K&L GATES

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Judith Rinearson
judith.rinearson@klgates.com

T +1 212 536 3928

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency ("OCC")

via email to specialpurposecharter@occ.treas.gov

Re: Special Purpose National Bank Charters for Fintech Companies

Dear Comptroller Curry:

Thank you for the opportunity to provide comments and questions regarding the OCC's recent report entitled, "Exploring Special Purpose National Bank Charters for Fintech Companies" (the "Report").

I am submitting this letter on behalf of the Money Services Business Association ("MSBA"). The MSBA was established as a not-for-profit trade association in October, 2015, focused on the non-bank money services industry, including licensed money transmitters, their agents and authorized delegates, payment card issuers and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchange and administrators, eWallet providers and other similar money services businesses.

The MSBA has over 40 member companies and continues to grow through outreach and inclusion of organizations of all sizes committed to operating consistent with local, state, national and international laws, as well as their own internal best practices. Our members also recognize the importance of safety and soundness protections for consumers as well as the importance of regulation to fight terrorism and money laundering. Our members are also fully committed to working with law enforcement to protect the integrity of the international financial system. See www.msbassociation.org

We commend the OCC for exploring new and innovative ways to increase payment innovation and reduce duplicative regulatory burdens. The concept of a Special Purpose National Bank Charter for Fintechs (to be referred to herein as the "Fintech Charter") is one that has garnered a lot of attention and inquiries over the last few weeks. Before addressing the specific questions raised at the end of the Report, we would like to share with you some of the key questions and concerns we have heard from our members:

- First, it would be our understanding that the Fintech Charter would include global remittance and bill payment services offered in new ways, such as online, virtually, via the blockchain or other similar shared ledger technologies, or through mobile applications. As noted in the Report, the Charter would allow entities to

    > "engage in new activities as part of the business of banking <u>or to engage in traditional activities in new ways</u>. For example, …, issuing debit cards or engaging in other means of facilitating payments electronically are the modern equivalent of paying checks." (Report, p. 4)

  We would seek confirmation that the scope of the Fintech Charter would therefore include debit and prepaid cards, check cashing as well as remittances and bill payment services that utilize new technologies.

- We also believe that just because it is referred to as a "Fintech" Charter does not mean that only "start up" companies would be permitted to obtain a Fintech Charter. We understand that any non-bank institution that meets the OCC's requirements, and provides both new services or traditional services in new ways could apply for the Fintech Charter - - even if they are long, well-established companies.

- Although there are limits on preemption, we also understand that the Charter would preempt state licensing, including state lending licenses as well as state "money transmitter" licenses. We seek confirmation on this point, because some of our members have undergone the significant cost and burden of obtaining licenses in 40+ states. The ability to offer remittances, prepaid cards, bill pay services and other similar money services nationally under a single Fintech Charter is one of the significant benefits such a Fintech Charter provides.

- To the extent a jurisdiction precludes agency appointments under bank charters for purposes of providing retail stores with the authority to offer certain payment instruments and/or services, how helpful will this Fintech Charter be? Would the benefit of the Fintech Charter primarily be provided to those entities which only offer FinTech services directly to consumers (i.e., without agents)?

- We understand that FDIC insurance would be required for special purpose Fintech National Banks that "accept deposits". Although the rules might differ for prepaid cards, it is our understanding that offering remittance and/or bill-pay services - without opening up customer "accounts" - would not be deemed accepting deposits and would not require FDIC insurance. We acknowledge that this determination can ultimately only be made by the FDIC, however, and seek clarification as to how and when such determination would be made.

- Finally, we note that many of our members are already licensed as state money transmitters on a national basis (i.e. possess up to 48 licenses), and have excellent relationships with state regulators, many of whom have worked with our members for many years, understand well our business models and have been supportive of our industry. These state regulators have made significant efforts to work together with the non-bank payments industry by, for example, implementing the NMLS (Nationwide Multistate Licensing System & Registry) system and endorsing unifying regulations and requirements. We would like to understand better what efforts, experience and resources the OCC intends to contribute and invest to oversee the wide variety and complexity of non-bank payment services contemplated by the Fintech Charter. [1]

As for the questions raised in the Report, here are our members' thoughts on certain of them:

1. <u>What are the public policy benefits of approving fintech companies to operate under a national bank charter? What are the risks</u>?

We would hope that the Fintech Charter would result in more innovation and a reduction in regulatory burdens for payment companies. The risks, as noted above, arise out of the OCC's potential lack of experience working with the non-bank payments industry.

2. <u>What elements should the OCC consider in establishing the capital and liquidity requirements for an uninsured special purpose national bank that limits the type of assets it holds?</u>

There are many elements, but we believe that the length of time that the entity has been licensed and operating, the culture of compliance demonstrated, the nature and size of its business, and the background and experience of its leadership should all be taken into consideration.

3. <u>What information should a special purpose national bank provide to the OCC to demonstrate its commitment to financial inclusion to individuals, businesses and communities? For instance, what new or alternative means (e.g., products, services) might a special purpose national bank establish in furtherance of its support for financial inclusion? How could an uninsured special purpose bank that uses innovative methods to develop or deliver financial products or services in a virtual or physical community demonstrate its commitment to financial inclusion?</u>

Financial inclusion is the hallmark of MSBA members - - many of which service populations who otherwise have little access to traditional banking or mainstream financial systems. Our members would gladly demonstrate our commitment to financial inclusion by sharing information about our customer bases, our typical transaction sizes, our advertising and marketing practices and our geographic locations.

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[1] We understand that many state regulators have opposed the Fintech Charter proposal because of these uncertainties. We would hope that the OCC's proposal will encourage more states to consider implementing the reciprocity provisions already included in Section 203 of the Uniform Money Services Act issued by National Conference of Commissioners of Uniform State laws (NCCUSL). By increasing reciprocity between states for money transmitter licenses, the burdens of multi-state licensing would be considerably reduced, even for those companies who elect not to seek a Fintech National Bank Charter.

4. Should the OCC seek a financial inclusion commitment from an uninsured special purpose national bank that would not engage in lending, and if so, how could such a bank demonstrate a commitment to financial inclusion?

> We believe it is reasonable to require uninsured, non-lending special purpose national banks to nonetheless submit financial inclusion plans as part of its business plan.

5. How could a special purpose national bank that is not engaged in providing banking services to the public support financial inclusion?

> No response.

6. Should the OCC use its chartering authority as an opportunity to address the gaps in protections afforded individuals versus small business borrowers, and if so, how?

> No response.

7. What are potential challenges in executing or adapting a fintech business model to meet regulatory expectations, and what specific conditions governing the activities of special purpose national banks should the OCC consider?

> The existing framework of state-licensed money services businesses somewhat streamlined through NMLS may serve as a guidepost for the regulatory requirements of a Fintech Chartered entity. MSBA members readily meet the existing requirements of state law, but see inefficiency in having to provide the same information to dozens of state regulators.

8. What actions should the OCC take to ensure special purpose national banks operate in a safe and sound manner and in the public interest?

> We suggest the OCC study the requirements of state "money transmitter" licensing laws, in terms of bonds, permissible investments, audits and financial reporting.

9. Would a fintech special purpose national bank have any competitive advantages over full-service banks the OCC should address? Are there risks to full-service banks from fintech companies that do not have bank charters?

> In our view, full-service banks serve a very different community and offer very different services. We see little opportunity for a competitive advantage for entities with a narrow special purpose Fintech Charter.

10. Are there particular products or services offered by fintech companies, such as digital currencies, that may require different approaches to supervision to mitigate risk for both the institution and the broader financial system?

No response.

11. How can the OCC enhance its coordination and communication with other regulators that have jurisdiction over a proposed special purpose national bank, its parent company, or its activities?

We would urge the OCC to increase its coordination and communication with state money transmitter regulators. We would suggest working closely with the Conference for State Bank Supervisors (CSBS) and the Money Transmitter Regulators Association (MTRA). MSBA would also be pleased to serve as a sounding board for the Fintech Charter.

12. Certain risks may be increased in a special purpose national bank because of its concentration in a limited number of business activities. How can the OCC ensure that a special purpose national bank sufficiently mitigates these risks?

No response.

13. What additional information, materials, and technical assistance from the OCC would a prospective fintech applicant find useful in the application process?

We would appreciate having more clarity about the Capital and Liquidity requirements, and the costs, timing and process for obtaining a Charter. Once again, thank you for this opportunity to provide comments on behalf of the MSBA. Should you wish for more information, please be assured that the MSBA Board would be happy to schedule a call or meeting. The MSBA can be contacted via phone at 201-781-2590 or via email to the Director, Kathy Tomasofsky at Kathy.Tomasofsky@msbassociation.org.

Sincerely,

Judith Rinearson
Partner, K&L Gates, MSBA Advisor