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THE OCC IS ACCEPTING APPLICATIONS FOR SPECIAL PURPOSE NATIONAL BANK CHARTERS FROM FINTECHS

After two years of contemplation and lawsuits, the Office of the Comptroller of the Currency (“OCC”) announced that it will accept applications for special purposes national bank (“SPNB”) charters from nondepository financial technology companies (“Fintechs”) engaged in the business of banking. This announcement comes hours after the U.S. Treasury issued a lengthy report on Fintechs and a variety of other issues.

In addition to explaining its chartering authority in a policy statement, the OCC outlined the chartering standards and supervisory expectations specifically for Fintechs that would engage in paying checks or lending money, but would not take deposits.

With the announcement, the OCC published a licensing manual supplement to provide details on how the OCC will evaluate applications for a SPNB charter from a Fintech. The OCC will use the same chartering standards and procedures as the basis for processing applications from all national banks, including SPNBs. The OCC will review the following for a SPNB charter application from a Fintech:

- The qualifications of the Fintech’s organizers, management and directors;
- The Fintech’s comprehensive business plan, including proposed internal controls to monitor and mitigate risk and a risk assessment of the business plan;
- The Fintech’s capital and liquidity;
- The Fintech’s commitment to financial inclusion, including its plan to serve the needs of underserved markets; and
- The Fintech’s contingency plan to address significant financial stress that could threaten its viability.

If approved for a SPNB charter, a Fintech will be subject to the same supervisory framework as other national banks, including the CAMELS rating system and the OCC’s risk-based supervision approach. Similar to other de novo institutions, newly chartered SPNBs will be subject to more frequent and intensive oversight in the early years of its charter.

The OCC noted that the SPNB charter is one of many options available to Fintechs. According to the OCC, Fintechs could apply for a full-service national bank charter, pursue a state bank charter, obtain business licenses or partner with other financial institutions.

In 2017, two federal district courts dismissed lawsuits against the OCC that challenged the OCC’s authority to charter SPNBs for Fintechs. The courts found that the Conference of State Bank Supervisors (“CSBS”) and the New York Department of Financial Services (“NY-DFS”) lacked standing because at the time of the lawsuits the court could only speculate whether the OCC would actually accept and approve SPNB charters for Fintechs. With yesterday’s announcement, it is unclear whether the CSBS or the NY-DFS will renew their respective lawsuits to stop the chartering of SPNBs.

We have helped many clients with strategic planning, including selecting the proper vehicle (e.g., a bank charter, state licenses, etc.) to deliver financial services. We are happy to discuss the SPNB for Fintechs in detail.

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