



January 13, 2017

SUBMITTED VIA EMAIL

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Comptroller Thomas Curry
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, D.C. 20219

**Re: Exploring Special Purpose National Bank Charters for Fintech Companies,
December 2016 Request for Comment.**

Dear Comptroller Curry:

The Structured Finance Industry Group (SFIG)¹ appreciates the opportunity to respond to the Office of the Comptroller of the Currency (OCC) request for comment to the above referenced report (Report).

SFIG is a member-based trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG's core charge is to support a robust and liquid securitization market, recognizing that securitization is an essential source of central funding for the real economy.

In line with the mission of the OCC, SFIG values clear and predictable regulations, which enable financial institutions to provide innovative products to consumers while accounting for risk and stability in lending operations and securitization.

¹ SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, to drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market, including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.



DISCUSSION

A vibrant securitization market is essential to the availability of consumer financial services and the national economy as a whole. Accordingly, this letter focuses on four primary issues that are most important to the securitization markets:

1. Special Purpose National Bank Charters for Fintech Companies Will Facilitate Greater Stability and Thereby Increase Overall Lending. Through a national charter and the uniform supervision of the OCC, fintech companies may streamline regulatory compliance efforts and move beyond challenges currently posed by state-by-state licensing requirements, lending laws and interest rate restrictions. This increased regulatory certainty, as highlighted in the Report, will lead to a reduction in litigation risk, and greater consistency in the application and understanding of laws. Hence, SFIG supports greater fintech access to these special purpose charters as this move will invariably impact confidence in the secondary loan market and increase overall lending.
2. The Rules and Standards Applicable to Special Purpose National Banks Will Afford Consumers Greater Safety and Confidence in Fintech Products. As noted within the Report, all national banks are required to meet high supervisory standards. These standards will likely facilitate greater consumer confidence in fintech products. Likewise, although smaller fintech companies may view the rigors of the charter process as a barrier to entry, fintech charters provide consumers a benchmark by which to measure a marketplace lender whether or not that particular lender itself has received a charter. Thus, it is likely that if even only relatively few marketplace lenders apply for and receive charters, a benchmark will be established that may lead to increased consumer use of more stable fintech products.
3. If the OCC Includes Public Policy Driven Conditions Within its Charters, the OCC Should Systemically Impose Such Conditions. The Report states that the OCC may condition fintech charter approval on compliance with financial inclusion and consumer protection standards similar to those currently imposed upon insured depository institutions (IDIs), *e.g.*, standards outlined in the Community Reinvestment Act. If the OCC chooses to incorporate such provisions within *some* charters, SFIG respectfully requests that the OCC provide public notice of the triggering characteristics prompting such inclusion and how these provisions will be harmonized with existing regulations such as those for IDIs. This consistent approach to fintech chartered companies will facilitate greater uniformity across the industry and ensure that both consumers and fintech companies are treated equitably.
4. The OCC Should Affirm the Treatment of Financial Assets Transferred in Connection with a Securitization. Because the legal isolation of assets transferred by non-depository banks has not been the subject of extensive regulatory or judicial examination, certain challenges may arise when legal counsel is asked to deliver a legal isolation opinion in connection with securitization sponsored by the newly-chartered entities.



SFIFG members believe that these challenges should be addressed by the OCC proactively, by way of the OCC affirming that state law principles of sale treatment apply in the context of securitization and other asset transfers by non-depository national banks. Further, SFIFG members believe that such a conclusion is supported by the National Bank Act, but given the paucity of authority beyond the Act itself, OCC guidance would greatly facilitate securitization activities by such entities.

We also would like to offer some additional observations with respect to two related items of interest in our membership.

First, we note that, although granting of these new charters may produce the benchmarking effect noted in item 2 above even for marketplace lenders that do not apply for the charters, these lenders, without further regulatory relief, will likely continue to face constant legal uncertainties. Specifically, the ability of investors to collect the interest rate for which loan originators lawfully contract is fundamental to the secondary markets. To that end, even though recipients of fintech charters will benefit from an ability to export usury laws, these entities may still be hindered from recognizing the full economic benefit of a charter, including securitization, where *Madden v. Midland* is in effect. In addition, for those marketplace lenders that do not obtain a charter, they, in light of *Madden*, still face uncertainty with regards to the exportation of usury laws. Hence, SFIFG urges the OCC to engage with its fellow regulatory authorities to continue to address the issues resulting from the *Madden* decision.

Second, we note that the Report concerns itself exclusively with the question of extending the chartering authority to “fintech companies”, a term that the Report appears to use interchangeably with “marketplace lenders”. Beyond describing “fintech” as being shorthand for “financial technology” and equating it with marketplace lending, the Report does not define the concept.

Many of SFIFG’s members are neither depository institutions nor consider themselves to be fintech or marketplace lenders—they are more likely to self-characterize themselves as “specialty finance companies” or simply as “finance companies”. In practice, however, the same technologies underlie most lending businesses, whether conducted by depositories, finance companies or marketplace lenders. Indeed, the distinguishing attribute of marketplace lending may not be its reliance on technology or certain types of technologies, but rather the absence of holding a portfolio of loans on a balance sheet. Most financial services industry participants are of the view that the lending industry in general, through all segments, will become increasingly intensive users of “financial technology”.



In light of these observations, SFIG suggests that, in future releases, the OCC consider posing two questions not posed by the Report for public comment: how to define “fintech companies”, if the proposed extension of chartering authority continues to be limited to such companies, however defined, and, if so, whether such a limitation to “fintech” to the exclusion of other non-depository lenders is appropriate and/or in the public interest.

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SFIG welcomes opportunities to work with the OCC to develop a clear regulatory framework that promotes access to consumer financial products and services, and stability within financing and securitization markets.

If you have any questions about this response, please contact Richard Johns, Executive Director of the Structured Finance Industry Group, at Richard.Johns@sfindustry.org or (202) 524-6301.

Respectfully Submitted,

Richard Johns

Richard Johns
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