



March 17, 2017

THE OCC PROVIDES MORE DETAILS ON THE FINTECH CHARTER

On Thursday, the Office of the Comptroller of the Currency (“OCC”) provided more details on the special purpose national bank charter for fintech companies in the form of (i) a proposed licensing manual supplement and (ii) a white paper that summarizes submitted comments to the OCC’s December 2016 fintech charter white paper and provides general responses (“White Paper”). The OCC will receive public comments on the proposed licensing manual supplement until April 14, 2017.

In the White Paper, the OCC identified three threshold principles that informed the drafting of the proposed supplement: (i) the OCC will not allow the inappropriate commingling of banking and commerce; (ii) the OCC will not allow products or services that have predatory, unfair or deceptive features; and (iii) the OCC will not allow “light-touch” supervision of chartered fintechs.

The 22-page proposed supplement explains how the OCC will apply existing licensing standards and requirements to fintechs applying for a special purpose national bank charter. The supplement is not a comprehensive guide and should be read in conjunction with other national bank licensing guidance. The supplement uses the term “special purpose national bank” to mean a national bank that engages in limited banking activities (including one of the core banking functions) but does not take deposits. The OCC did not otherwise limit the types of fintechs that could apply for a charter.

The proposed supplement focuses on the steps to apply for and obtain a charter, but also contains an appendix on supervisory considerations for chartered fintechs. While the OCC acknowledged stakeholders’ comments that regulation and supervision of fintech companies must be flexible to enable innovation, the OCC stated that every institution must meet certain minimum statutory and regulatory standards to qualify for a national bank charter.

Accordingly, the proposed supplement mainly adopts existing licensing procedures and expectations for (full-service) national banks with some modest variation for fintech applicants. The variations include:

- The Office of Innovation will be the primary point of contact for all fintech inquiries, including chartering inquiries.
- A fintech’s business plan must include a financial inclusion plan that describes the fintech’s proposed goals, approaches, activities and milestones for serving the needs of its relevant market and community. The OCC leaves it to fintechs to identify and explain their methods for defining their relevant markets and communities and the needs of such markets or communities. If the OCC grants a charter, a chartered fintech is expected to implement and update its financial inclusion plan periodically and obtain public input.
- In prefilling meetings, the OCC will discuss whether innovative products or services qualify as permissible banking activities.
- The specific products or services offered by a fintech will be considered when assessing the qualifications of a fintech’s organizers, management and directors.
- Although fintechs will be subject to the minimum capital requirements for national banks, the OCC indicated that limited on-balance-sheet assets or nontraditional strategies will be considered when setting a fintech’s particular capital requirements (which could be higher).
- As with other types of special purpose banks, the OCC may place additional requirements on fintech charters to ensure adequate liquidity. In the White Paper, the OCC acknowledged that many fintechs have yet to operate in stressed conditions.
- The OCC may require a fintech to including an alternative business strategy in its application detailing how a fintech will manage potential scenarios when expectations (e.g., growth rates) differ significantly from the original plan.
- The OCC may impose special conditions on a fintech charter similar to those in laws that apply by statute to insured banks only.

The supervisory framework for chartered fintechs will incorporate many of the core supervisory elements used with other national banks, including an assigned portfolio manager, on-site and off-site supervisory activities, a risk-based approach to supervision and the CAMELS rating system. Newly chartered fintechs will be subject to more frequent and intensive supervision in the early years of operation.

As we noted in response to the OCC’s December 2016 fintech

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charter announcement, the devil remains in the details. See ALERT of Dec. 5, 2016. While the supplement provides some further articulation of the OCC's expectations for fintech charters, the OCC declined to provide details on certain aspects of the chartering process. Instead, the OCC adopted flexible standards or explained restrictions that "could" apply based on a fintech's business model and proposed products or services. Unfortunately, helpful guidance may only come from the experience of applying for a charter.

The OCC has done little to show the benefits of obtaining a fintech charter, except for the recognized benefits of federal bank preemption. Managing state regulatory burdens of national programs can be achieved by other means. Banking restrictions and requirements are onerous individually and in the aggregate. Many of the banking restrictions and requirements (e.g., restrictive capital requirements, intrusive business plan approvals, demonstration of the needs for their services, public input into business plans, regulatory interference into proposed innovative products and services, regulatory oversight into the qualifications of organizers, management and directors, requirements as to liquidity, alternative business strategies requirements and regular examinations by a paternalistic regulator) were intended to make depository banks safer and thus, protect the public's money. What is the justification for applying requirements and restrictions designed for deposit-taking institutions to chartered fintechs that the OCC says cannot take deposits? The bank regulatory structure is not designed to protect lenders or their borrowers. The OCC has reserved the right to apply other banking law requirements to fintechs, such as affiliate transaction restrictions, loans to a single borrower restrictions, interlocking directorate restrictions, anti-tying restrictions and community reinvestment requirements. Given the uncertainties with the fintech charter and the potential baggage that would accompany it, we are advising non-bank clients to not plan on an OCC fintech bank charter as a part of their near term business plans.

Republicans on the U.S. House of Representatives' Committee on Financial Services have taken note and in a March 10, 2017 letter have urged the OCC to allow the next Comptroller to have an opportunity to assess the proposed fintech charter threatening potential congressional action if the OCC fails to provide adequate details for comments or rushes to finalize the charter application process prior to confirmation of the next Comptroller. □

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