



OCC MOVES FORWARD WITH FINTECH CHARTER, SEEKS COMMENTS

The Office of the Comptroller of the Currency (“OCC”), the prudential regulator of national banks, has made a decision. “We will move forward with chartering financial technology companies that offer bank products and services,” said the OCC on Friday.

Fintechs will have the option of becoming special purpose national banks similar to trust banks or credit card banks, although many details are yet to be determined. A chartered fintech would be a nondepository financial institution that would not be insured by the Federal Deposit Insurance Corporation but would be expected to be a member of the Federal Reserve System. While chartered fintechs would enjoy many of the advantages of federal preemption under the National Bank Act, obtaining a charter could subject fintechs to many of the laws and regulations that can burden national banks (including the Bank Secrecy Act), regular examinations, reporting requirements and supervision by the OCC.

As always, the devil will be in the details. The OCC has not yet finalized the application evaluation process nor established clear expectations for the fintech charter.

Concurrently with the fintech charter announcement, the OCC published a white paper seeking comments on what activities and expectations the OCC should require for fintechs seeking a special purpose national bank charter.

The white paper explains the basis for the OCC’s chartering authority, features and attributes of a national bank charter and the standard charter application process for national banks. The white paper also identifies baseline supervisory expectations for any fintech seeking a national charter, including:

- Submitting a robust business plan that covers a minimum of three years.
- Having a governance structure appropriate for the risk and complexity of the fintech’s activities.
- Meeting minimum capital requirements, which the OCC indicated may be higher than national banks’ requirements given fintechs’ off-balance sheet activities.
- Meeting minimum liquidity requirements.
- Demonstrating effective compliance risk management.
- Demonstrating a commitment to financial inclusion that supports

fair access to financial services.

- Developing alternative business and recovery strategies to address various best-case and worst-case scenarios.

The white paper ends by posing 13 questions on special purpose national bank charters for fintechs. Notably, the OCC asked whether it should use its chartering authority as an opportunity to address the gaps in protections afforded to individuals versus small business borrowers.

The OCC will accept written comments through January 15, 2017.

Our firm has substantial experience with special purpose bank charters, including helping form some of the first credit card banks and advising on the use of industrial loan companies. As details for the charter develop, we can help draft comments to the OCC, advise on the strategic considerations of obtaining a special purpose bank charter or assist in the fintech charter application process if deemed appropriate for your situation. □

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