SULLIVAN & CROMWELL LLP

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Office of the Comptroller of the Currency Issues Draft Licensing Manual Supplement for FinTech Companies

OCC Outlines Process for FinTech Companies to Apply for Special Purpose National Bank Charters and Seeks Public Comment

SUMMARY

On March 15, 2017, the Office of the Comptroller of the Currency (OCC), the regulator and chartering authority for national banks and federal savings associations, issued a draft supplement to the *Comptroller's Licensing Manual* (Licensing Manual) entitled *Evaluating Charter Applications from Financial Technology Companies* (Licensing Supplement).[1] The Licensing Supplement describes the process through which financial technology (FinTech) companies may apply for special purpose national bank (SPNB) charters and outlines certain additional supervisory criteria the OCC will consider when evaluating applications. As described in the Licensing Supplement, FinTech companies seeking SPNB charters will be subject to an application process substantially similar to the process for applicants seeking a full-service national bank charter. The Licensing Supplement also outlines a set of supervisory criteria specific to FinTech companies that the OCC will use when evaluating applications, including the OCC's expectations for a "financial inclusion plan" (FIP) that certain FinTech companies will be required to submit as part of their applications. The OCC is seeking public comment on the Licensing Supplement and the deadline for comment is April 14, 2017.

On March 15, 2017, the OCC also released an accompanying *Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies* (Explanatory Statement).[2] The Explanatory Statement "explains the OCC's decision to issue for public comment" the

Licensing Supplement and responds to categories of public comments received on its white paper entitled *Exploring Special Purpose National Bank Charters for Fintech Companies* (SPNB White Paper).

The SPNB charter proposal has been widely supported by the FinTech community. However, it has been criticized by state regulators, consumer advocacy groups and other stakeholders, and the publication of the Licensing Supplement immediately drew a sharp rebuke from the Conference of State Banking Supervisors (CSBS)[3] and the New York State Department of Financial Services (NYSDFS).[4]

The Licensing Supplement and the Explanatory Statement address a number of issues and questions that have been raised about the charter proposal, and evidence the OCC's intention to proceed with the charter despite criticism.

BACKGROUND

In August 2015, the OCC announced an initiative to develop a comprehensive framework to improve its ability to identify and understand trends and innovations in the financial services industry, as well as the evolving needs of financial services consumers.[5] Following that announcement, the OCC took a number of steps to achieve this objective, including articulating its perspective on supporting responsible innovation in the federal banking system,[6] engaging with national banks, FinTech companies and other stakeholders on innovation in the banking sector, establishing a new Office of Innovation and defining a number of specific actions that the OCC will implement for use in evaluating innovative financial products, services and processes and their associated risks.[7,8]

On December 2, 2016, the OCC published the SPNB White Paper, announcing that it was moving forward with a plan to charter SPNBs for FinTech companies. The SPNB White Paper received 110 comments from interested stakeholders during the public comment period.[9]

Reaction from commenters to the SPNB White Paper was mixed and largely divided along the following lines:

- *FinTech Companies*: A variety of FinTech companies – including marketplace lenders, payment processors and digital currency platforms – delivered generally positive feedback, commending the OCC for aspects of state licensing regime preemption, but stressed the need for proportional regulation depending on the types of risk posed by a FinTech company's business model.[10]
- *Trade Organizations*: FinTech trade and lobbying organizations also provided generally positive feedback, but called for the creation of a separate regulatory sandbox to facilitate product-testing for early-stage FinTech companies.[11] Trade groups for larger financial institutions struck a more neutral tone, commenting that the SPNB White Paper raised more questions than answers and required coordination between the OCC and other agencies to address issues relating to the separation of banking and commerce and safety and soundness.[12] Trade groups for smaller-sized, state financial institutions were more critical of the charter proposal, questioning the OCC's claim to chartering authority for SPNBs under the National Bank Act (particularly for non-deposit taking SPNBs) and emphasizing the prospect of an unequal playing field for full-service banks

relative to FinTech companies operating under a SPNB charter arising from a perception that the latter would be more lightly regulated.[13]

- *Consumer Advocacy Groups*: Consumer advocacy organizations expressed skepticism that the OCC's financial inclusion requirements for charter applicants would be stringent enough to protect consumers, and asserted that many state consumer protection laws would be preempted, leaving consumers vulnerable to FinTech companies that could engage in predatory lending behavior.[14] There was also concern that some federal protections of consumers and small businesses would be less robust because the OCC would take over as primary regulator for SPNBs and deprive the Federal Trade Commission of jurisdiction to enforce unfair and deceptive practices violations.[15]
- *Federal and State Regulators*: The strongest criticism came from state officials, including state banking regulators and state attorneys general, who voiced concerns that the SPNB would threaten the integrity of the dual banking system, especially because the preemption powers provided by a SPNB charter would erode state-level consumer protections.[16] Members of Congress, including Senators Sherrod Brown and Jeff Merkley, similarly disapproved of the SPNB charter initiative because it would encourage charter shopping, could become a vehicle of abuse to consumers and threatened the competitiveness of full-service national bank charters.[17] Senators Brown and Merkley also noted that granting SPNB charters to non-deposit taking FinTech companies could result in an unlawful commingling of banking and commerce.

In a March 6, 2017 speech at the LendIt USA 2017 Conference, Comptroller Curry mentioned that further details regarding the OCC's SPNB charter proposal would come in the form of a supplement to its Licensing Manual that would clarify the application process for SPNB charter applicants. In his speech, Comptroller Curry pushed back against "misperceptions" that critics had raised during the SPNB White Paper comment period and reiterated the OCC's position that the OCC has the authority to charter special purpose national banks (including non-deposit taking ones) without express statutory authorization, that granting special purpose charters would not provide recipients with "a ticket to light-touch supervision" and that offering special purpose charters to FinTech companies would not result in a commingling of banking and commerce.[18]

Shortly after Comptroller Curry's speech, on March 10, 2017, the 34 Republican members of the House Financial Services Committee delivered a letter to Comptroller Curry encouraging him to proceed in a more deliberate manner, noting that "[i]f the OCC proceeds in haste to create a new policy for 'fintech' charters without providing the details for additional comment, or rushing to finalize the charter prior to the confirmation of a new Comptroller, please be aware that we will work with our colleagues to ensure that Congress will examine the OCC's actions and, if appropriate, overturn them."[19] This warning has been interpreted to be a reference to Congressional authority under the Congressional Review Act to disapprove a wide range of "rules" issued by Federal agencies.

EXPLANATORY STATEMENT

In its Explanatory Statement, the OCC responded to comments received on the SNPB White Paper and articulated the reasons why the OCC has decided to move forward with its charter proposal.[20] To address threshold concerns raised during the SNPB White Paper comment period, the OCC stated that:

(1) the charter proposal will not facilitate the inappropriate commingling of banking and commerce; (2) the OCC will not allow products with predatory features nor will it allow unfair or deceptive acts or practices; and (3) there will be no "light-touch" supervision of companies that successfully apply for and are granted a SPNB charter, because FinTech companies granted such SPNB charters will be held to the same high standards that all federally chartered banks must meet.[21] In addition, the Explanatory Statement reiterates the OCC's position that it has the requisite statutory authority to grant SPNB charters to FinTech companies under the National Bank Act.[22]

LICENSING SUPPLEMENT

The Licensing Supplement describes how the OCC will apply the licensing standards and requirements of its existing regulations and policies to FinTech companies applying for a SPNB charter. In general, the Licensing Supplement notes that FinTech company applicants will be subject to substantially the same application process as applicants seeking a full-service national bank charter. However, the Licensing Supplement also outlines certain procedural steps and evaluative criteria specific to SPNB applicants. The Licensing Supplement does not apply to applicants seeking full-service national bank charters (which include deposit taking), or other existing special purpose national bank charters (like traditional trust companies), which are covered by existing OCC regulations and policies. The following summarizes certain important modifications to the OCC's traditional chartering process for the SPNB presented by the Licensing Supplement.

***Initial contact with the OCC*:** The first point of contact for a FinTech company interested in pursuing a SPNB charter application will be the OCC's newly formed Office of Innovation. After discussions with the Office of Innovation, it will arrange an exploratory meeting between the FinTech company and OCC staff, including representatives of the OCC's Licensing Division (OCC Licensing). Following the exploratory meeting with OCC staff, the OCC will identify aspects of the FinTech SPNB charter that present novel or complex issues for the prospective applicant, and the FinTech company will be assigned an OCC Licensing contact. There will be at least one formal pre-filing meeting between the FinTech company and OCC Licensing staff, with additional meetings possible depending on the novelty and complexity of the proposal.[23]

***Activities of the proposed SPNB*:** During the pre-filing stage, a prospective applicant will need to demonstrate that it is eligible for a SPNB charter. To be eligible, the applicant must conduct (and be limited to) at least one of the three core banking functions of receiving deposits, paying checks or lending money. It is likely that the business model of most applicants would relate to paying checks or lending money, because applicants seeking to take deposits would need to obtain a full service national bank charter and thus would not be covered by the Licensing Supplement. The OCC notes that it interprets the National Bank Act as being sufficiently adaptable to permit national banks (i) to engage in new activities as part of the business of banking or to engage in traditional activities in new ways and recognizes that (ii) the activities proposed by an applicant for SPNB charter eligibility may include activities that have not previously been determined to be part of, or incidental to, the business of banking or fit within an established core banking function.[24] When this is the case, the FinTech company should discuss the permissibility of the proposed activities and their status as core banking activities.[25]

Filing procedures – publication and public comment; confidentiality**:** Following the pre-filing phase, the SPNB charter applicant will be required to file the full charter application and follow existing filing procedures for national bank charters. An applicant must publish notice of its charter in the community in which the proposed SPNB will be "located" as soon as possible before or after the filing date. The OCC notes that it will consider the nature of the SPNB's operations in order to determine where publication of the notice would be appropriate, recognizing that a FinTech company's operations may be primarily or solely online and not resemble those of traditional national banks. The application will be subject to a 30-day comment period, and the public portion of the application file will be available to any person upon request and will also be available on the OCC's website.[26] Parts of the business plan will be included in this public file, including the FIP.[27]

Business Plan**:** As with all national bank charter applicants, a FinTech company will be required to submit a comprehensive business plan as part of its application.[28] In the Licensing Supplement, the OCC notes that it will subject the applications of FinTech companies without an established business record to higher degrees of scrutiny when determining whether the proposed SPNB has a reasonable likelihood of long-term success.[29] The Licensing Supplement also provides FinTech companies with additional guidance on their business plan submissions, including in the following areas:

- *Risk Assessment*: The OCC expects that the business plan will identify and discuss the specific risks inherent in the proposed SPNB's business model. The risk assessment should include the SPNB's risk appetite and ways that the SPNB could effectively manage its identified risks.[30] In addition, the OCC will consider the internal and system controls that the SPNB uses to monitor and mitigate risk, including management information systems.
- *Financial Management*: FinTech company applicants will be subject to the OCC's minimum risk-based capital and leverage requirements set forth in 12 CFR 3. The OCC expects that the business plan will discuss how the SPNB's capital would weather adverse market conditions, such as broad market volatility or volatility specific to a business line. Preliminary conditional approval for a SPNB will include a condition specifying a minimum capital level that the SPNB must maintain based on the OCC's analysis of quantitative and qualitative factors. The OCC will also scrutinize the liquidity and funds management of an applicant to ensure that the FinTech company is able to readily meet its cash and collateral obligations at a reasonable cost without adversely affecting its daily operations or financial condition.[31]
- *Financial Inclusion Plan*: SPNB applicants that will provide financial services to consumers and small businesses will be required to demonstrate their commitment to financial inclusion by submitting a FIP as part of their business plan. When an applicant that must submit a FIP is developing its business plan, it may engage in outreach to interested community and consumer groups to determine community financial needs. The OCC acknowledges that some charter applicants may have a business model that incorporates financial inclusion inherently through its products and services, and in such instances, the applicant should identify and discuss with the

OCC the aspects of its business plan that by the nature of the product or service address issues of financial inclusion.[32] The business plan's FIP should describe the proposed goals, approach, activities and milestones for serving the relevant market and community. The nature and scope of an FIP developed by an applicant will vary depending on the SPNB's business model and the types or products and services it offers.[33]

The OCC may identify specific requirements that are necessary for the business plan to be achievable and to ensure that the OCC's chartering standards are met. The OCC may then impose special conditions on the FinTech company's SPNB charter in order to attain these goals. As is the case with all de novo national bank charters, the OCC will include the requirement that the SPNB obtain a supervisory non-objection letter from the OCC if it deviates significantly from its approved business plan.[34]

***Evaluating an application*:** When evaluating a SPNB application, the OCC will apply the same supervisory criteria applicable to full-service national bank applications. The OCC will not approve charter applications that are opposed to OCC policy or other established public policy, such as proposals for business plans that would result in undue harm to consumers, or cause an inappropriate commingling of banking and commerce.[35]

In the Licensing Supplement, the OCC also outlines a set of supervisory considerations specific to SPNB applications, which include the following:

- *Risk Management*: The OCC expects that FinTech SPNBs will have risk management systems commensurate with the complexity and volume of risk that the SPNB assumes. The OCC uses a supervision-by-risk approach to evaluate risk, identify risk-based issues and ensure that SPNBs can take corrective action prior to risk-based issues compromising their safety and soundness. After a risk evaluation, the OCC will tailor and conduct supervisory activities at a SPNB based on identified risks and conduct periodic testing to validate its risk assessment.[36]
- *Corporate Governance*: The OCC expects the management of FinTech SPNBs to have relevant subject matter expertise and financial acumen and that the board of directors will have a prominent role in the overall governance structure by participating on key committees and guiding the FinTech SPNB's risk management framework. Board members are also expected to actively oversee management, to provide a credible challenge to management and to exercise independent judgement.

***Chartering Decision*:** The OCC will grant approval of a SPNB charter application in two steps: preliminary conditional approval and final approval. A preliminary conditional approval is not a guarantee that the OCC will provide the applicant with final approval for a SPNB charter; rather, it is only an assurance that the application has passed the first phase of OCC review and is a green light for the applicant to spend the money to raise capital, hire officers and employees and develop the policies and procedures necessary to conduct the business of the SPNB, including the policies and procedures related to financial inclusion. As a general matter, the SPNB applicant must open for business within 18 months of the OCC's preliminary conditional approval, unless it has received an extension.[37] A FinTech SPNB charter applicant that receives final approval from the OCC may commence its banking business. Once the SPNB opens, the OCC will supervise it through scheduled supervisory cycles, including on-site examination and periodic off-site monitoring.[38]

***Coordination with other regulators; continuation of remedies*:** The OCC will coordinate as appropriate with other regulators that have regulatory jurisdiction over the SPNB based on the structure and activity of the SPNB. If a SPNB applicant is the subject of a pending investigation or enforcement action by another regulator, such investigation or enforcement action may not be nullified by the charter application process and may give the OCC grounds to deny the charter application. Once the OCC has consulted the investigating party or the regulator considering an enforcement action against the FinTech company at issue, the OCC will, at a minimum, ensure that the company will have a continuing obligation to remediate any prior violations through conditions imposed on an approval of the SPNB charter.[39]

The OCC has requested public feedback on all aspects of the Licensing Supplement. Comments must be submitted by April 14, 2017.

OBSERVATIONS

The OCC's publication of the Licensing Supplement provides greater clarity on the process through which FinTech companies may apply for SPNB charters and describes the criteria that the OCC will apply when evaluating and acting on applications. It further demonstrates Comptroller Curry's commitment to the SPNB charter for FinTech companies. Comptroller Curry's term ends in April 2017. It is not clear whether his successor (who has not yet been nominated) will share his commitment to the SPNB charter, and if he or she does not, what will become of it.

The Licensing Supplement is, as expected, largely consistent with the SPNB White Paper and existing OCC guidance. Key points of interest raised by new information in the Licensing Supplement include:

- The submission of a FIP is only required for applicants whose business model includes lending or providing financial services to consumers or small businesses. The OCC recognizes that some FinTech business models inherently address financial inclusion, such as companies that engage in nonprime lending. In these cases, the Licensing Supplement notes that applicants should identify and discuss how their products or services inherently address financial inclusion considerations.[40] In addition, the Licensing Supplement indicates that FIPs will be available for review and comment by the public, and the OCC will condition the issuance of FinTech SPNB charters on implementation of an applicant's FIP.[41] In light of the public comment activity on the SPNB proposal itself, applicant should expect comments on their proposals during the application process.
- In response to comments raised during the White Paper comment period, the OCC has made clear that it will not approve FinTech SPNB charter applications that implicate the commingling of banking and commerce.[42] This may preclude the submission of FinTech SPNB charter applications by large technology companies and retailers that engage in business and commerce generally and have no intention of narrowing their activities.
- FinTech companies that are the subject of formal investigations or enforcement actions cannot escape the consequences of such investigations or actions by seeking a SPNB charter.[43] A

FinTech company that successfully becomes a SPNB will still have to remediate or pay penalties to the appropriate parties. Some FinTech companies may currently be subject to state-level investigations and enforcement proceedings, and it is not clear how those will affect the application process.

- The OCC has not provided objective guidance on alternative capital requirements based on the unique risks and activities presented by FinTech company applicants.[44] This reflects the breadth of possible FinTech SPNB charter applicants and the flexible approach the OCC has chosen to take with respect to the wide-ranging business models and nontraditional capital structures of certain FinTech companies.

Based on the guidance contained in the Licensing Supplement, prospective applicants should be certain to take a number of steps in preparing a FinTech SPNB charter application. These include the following:

- *Schedule Exploratory Meeting*: FinTech companies can schedule an initial meeting with the OCC's Office of Innovation to discuss their qualifications for a FinTech SPNB charter, and many have already. Since the OCC has specified that all prospective applicants must schedule an initial meeting with the Office of Innovation, companies should consider scheduling this meeting as early as possible to avoid a long wait. During this meeting, FinTech companies should be prepared to explain why their proposed activities are permissible for a SPNB and how they fall within one of the core banking categories of taking deposits, paying checks or lending money.
- *Strengthen Business Plan*: Prospective applicants should critically assess whether their business plan meets the supervisory expectations that the OCC has outlined in the Licensing Supplement. FinTech companies whose business plans include lending or providing financial services to consumers or small businesses should consider how they will meet the OCC's financial inclusion expectations.
- *Conduct Gap Analysis*: FinTech companies should consider whether their internal controls, management capabilities and board oversight structure are sufficient to meet the OCC's supervisory expectations, and should develop plans to remediate any deficiencies prior to submitting an application. Companies that are newly formed, or that have a short track record, should be prepared to explain how they plan to grow and scale in a responsible manner that does not raise supervisory concerns, particularly in the areas of management oversight and internal controls.
- *Capital Proposal*: Prospective applicants should examine their financial capabilities and assess whether their capital and leverage ratios are sufficient to meet the minimum ratios set forth in 12 CFR 3. In addition, applicants should be prepared to propose a minimum capital level applicable to their business, and be prepared to provide the OCC with an explanation of why their proposed minimum capital level makes sense in light of their activities, risks and business model. If additional capital will be required, they should consider developing plans to obtain it.

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ENDNOTES

1 OCC, *Comptroller's Licensing Manual Draft Supplement: Evaluating Charter Applications From Financial Technology Companies* (Mar. 15, 2017), *available at* https://www.occ.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf ("*Licensing Supplement*").

2 OCC, *OCC Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies* (Mar. 15, 2017), *available at* https://www.occ.gov/topics/bank-operations/innovation/summary-explanatory-statement-fintech-charters.pdf ("*Explanatory Statement*").

3 Conference of State Bank Supervisors, *CSBS Urges Congress to Weigh in Against OCC Non-Bank Charter, "A Solution in Search of a Problem"* (Mar. 15, 2017), *available at* https://www.csbs.org/news/press-releases/pr2017/Pages/031517.aspx. The Conference of State Bank Supervisors responded to the OCC's releases, finding that "[i]t is deeply unsettling that the OCC chose to ignore the public record – including letters from Republicans and Democrats in Congress – warning of the harm this action will cause to consumers and the added risks to taxpayers. CSBS is exploring all options. We urge Congress to continue to weigh in on this important issue."

4 Maria T. Vullo, NYSDFS Superintendent, *Statement on the OCC's Proposed Licensing Manual Supplement for Evaluating Charter Applications From Financial Technology Companies* (Mar. 15, 2017), *available at* http://www.dfs.ny.gov/about/press/pr1703152.htm. Superintendent Vullo voiced strong opposition to the Licensing Supplement, disputing the OCC's claim to have SPNB chartering authority under the National Bank Act, and warning that "[t]he imposition of an entirely new federal regulatory scheme on an already functional and deeply rooted state regulatory landscape will invite efforts to evade state usury laws and other consumer protections, stifle small business innovation, create institutions that are too big to fail and increase the risks presented by nonbank entities."

5 Remarks by Thomas J. Curry, Comptroller of the Currency, Before the Federal Home Loan Bank of Chicago (Aug. 7, 2015), *available at* https://www.occ.gov/news-issuances/speeches/2015/pub-speech-2015-111.pdf.

6 OCC, *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective* (Mar. 31, 2016), *available at* http://occ.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf.

7 OCC, *Recommendations and Decisions for Implementing a Responsible Innovation Framework* (Oct. 26, 2016), *available at* https://www.occ.gov/topics/bank-operations/innovation/comments/recommendations-decisions-for-implementing-a-responsible-innovation-framework.pdf.

8 The specific steps of the OCC's Responsible Innovation initiative included the following: (i) on March 31, 2016 the OCC released a white paper on Responsible Innovation, (ii) the OCC hosted a Forum on Responsible Innovation in June 2016 designed to solicit the views of national banks, FinTech companies and other stakeholders on innovation in the banking sector, (iii) the OCC formed an Innovation Framework Development Team that performed extensive information gathering and analysis, and held other discussions with key stakeholders during the second half of 2016 and (iv) on October 26, 2016, the OCC released its Responsible Innovation Framework policy statement.

9 OCC, *Public Comments on Exploring Special Purpose National Bank Charters for Fintech Companies* (Jan. 17, 2017), *available at* https://www.occ.gov/topics/bank-operations/innovation/fintech-charter-comments.html.

10 See, e.g., Richard H. Neiman, Lending Club, *Comment on the OCC White Paper "Exploring Special Purpose National Bank Charters for Fintech Companies"* (Jan. 17, 2017), at 15, *available at* https://www.occ.gov/topics/bank-operations/innovation/comments/comment-lending-club.pdf.

11 See, e.g., Perianne Boring, Chamber of Digital Commerce, *Comments on the OCC's December 2, 2016 White Paper Regarding Special Purpose National Bank Charters for FinTech Companies* (Jan. 17, 2017), at 2, *available at* https://www.occ.gov/topics/bank-operations/innovation/comments/comment-chamber-digital-commerce.pdf.

12 See, e.g., John Court (The Clearing House Association L.L.C.) and Christopher Cole (Independent Community Bankers of America) and Christopher B. Killian (Securities Industry and Financial Markets Association), *Comment on "Exploring Special Purpose National Bank Charters for Fintech Companies"* (Jan. 17, 2017), at 2, *available at* https://www.occ.gov/topics/bank-operations/innovation/comments/comment-clearing-house-et-al.pdf.

13 See, e.g., John W. Ryan, Conference of State Bank Supervisors, *Comment on "Exploring Special Purpose National Bank Charters for Fintech Companies"* (Jan. 13, 2017), at 2-4, *available at* https://www.occ.gov/topics/bank-operations/innovation/comments/comment-csbs-comment-letter-special-purpose-national-bank-charters-fintech.pdf.

14 See, e.g., National Consumer Law Center (On behalf of its low income clients) and the Consumer Federation of America, Consumer Union, Main Street Alliance and U.S. PIRG, *Comments to the Comptroller of the Currency on "Exploring Special Purpose National Bank Charters for Fintech Companies"* (Jan. 17, 2017) at 13, *available at* https://www.occ.gov/topics/bank-operations/innovation/comments/comment-nclc-et-al.pdf.

15 See, e.g., Main Street Alliance, *Comment on "Exploring Special Purpose National Bank Charters for Fintech Companies"* (Jan. 16, 2017), at 2, *available at* https://www.occ.treas.gov/topics/bank-operations/innovation/comments/comment-main-street-alliance.pdf.

16 See, e.g., Maria T. Vullo, NYSDFS, *Comment on "Exploring Special Purpose National Bank Charters for Fintech Companies"* (Jan. 17, 2017), at 5-7, *available at* https://www.occ.gov/topics/bank-operations/innovation/comments/comment-ny-dfs.pdf.

17 Sherrod Brown and Jeffrey A. Merkley, United States Senate Committee on Banking, Housing, and Urban Affairs, *Comment on "Exploring Special Purpose National Bank Charters for Fintech Companies"* (Jan. 9, 2017), at 1, *available at* https://www.merkley.senate.gov/news/press-releases/brown-merkley-push-back-on-occs-plan-for-financial-technology-charter.

18 Remarks by Thomas J. Curry, Comptroller of the Currency, at LendIt USA 2017 (Mar. 6, 2017), *available at* https://www.occ.gov/news-issuances/speeches/2017/pub-speech-2017-27.pdf.

19 House Financial Services Committee, *Letter to Comptroller Curry* (Mar. 10, 2017), *available at* http://paybefore.com/wp-content/uploads/2017/03/OCC-Congress-letter-March-2017.pdf.

20 *Explanatory Statement* at 2-3.

21 *Id*.

22 *Id.* at 15.

23 *Licensing Supplement* at 4.

24 *Id*. at 5.

25 *Id*.

26 *Id*. at 6.

27 *Id*.

28 *Id*. at 9. See 12 CFR 5.20(h).

29 *Id*.

30 *Id*.

31 *Id.* at 12.

32 *Id.* at 20.

33 *Id*.

34 *Id*.

35 *Id*. at 7.

36 *Id.*

37 *Id*.

38 *Id*. at 16.

39 *Id*. at 8.

40 *Id.* at 20.

41 *Id.* at 15.

42 *Id*. at 7.

43 *Id*. at 8.

44 *Id.* at 11.

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