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SECOND CIRCUIT HOLDS NYDFS LACKS STANDING IN OCC FINTECH CHARTER SUIT

Recently, the Second Circuit held that the New York Department of Financial Services lacked standing to challenge the Office of the Comptroller of the Currency's ("OCC") special purpose national bank charter for nondepository financial technology companies ("Fintech Charter"). The Second Circuit held that failed to allege that the OCC's decision to offer the Fintech Charter caused NYDFS to suffer "an actual or imminent injury in fact."

This decision reversed the United States District Court for the Southern District of New York's which had held that (i) NYDFS had standing, (ii) NYDFS' claims were ripe, and (iii) the OCC exceeded its authority under the National Bank Act because the NBA unambiguously requires national banks to engage in deposit taking.

Because the Second Circuit found that NYDFS lacked standing and thus its claims were constitutionally unripe, the Court did not address the more substantive legal question of whether the OCC exceeded its authority.

The Second Circuit's findings mirror earlier court decisions. See DT ALERT Sept. 10, 2019. In 2019, the United States District Court for the District of Columbia dismissed the Conference of State Bank Supervisor's ("CSBS") second challenge to the OCC's Fintech Charter on the basis that the CSBS lacked standing and its claims were unripe for adjudication. *Con. of St. Bank Supervisors v. Office of Comptroller of the Currency*, No. 18-2249 (D.D.C. Sept. 3, 2019).

We will keep you advised of further developments related to OCC Fintech Charter litigation. □

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