



MARKETPLACE LENDING ASSOCIATION

April 13, 2017

Via E-Mail (specialpurposecharter@occ.treas.gov)

Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

RE: Comments – Comptroller’s Licensing Manual Draft Supplement, “Evaluating Charter Applications from Financial Technology Companies”

Dear Sir or Madam:

Marketplace Lending Association (“MLA”)¹ appreciates the opportunity to comment on the Comptroller’s Licensing Manual Draft Supplement, “Evaluating Charter Applications from Financial Technology Companies” (“Draft Supplement”). As stated in our January 17, 2017 comment letter (“January 2017 Letter”) regarding the Office of Comptroller of Currency’s (“OCC”) paper on Exploring Special Purpose National Bank Charters for Fintech Companies (“Fintech Charter Paper”),² we support the OCC’s proposal for a Special Purpose National Bank with a Fintech Charter (“Fintech SPNB”). A Fintech SPNB would allow certain well-run marketplace lending platforms (collectively, “MLPs”) to operate on a nationwide basis in a rigorous regulatory environment. In addition, we commend the OCC for anticipating that Fintech companies’ activities may vary considerably and urge the OCC to use the Fintech SPNB application process and its supervisory functions to evaluate and oversee applicants for Fintech SPNBs on a case-by-case basis, instead of following a one-size-fits-all approach. Our specific comments regarding the Draft Supplement are set forth below.

I. Banking and Commerce Considerations

In the Draft Supplement, the OCC expressly provides that it “will not approve proposals that would result in an inappropriate commingling of banking and commerce[,]” which “could introduce into the banking system risks associated with non-banking related commercial activities, interfere with the efficient allocation of credit throughout the U.S. economy and foster anti-

¹ MLA is an association of technology enabled lending companies with a mission to promote transparent, efficient, and customer-friendly financial systems by supporting the responsible growth of marketplace lending, fostering innovation in financial technology (“Fintech”), and encouraging sound public policy. Our members include two-sided platforms that connect borrowers and investors, technology-enabled platforms that lend from their balance sheets, and hybrids of these two models, and we use “marketplace lending” and “marketplace lending platform” (“MLP”) to refer to all these models.

² MLA Comment Letter, Office of Comptroller of Currency, Exploring Special Purpose National Bank Charters for Fintech Companies (Jan. 17, 2017), *available at* <https://www.occ.gov/topics/responsible-innovation/comments/comment-mla-marketplace-lending.pdf>.

competitive effects and undesirable concentration of economic power[.]”³ MLA acknowledges the OCC’s concern regarding the concentration of power and recognizes that there may be situations where a company with a large retail or manufacturing business controlling a Fintech company might seek to obtain a Fintech SPNB and may enhance its commercial enterprise by relying on its market power to direct consumers and small businesses to use the services of the Fintech SPNB. On the other hand, while certain Fintech companies applying for a charter may, at times, be incidentally owned (sometimes, in part) by certain venture capital funds and other investors in commerce, the level of engagement by such owners is sufficiently low that there is little likelihood that the commercial enterprise would be tied to or would impact the Fintech SPNB. Thus, MLA urges the OCC to consider the differences between incidental commercial activities of investors in Fintech SPNBs and commercial enterprises that would seek to use a Fintech SPNB to further their non-financial commercial business operations or to use their commercial market power to drive business to their Fintech SPNB to the disadvantage of other banks.

Further, MLA agrees that there are many justifications for separating banking and commerce, including a public desire to mitigate the risk of loss to the Deposit Insurance Fund (“DIF”) and consumers’ deposit accounts in the event that a bank’s condition deteriorates due to a connection with non-banking activities. However, these policy reasons likely do not apply to Fintech companies, such as MLPs, which generally do not accept consumer deposits and pose no direct threat to the DIF in the event of failure. Furthermore, this approach is consistent with the National Bank Act (“NBA”) and the Bank Holding Company Act (“BHCA”) as noted in our January 2017 letter.

As a result, imposing across-the-board ownership restrictions on all Fintech SPNBs (even those that are incidentally owned by companies involved in commerce) may unduly burden, or even discourage, certain Fintech companies from pursuing a beneficial chartering option, which would appear to undermine one of the stated goals of a Fintech SPNB – increasing competition. Rather, because every institution is different, MLA urges the OCC to consider determining the appropriate level of comingling of commerce and business on a case-by-case basis at least during the early stages of OCC’s implementation of the Fintech SPNB chartering process.

II. Safety and Soundness Considerations

MLA supports the OCC’s oversight of Fintech SPNBs because it believes the OCC will be a source of rigorous and thoughtful regulatory guidance and stability.

Further, we are encouraged by the OCC’s statement in the Draft Supplement that capital requirements will be based on “the OCC’s analysis of quantitative and qualitative factors” specific to each applicant.⁴ This is consistent with our view that the capital and liquidity requirements should be tailored to each applicant based on the applicant’s size, complexity, business model, operations, and relevant risks. As noted in our January 2017 Letter, we recommend that the OCC focus on durability through all market conditions and continuity of business as well as the

³ Office of the Comptroller of Currency, Comptroller’s Licensing Manual Draft Supplement, “Evaluating Charter Applications from Financial Technology Companies”, p. 7 (Mar. 2017), available at <https://www.occ.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf> (“Draft Supplement”).

⁴ *Id.*, at p. 11.

consequences of institutional failure to determine whether an MLP has adequate capital and liquidity. We believe that this approach is consistent with the OCC's combined goals of ensuring that Fintech banks conduct their business in a safe and sound manner, while also providing them with individualized supervision that fosters technological and financial innovation.

Recognizing that a Fintech SPNB will not be financed with deposits, the OCC should consider developing metrics that are different from those used for traditional depository institutions. Instead of applying rigid capital and liquidity requirements across the board, the OCC should consider implementing requirements that are based on basic prudent operations, long term profitability, and risk factors that would apply to Fintech SPNBs with different business plans and/or structures, including the consequences of the failure of a particular SPNB. Notwithstanding, MLA recognizes that the OCC may consider over time incorporating these factors into its guidance (which we anticipate will be different from those identified for traditional bank charters). Ultimately, with no insured deposits at risk, the MLA continues to urge the OCC to use its authority to tailor prudential requirements to the business models of applicants, rather than impose requirements in a one-size-fits-all manner that might limit the range of applicant firms.

III. Financial Inclusion Plan Considerations

MLA appreciates the guidance published by the OCC regarding the Financial Inclusion Plan ("FIP") and supports the OCC's focus on financial inclusion. Currently, traditional depository bank charters must comply with existing Community Reinvestment Act ("CRA") requirements, which assess whether a depository institution is meeting a community's credit needs. However, the CRA was written before the digital age and may not account for financial inclusion efforts that occur online and are borderless in nature, rather than at traditional branches in physical locations.

MLA agrees with the OCC's approach that "the nature and scope of an FIP will vary depending on the applicant's business model and the products or services it intends to provide to consumers or small business."⁵ As the OCC reviews the adequacy of an applicant's FIP plan, we ask the OCC to recognize that different companies will have different approaches to expanding lending opportunities. By their very nature, Fintech companies are designed to provide access to credit and each company will employ different strategies to meet these needs. If Fintech companies offer better access and more financial inclusion, the OCC should consider these factors when reviewing a company's business plan and FIP to identify the appropriate criteria for determining a Fintech SPNB's commitment to financial inclusion. Notwithstanding, we urge the OCC to ensure that while any requirements imposed on Fintech SPNBs may be rigorous, they should not be unfair or overly burdensome when compared to those imposed on traditional charter banks operating under the CRA.

IV. Level Playing Field

The OCC's explanatory statement accompanying the Draft Supplement noted that the OCC acts in accordance with the standards and scope of the OCC's application of federal preemption for national banks and federal savings association, which would apply to special purpose national

⁵ *Id.*, at p. 20.

banks (which would include Fintech SPNBs).⁶ MLA supports the OCC's position of recognizing that federal preemption provisions would apply to Fintech SPNBs as to any other national bank chartered by the OCC.

As noted in our January 2017 Letter, the Fintech SPNB would level the playing field between banks and non-banks, which would promote competition and drive down the cost of financial products for consumers and businesses. We strongly support the development of a Fintech SPNB that will provide Fintech companies with the full benefits afforded to traditional bank charters (*e.g.*, rate exportation, etc.). Extending these benefits to Fintech SPNBs will increase competition, which is one of the OCC's stated goals in connection with the Fintech SPNB, and which will enable banks to offer better products and lower costs to a national market. Further, these benefits will provide Fintech SPNBs with the ability to operate efficiently and consistently to allow for maximum benefit to customers and product diversity under the purview of the OCC.

V. Advancing Fintech SPNB Efforts

We applaud the OCC for its receptiveness to discussions and meetings related to the Fintech SPNB. We welcome the OCC's efforts at transparency as it further seeks input and refinement of the Fintech SPNB application process. Maintaining an open-door policy for discussions with all interested parties will help produce successful Fintech SPNBs, and ultimately benefit the U.S. economy including consumers and businesses nationwide. We are confident that the OCC's guidance and oversight will promote a stable industry that fosters a fair and competitive marketplace that both enhances the products offered by Fintech companies and decreases barriers and costs to customers.

As the OCC advances its Fintech SPNB efforts, MLA hopes that the OCC continues to engage with potential applicants and marketplace participants regarding the Fintech SPNB application process and supervisory oversight. This is especially important given the likelihood that Fintech SPNB applicants will have differing business structures and plans, which may require some time to review and determine appropriate safety and soundness controls. We believe this approach will allow applicants and the OCC to enhance their understanding of how a Fintech SPNB can benefit customers, Fintech companies, and the banking system as a whole.

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⁶ Office of the Comptroller of Currency, OCC Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies, p. 5 (Mar. 2017), available at <https://www.occ.gov/topics/responsible-innovation/summary-explanatory-statement-fintech-charters.pdf>.

Thank you for allowing us the opportunity to provide feedback on the Draft Supplement. If you have any questions, please do not hesitate to contact me at nat.hoopes@marketplacelendingassociation.org or (202) 660-1825.

Sincerely,

Nathaniel L. Hoopes
Executive Director
Marketplace Lending Association