibit banks from implementing new technologies.

ABA appreciates the deliberate and transparent consideration that the OCC has given this important issue. ABA supports the OCC's effort to consider special purpose national bank charter applications from fintech companies so long as the same rules and oversight are applied consistent with those for any national bank. We encourage additional dialogue to address lingering questions. ABA views the OCC's intent to issue charters as an opportunity to further bring financial technology into the banking system, ensuring that innovative products are offered in a safe and responsible manner that customers can trust.

Sincerely,
Rob Morgan
Vice President, Emerging Technologies