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April 12, 2017

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: Exploring Special Purpose National Bank Charters for Fintech Companies: Summary of Comments and Explanatory Statement

Dear Comptroller Curry:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comment on the OCC's draft supplement to the Comptroller's Licensing Manual entitled "Evaluating Charter Applications from Financial Technology Companies" (Licensing Supplement). As we stated in our previous letter to the OCC[2], ICBA welcomes a robust discussion on responsible innovation and supports the agency's Office of Innovation that could potentially help those community banks that are interested in partnering with financial technology or "fintech" companies. However, ICBA continues to have strong concerns about issuing special purpose national bank (SPNB) charters to fintech companies without spelling out clearly the supervision and regulation that these chartered institutions and their parent companies would be subject to.

As we noted in our previous letter to the OCC, since the scope of the chartering authority under the 150-year old National Bank Act is very unclear and since the federal agencies are inconsistent on how they define a "bank" or what constitutes the "business of

[1] The Independent Community Bankers of America®, the nation's voice for more than 5,800 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 760,000 Americans, hold $4.7 trillion in assets, $3.7 trillion in deposits, and $3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

[2] Please see our letter in response to Exploring Special Purpose National Bank Charters for Fintech Companies, dated January 17, 2017.

banking"[3], ICBA believes the OCC should seek explicit statutory authority from Congress prior to issuing a fintech SPNB charter. This would give Congress the opportunity to define the business of banking and consider all the policy implications of issuing a fintech charter.

If Congress allows the agency the ability to move forward, the OCC should publish rules, subject to notice and comment, surrounding all aspects of the fintech charter. The OCC should not issue fintech charters on a case-by-case basis pursuant to a broadly worded supplement to the Comptroller's Licensing Manual without first issuing a proposed rule in compliance with the Administrative Procedure Act. Since the OCC is establishing a whole new category of bank charters, outreach meetings should be included as part of its rule making.

The draft Licensing Supplement, while appreciated by community bankers who are concerned about the prospect of a new national bank charter, fails to answer many of the essential questions required to understand where the OCC's motives lie in seeking to approve national bank charters for otherwise non-bank financial technology firms while not supporting initiatives to spur the creation of new traditional community banks, that otherwise might be chartered to serve the needs of many communities across the country. The Licensing Supplement also fails to address the essential questions concerning the regulatory framework that would govern the supervision of these firms as they enter the space now occupied by heavily regulated and intensely scrutinized national banks.

For instance, the draft Licensing Supplement says that the OCC "will not approve proposals that would result in an inappropriate commingling of banking and commerce." But it is unclear whether this prohibition would extend to the owners or affiliates of the fintech company in the same way that the Bank Holding Company Act restricts the commercial activities of a bank holding company. As we stated in our previous comment letter, allowing corporate conglomerates like Google to own banks violates the U.S. policy of maintaining the separation of banking and commerce, jeopardizes the impartial allocation of credit, creates conflicts of interest, and unwisely extends the federal safety net to commercial interests. If the OCC truly wants to separate banking and commerce, the agency should issue a rule that states that any SPNB charter and/or its owners or affiliates will be subject to the same restrictions as those that apply under the Bank Holding Company Act.

The OCC needs to also be clearer about its minimum liquidity and risk-based capital requirements for fintech companies instead of relying on a tailored approach that depends on a vague standard of "quantitative and qualitative factors." This approach is so subjective that it raises serious questions as to whether these new entities will be subject

[3] For instance, the Bank Holding Company Act, federal tax laws and federal bankruptcy laws, define the business of banking more broadly than the OCC does and requires banks to engage in deposit taking before they can be defined as a "bank".

to the same capital and liquidity standards as insured depository institutions. The agency needs to publish transparent capital and liquidity requirements for these firms that specifically address minimum levels considered appropriate for a fintech firm to be considered well capitalized. The OCC should also state that all fintech capital and liquidity requirements will be no less stringent than the capital and liquidity requirements imposed on insured depository institutions.

It is also unclear in the draft Licensing Supplement the extent to which the other banking regulators were consulted about fintech charters prior to the issuance of the draft. Will these new SPNBs be members of the Federal Reserve? If so, will they have access to the Federal Reserve's discount window and payments systems? How often will they be subject to compliance exams? The draft Licensing Supplement appears to ignore not only the responsibilities and requirements of other federal bank regulators but those of the state banking agencies as well.

Although the draft Licensing Supplement says that SPNBs will be subject to safety and soundness exams and a ratings system identical to other national banks, it is unclear whether asset size will determine whether an SPNB will be examined every 12 months or every 18 months. The draft does say that newly chartered SPNBs will be subject to more frequent and intensive supervision in their early years of operation and that the "scope of supervision activities will follow a risk-based approach commensurate with the size and complexity of the institution, focusing on any elevated risks and unique supervisory challenges presented by a given SPNB. Finally, while the OCC says that the draft Licensing Supplement "explains how the OCC will apply the licensing standards and requirements in its existing regulations and policies to fintech companies applying for an SPNB charter," it never defines a financial technology company. In fact, the draft Licensing Supplement appears to support the view that as long as the entity engages in one of the core banking functions described at 12 CFR 5.20—i.e., deposit taking, paying checks, or lending—then it is eligible for a SPNB charter regardless of whether the company is considered a fintech company. The OCC does not adequately address the policy question as to why any company that engages in lending should be eligible for a SPNB charter.

In conclusion, ICBA finds the draft Licensing Supplement so vague and unclear concerning how these new SPNBs will be regulated that it raises serious concerns as to whether the OCC is creating a new category of banks that will be less regulated than an insured depository institution. We recommend that the OCC immediately rescind the draft Licensing Supplement and ask Congress for statutory authorization to issue these SPNB charters. Besides the fact that the OCC's present statutory authority is very unclear, this issue is far too important for the agency to go it alone and issue a new fintech charter without serious Congressional consideration of all the important policy

questions related to establishing a whole new category of lightly regulated financial institutions.

ICBA appreciates the opportunity to comment on the draft Licensing Supplement. If you have any questions or would like additional information, please do not hesitate to contact either Christopher Cole at chris.cole@icba.org or James Kendrick at james.kendrick@icba.org.

Sincerely,

/s/

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

/s/

James Kendrick
First Vice President, Accounting and Capital Policy