



May 31, 2016

Thomas J. Curry  
Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street S.W., #3E  
Washington, D.C. 20024

Re: Comments on Supporting Responsible Innovation  
In The Federal Banking System: An OCC Perspective

Dear Comptroller Curry:

On behalf of Circle Internet Financial, Inc. (“Circle”) please find the enclosed comments in response to the Office of the Comptroller of the Currency’s (“OCC”) white paper titled “Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective”, which was published in March 2016. Circle is a consumer internet company focused on transforming the world economy with secure, simple, and less costly technology for storing and using money. Circle fully supports the OCC’s efforts to develop a framework that addresses innovation in financial services. The OCC’s paper outlines the challenges and opportunities that exist with new technology and innovation in financial services. The following comments are meant to provide further insight into how the OCC may foster innovation while at the same time fulfilling its regulatory mandate.

## **I. Background and Considerations with Respect to Responsible Innovation**

### ***Emergence of Fintech and the Current Regulatory Regime***

The financial services industry has changed dramatically over recent years. New technology offers unique opportunities for consumers that could lead to disruption in traditional financial services products and services. In particular, new financial technology (“fintech”) companies have emerged that seek to transform payments, money transfers, lending, fundraising and asset management. These include products like P2P lending and mobile payments utilizing

blockchain technology that provide individuals alternatives to traditional financial services. Despite these advances, U.S. regulators are still operating under guidelines that constrain fintech companies and do not allow new technology to easily reach the hands of consumers. The U.S. has fallen behind other countries, such as the United Kingdom, that have encouraged fintech firms to be licensed and conduct activity within their borders and beyond without excessive friction.

The OCC's definition of responsible innovation focuses on allowing the adoption of new products and services for consumers, businesses, and communities while also addressing the risks. This balance is appropriate; however, under existing regulatory regimes neither of these goals has been adequately addressed. Current regulations do not encourage innovation and do not adequately address risks associated with new products and services. Decades old regulations should be revisited to deal with twenty first century issues. In many cases, the regulations are ambiguous, duplicative and onerous. Collaboration on regulatory issues in the U.S. is fragmented among government agencies at the state and federal level that have different missions and goals. As a result, fintech firms are subject to either uncertain regulations or a patchwork of state by state laws that differ greatly and are applied in an inconsistent manner. These regulations are costly to comply with and are damaging to start-ups and small businesses that are trying to grow their business and offers new services to consumers.

Based on our business model, Circle is registered as a money service business with the Financial Crimes Enforcement Network at the federal level and is required to be licensed as a money transmitter in all applicable U.S. states. Although there have been laudable efforts by the Conference of State Bank Supervisors to streamline the process, the state licensing regime is a time intensive and costly process fraught with duplication, inconsistency and ambiguity. In addition to licensing, the ongoing reporting and examination requirements are equally as vexing. This process creates a barrier for innovations that are developing quickly and prevents them from being brought to market in an efficient manner. It also causes venture capitalists and institutional investors to reconsider whether it is worth investing in companies that are subject to these regulatory and reputational risks.

When determining a regulatory framework for fintech companies, some lessons may be learned from recent efforts to regulate new technologies. For example, in 2015 the New York Department of Financial Services finalized a Bitlicense to oversee digital currency companies.<sup>1</sup> While some aspects of the law adequately protect against risks associated with related

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<sup>1</sup> New York Department of Financial Services Regulations on Virtual Currencies, <http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp200t.pdf> (finalized on August 8, 2015).

activities, other parts of the regulations do not fully appreciate the underlying technology and are duplicative or inconsistent with federal regulations. In addition, the law provides too much discretion which could cause the regulator to apply the requirements inconsistently to different organizations. These lessons learned underscore the need for a process in the U.S. to properly vet new technologies within an agency that seeks to educate themselves and gain subject matter expertise to ensure the goals of responsible innovation are met.

### ***The OCC Should Consider the UK Model for Encouraging Innovation in the U.S.***

The OCC could learn and benefit from the framework created by The Financial Conduct Authority's ("FCA") Innovation Hub which is part of Project Innovate in the United Kingdom.<sup>2</sup> The Innovation Hub allows for a dedicated contact for institutions to guide them through the licensing process and beyond. It also studies gaps and the need for potential future regulation for fintech companies. Similar innovation groups have been launched in Singapore<sup>3</sup> and Australia<sup>4</sup>. In addition to encouraging innovation within its borders, the UK regulators have focused on international coordination efforts to further foster innovation and assist UK fintech companies. For example, UK regulators have signed a cooperation agreement with Australian authorities to provide assistance for financial technology companies seeking to operate between those jurisdictions.<sup>5</sup> The HM Treasury has also announced a "fintech bridge" that will help UK fintech startups expand to Singapore.<sup>6</sup> As a result of these efforts, fintech companies in the UK account for £20 billion in annual revenue, employ 135,000 people and attracted 42% of all European fintech investment in 2014.<sup>7</sup>

## **II. New Role for the OCC as the U.S. Innovation Hub Leader**

### ***The OCC's Mission Relating to Innovation***

The OCC should consider filling the void and becoming the leading agency for financial innovation in the U.S. As the hub in this hub-and-spoke model, the OCC could become the central

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<sup>2</sup> UK Financial Conduct Authority, Project Innovate, see <https://innovate.fca.org.uk>.

<sup>3</sup> New FinTech office of the Monetary Authority of Singapore and the National Research Foundation in Singapore, Monetary Authority of Singapore Press Release dated May 3, 2016.

<sup>4</sup> Australia Investments & Securities Commission Innovation Hub, see <http://asic.gov.au/for-business/your-business/innovation-hub>.

<sup>5</sup> British, Australian Regulators Sign Fitech Support Pact, Reuters (March 23, 2016).

<sup>6</sup> Monetary Authority of Singapore Press Release, First Ever Fintech Bridge Established between Britain and Singapore (May 11, 2016).

<sup>7</sup> FinTech Futures: The UK as a World Leader in Financial Technologies, A report by the UK Government Chief Scientific Adviser (March 2015).

point of contact for all U.S. federal and state regulators, international regulators, industry groups and other interested stakeholders on innovation by fintech firms and in the existing banking system. The OCC could create an office of innovation to administer these efforts. The mission of that office would be to drive responsible innovation through outreach, coordination, education and collaboration. Similar to the UK model, the OCC would become both a facilitator and regulator of innovative products and services.

### ***The Proposed Approach to Fintech Regulation***

U.S. lawmakers have begun to recognize the shifting winds and the need to review current regulations to determine what guidance is needed in light of rapid technology changes in financial services and the existing regulatory barriers. Members of Congress recently requested that the Government Accountability Office study and issue a report on fintech regulations.<sup>8</sup> The OCC should similarly study new business models and analyze the risks. The OCC, and other regulators, should resist simply applying existing regulations to new technology, which in many cases would not be applicable or effective in addressing the associated risks. If the OCC determines new guidance is necessary, these regulations should focus on the highest area of risk and should be commensurate with the actual risks. These laws should not impede innovation and should adapt as the technology evolves. One way to ensure this is to make regulations principles-based rather than prescriptive. The OCC should consider creating a regulatory sandbox similar to the approach taken in the UK<sup>9</sup> or create safe harbors that allow companies to test new products and bring new services to market without costly compliance burdens or fear of regulatory enforcement actions. Subject to appropriate oversight, the OCC should provide fintech companies sufficient flexibility to develop best practices and self-regulate since these firms best understand the technology and applicable risks.

Through its innovation efforts, the OCC should also continue to examine the interplay between fintech firms and traditional banks. Banks should not be penalized for providing services to fintech companies and fintech companies should have access to banking services. The OCC should not encourage de-risking of nonbank firms and should continue to issue guidelines that support providing banking services to innovative firms as long as risk management controls are present.

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<sup>8</sup> See letter to Comptroller General Dodaro from Representatives Patrick McHenry and Randy Hultgren (May 24, 2016).

<sup>9</sup> <https://www.fca.org.uk/news/regulatory-sandbox> (November 10, 2015).

### ***A National Charter for Fintech is Needed***

New financial products and services do not always fit squarely into existing financial services regulations, such as those for banking or money transmission services. In many cases, these are hybrid products that require additional scrutiny. As a result, the OCC should consider alternative new charters for fintech companies. We believe the OCC is in the best position to understand the related issues and oversight. As currently constituted, the majority of fintech firms end up being regulated at the state level. As previously discussed, the state licensing framework is not conducive to fostering innovation in its current construct. Absent uniformity or changes at the state level, we believe a national charter would provide a better avenue for innovation and help cure the competitive imbalance that U.S. fintech firms face globally. These licenses could include a special purpose charter or other federal licensing scheme that would provide a choice for firms similar to those provided to banks under the dual banking system. This charter could offer the same consumer protections as bank charters and ensure that new industries operate in a safe and sound manner. As with other preemptive charters, states would still maintain powers to protect consumers under these regimes.

We believe a new charter at the federal level could lead to a race to the top and innovation among regulators at the federal and state level. For example, one result may be the implementation of uniform laws and licensing standards for fintech firms at the state level. Or perhaps preemption could lead to the development of a home-host state model in the U.S. similar to the European Union model where a company may be licensed in one jurisdiction and allowed to “passport” the license throughout the European Economic Area (rather than file an application with each country).

### **III. OCC Outreach for Fintech**

Circle believes that communication, education and collaboration are the keys in the OCC’s efforts to foster innovation. This would include bringing together banks, nonbanks and other interested parties to conduct meaningful discussions on these issues. The creation of a centralized office of innovation at the OCC would provide a useful forum for all interested parties to incubate ideas and voice concerns relating to innovation and regulation.

There are several forms of outreach that would be helpful for new technologies. Maintaining a central point of contact, or other subject matter experts, within the OCC to assist firms with developing innovation would be extremely helpful. In addition, the OCC should consider establishing an office of research to study these changing landscapes and to solicit

comments and feedback on policy discussions. The OCC could also conduct education forums and workshops with the fintech industry and relevant stakeholders.

Coordination among regulators will help reduce duplicative or inefficient regulations among different agencies. The OCC should utilize a model similar to the Federal Financial Institutions Examinations Council<sup>10</sup> whereas state and federal regulators collaborate and a uniform approach and guidelines are adopted. International coordination is equally as critical. The OCC could have dedicated international contacts to coordinate with other regulators in this space. Given the international nature of fintech, it would be useful to have a global body that interfaces on these issues similar to how groups such as Financial Action Task Force<sup>11</sup> collaborate on financial crimes issues or the Bank for International Settlements<sup>12</sup> work collectively on international monetary policy. The goal of these types of domestic or international groups would be to establish broad principles on fintech as new technologies emerge.

#### **IV. Conclusion**

We appreciate the OCC's leadership on the subject of responsible innovation. As a fintech company seeking to develop new technology and improve existing financial services, Circle has witnessed many of the challenges that exist under the current regulatory regime in the U.S. The existing system does not promote innovation and therefore is detrimental to small businesses and consumers who would benefit. In the meantime, other countries are fostering the development of new financial products in a way that has led to material economic growth. The OCC has a unique opportunity to help regain the footing in the U.S. for fintech companies and change the dynamic.

We look forward to collaborating with the OCC on its efforts to address innovation in financial services and to establish a meaningful framework going forward.

Regards,

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<sup>10</sup> Federal Financial Institutions Examinations Council, [ffiec.gov](http://ffiec.gov).

<sup>11</sup> Financial Action Task Force, [www.fatf-gafi.org](http://www.fatf-gafi.org).

<sup>12</sup> Bank for International Settlements, [www.bis.org](http://www.bis.org).