

Remarks

By

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Before

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Thank you for that introduction. It's my pleasure to be with you at Georgetown Institute of International Economic Law's Fintech Week. I'm honored to participate on an agenda with so many authorities in the field of banking and financial technology, both domestic and international. It is also comforting to see so many familiar faces who have over the years shared my passion for banking, finance, and the law. I enjoy taking advantage of these opportunities, particularly at venues like this one that welcome provocative thoughts and embrace frank dialogue on important topics that may challenge one's long-held assumptions and beliefs. I congratulate Dean Treanor and his team for hosting such a remarkable event and look forward to it being an annual feature on the Washington calendar for many years to come. My favorite part of these events is hearing from you. With that in mind, I will keep my remarks, like my tenure as Acting Comptroller, brief so that I leave plenty of time for questions afterward.

Before providing an update on the good work of our Office of Innovation and the latest on our thinking regarding a charter for fintech companies that offer banking products and services, I want to share my optimism about banks, fintech companies, and the business of banking as whole. I think we are at the beginning of a period in this country that is more open to rethinking our approach to regulation, so that we can promote economic opportunity while ensuring the financial system operates in a safe and sound manner and protects consumers from

abuse. Bankers, industry members, regulators, and legislators appear ready and willing to have discussions today that would have been impossible six months or a year ago. That change in tone is very encouraging, and suggests that we are finally able to have a constructive, bipartisan conversation about how to approach our regulatory framework. The Treasury's core financial principles released in June<sup>1</sup> lay out many opportunities and a direction that could be helpful in any conversation about rebalancing regulation and promoting economic opportunity. In anything we consider, we must carefully weigh the cumulative effects of our actions. That includes the impacts on markets, consumers, and banks, and on other companies, such as fintechs, that are innovating the way financial products and services are delivered based on the evolving needs of consumers, businesses, and communities nationwide.

Another reason for my optimism is that I view change, including the significant shift occurring in the financial services marketplace today, as the natural evolution of banking itself. The federal banking system and the state banking system have been laboratories of innovation and technology for more than 150 years. Replacing state bank notes with a single national currency was revolutionary when President Lincoln and Secretary Chase conceptualized the national banking system during the Civil War. The checking account and later the credit card were giant leaps forward that empowered consumers and businesses and helped fuel commerce. Some in the room will even remember a time before ATMs became ubiquitous, and gave us access to and control over our bank accounts 24 hours a day. And, mobile banking is accelerating the speed of money and expanding control to your smartphone.

While any one of those events seemed like a revolution *at the time*, together they demonstrate financial services' evolution toward increasing convenience, speed, and control.

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<sup>1</sup> *A Financial System That Creates Economic Opportunities • Banks and Credit Unions*. U.S. Department of the Treasury. June 2017 (<https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf>).

Cumulatively, we call that progress. I don't think anyone here wants to return to the days of traveler's checks and wondering whether the store down the street accepts your particular bank card. Still, in each case, the change met resistance, faced operational challenges, and required regulators to revisit older ways of thinking about the risks and regulation of banking.

That same process is occurring today, but what has allowed the business of banking to evolve so successfully is that we have remained open to change and created a framework of laws and regulation over time that allows banking activities to evolve. That is why we have to be careful to avoid defining banking too narrowly or in a stagnant way that prevents the system from taking advantage of responsible advances in technology and commerce. If we take a stagnant view that blindly defends the status quo, the world will pass us by and we will become a footnote to history. Forty years ago, the Ninth Circuit recognized this situation and in its wisdom wrote, “[W]hatever the scope of such powers may be, we believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking.”<sup>2</sup>

That wisdom reflects the same spirit behind the work of the OCC's Office of Innovation and our efforts related to special purpose national bank charters. It has been just more than 10 months since Comptroller Curry appeared here at Georgetown Law and discussed those topics.<sup>3</sup> I am sure he shares my pride in the work of our Chief Innovation Officer Beth Knickerbocker and her team and in the ongoing discussions regarding the proper ways that fintech companies can participate in the banking system.

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<sup>2</sup> See *M M Leasing Corp. v. Seattle First National Bank*, 563 F. 2d 1377, 1383 (1977). See also *Nationsbank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.* 513 U.S. 251, 258 n.2 (1995) (“We expressly hold that the ‘business of banking’ is not limited to the enumerated powers in § 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated.”).

<sup>3</sup> Remarks by Comptroller Thomas Curry Regarding Special Purpose National Bank Charters for Fintech Companies. December 2, 2016 (<https://occ.gov/news-issuances/speeches/2016/pub-speech-2016-152.pdf>).

The Office of Innovation began operating in earnest in January. Its primary purpose is to make certain that institutions with federal charters have a regulatory framework that is receptive to responsible innovation and the supervision needed to support it. Part of that mission is to assist banks and nonbanks alike with understanding our expectations regarding safe and sound operations, providing fair access, and treating customers fairly.

The office serves as a clearinghouse for innovation-related matters and a central point of contact for OCC staff, banks, nonbank companies, and other industry stakeholders. Within our agency, the office has worked to raise awareness and understanding of industry trends and issues. We want to make sure that our staff understands the latest industry developments such as the use of artificial intelligence and machine learning, the latest payment developments and the evolution of lending, as well as bank-fintech partnerships. This familiarity will allow staff, particularly examiners, to have meaningful and helpful conversations with the banks we regulate. The Office also collaborates on innovation issues with OCC business lines and other regulators, and facilitates related activities.

Externally, the office has published guides and reference materials for community banks, as well as financial technology companies and nonbank institutions.<sup>4</sup> A large part of its activities involves outreach to establish a more open and continuous dialogue regarding innovation. I credit this outreach with helping to change the agency's attitude toward innovation and the tenor of the industry conversation. A big part of this outreach includes hosting "Office Hours." So far, the office has held office hours in San Francisco and New York and plans to hold others in hubs of significant financial innovation. During these meetings, team members explore potential innovations, discuss how companies can work with banks, and talk with more than a few

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<sup>4</sup> See "Responsible Innovation" on occ.gov (<https://www.occ.gov/topics/responsible-innovation/index-innovation.html>).

companies interested in becoming national banks. These meetings also allow the agency to share its perspective early in the innovation development process. And now the Office has Innovation Officers in D.C. and San Francisco and will add an officer in New York in November. The office has already become a valuable resource for national banks and thrifts, and with this additional staff, its utility will only grow over time.

Another way the office is supporting innovation is by developing a framework for OCC participation in bank-run pilots that allow banks to develop and test products in a controlled environment. We are still in the early phases of thinking through these issues, but believe pilots can be useful tools for the agency and industry. Pilots can accomplish the same goals as what others call “sandboxes,” and allow us to gain insight into a product and to become comfortable with a proposed product’s controls and risks early in the process. The idea behind our effort is to create principles that support the industry’s need for a place to experiment while furthering the OCC’s understanding of innovative products, services, and technologies. Information gathered in the pilots can inform OCC policies and help make sure that we are ready to supervise the new activity when rolled out on a larger scale. Again, we are still in the early stages of developing our approach and will have more to share as we progress.

While I think the work of our Office of Innovation is having a positive effect supporting responsible innovation in the industry, our continued deliberation of whether to offer national bank charters to fintech companies seems to get all of the attention. With so much interest, I think it is important for me to update you on where we are in that process and to correct some misperceptions that I see out there.

In July, I shared my views that companies that offer banking products and services should be regulated in the same way that banks are and subject to the same type of ongoing

supervision and examinations that banks face.<sup>5</sup> Anything less creates an uneven playing field that is unfair for banks and potentially unsafe for their customers.

I also shared my view, consistent with my predecessor, that companies that offer banking products and services should be allowed to apply for national bank charters so that they can pursue their businesses on a national scale if they choose, and if they meet the criteria and standards for doing so. Providing a path for these companies to become national banks is pro-growth, can reduce regulatory burden for those companies, and can bring enhanced services to millions of people served by the federal banking system.

National charters, however, will never be compulsory and should be just one choice for companies interested in banking. That option can exist alongside other choices that include becoming a state bank or state industrial loan company, or operating as a state-licensed financial service provider. States, like Georgia, already offer limited purpose charters that even allow commercial companies to be the parent company of the state institution.<sup>6</sup> A fintech company also has the option to pursue partnerships or business combinations with existing banks, or it could even consider buying a bank, if that makes sense.

If, and it is still an *if*, a fintech company has ambitions to engage in business on a national scale and meets the criteria for doing so, it should be free to seek a national bank charter. That includes pursuing a charter under the agency's authority to charter special purpose national banks *or* the agency's long-existing authority to charter full-service national banks and federal saving associations, as well as other long-established limited-purpose banks, such as trust banks, bankers' banks, and other so-called CEBA credit card banks. Many fintech and online lending

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<sup>5</sup> See Keith A. Noreika. "Remarks Before the Exchequer Club." July 19, 2017 (<https://www.occ.gov/news-issuances/speeches/2017/pub-speech-2017-82.pdf>).

<sup>6</sup> See "Merchant Acquirer Limited Purpose Banks." Georgia Department of Banking and Finance. 2014 ([https://dbf.georgia.gov/sites/dbf.georgia.gov/files/related\\_files/document/MALPB-PolicyStatement.pdf](https://dbf.georgia.gov/sites/dbf.georgia.gov/files/related_files/document/MALPB-PolicyStatement.pdf)).

business models fit well into these categories of national bank charters, and there has been some interest in fintechs becoming full-service banks, trust banks, and credit card banks. Chartering innovative de novo institutions through these existing authorities enhances the federal banking system, increases choice, promotes economic opportunity, and can improve services to consumers, businesses, and communities.

As for our initiative to use our authority to charter nondepository fintech companies, that remains a work in progress, and as you know that authority is also being challenged by the Conference of State Bank Supervisors and the New York Department of Financial Services.<sup>7</sup> Although we will defend our authority vigorously, we have not decided whether we will exercise that specific authority.

Before we make that decision, we need to be certain that the companies expressing interest in becoming a national bank fully understand just what it *means to be* a bank. Many startup companies' business models are intended to be an experiment that may only last a few years. After that, if the product or service doesn't go viral, no harm done. They will try again with a new idea. That's fine for startup companies and healthy for the economy, but that doesn't really work for *banks*. A national bank charter is a special thing, and the OCC will not undermine its value by granting charters to companies that are not ready to meet our admittedly high expectations.

I also want to address a concern that I think has been exaggerated with the intent of scuttling our idea for a fintech charter, and that is the argument that a fintech charter may be a slippery slope toward the inappropriate mixing of banking and commerce. People who make this argument suggest that such mixing would result in destabilizing the market and increase

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<sup>7</sup> Litigation specifically relates to the special purpose charters under 12 CFR 5.20(e)(1).

consumer abuses. That idea has been blown out of proportion. I merely suggested that we should *talk* to *any* company interested in becoming a bank and that commercial companies should not be prohibited from applying—if they meet the criteria for doing so. Talking about and applying for are a long way from approval of an application, and even further away from resulting in the kind of harm and abuse suggested.

First, every application would be considered on its own merits. Is the business plan sound? Does the proposed management team pass muster? Does the proposed company have adequate capital and liquidity? Are its processes adequate for ensuring that it operates in a safe and sound manner, provides fair access, and treats customers fairly? Does it have a good chance to succeed? Then, if the company receives a charter, it will be subject to regular examination and ongoing supervision by what I think is the greatest team of bank supervisors in the business to ensure that it stays on track.

Second, there are already dozens of examples where commercial companies are allowed to own banks at the state and federal levels without such abuse and harm—national credit card banks, state merchant processing banks, state-chartered ILCs. The law allows commercial companies today to own these types of banks for good reason—they support legitimate business goals and deliver valued products and services to their customers. The Bank Holding Company Act defines what it means to be a bank for the purposes of that act.<sup>8</sup> If the chartered bank does not meet that definition, its parent company would not become a bank holding company solely by virtue of owning the bank, and therefore, nonbank holding companies, commercial entities, or other banks could own such banks under the law.<sup>9</sup>

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<sup>8</sup> See 12 USC 1841.

<sup>9</sup> “Charters.” *Comptroller’s Licensing Manual*. OCC. September 2016. Page 51 (<https://occ.gov/publications/publications-by-type/licensing-manuals/charters.pdf>).

But we should be crystal clear: The chartered entity, regulated by the OCC, would be a *bank*, engaged in at least one of the core activities of banking—taking deposits, paying checks, or making loans. The folks who suggest that the OCC is considering granting charters to nonfinancial companies are wrong, and the more sophisticated ones know it. We should not let fear prevent a constructive discussion of where commerce and banking coexist successfully today and where else it may make sense in the future. I think this is a topic that deserves a lot more exploration.

I want to close by reemphasizing my optimism about banking and the financial services industry. Innovation and technology are making products and services better and business operations more efficient. The market domestically and internationally has plenty of room to grow, and today in Washington there is real energy around reducing unnecessary regulatory burden and promoting economic opportunity. Those are good reasons to be optimistic.

Thank you again for having me, and I would be happy to take your questions.