



CSBS'S FINTECH CHARTER CHALLENGE DISMISSED

On September 3rd, a D.C. federal district court dismissed the Conference of State Bank Supervisor's ("CSBS") second challenge to the Office of the Comptroller of the Currency's ("OCC") special purpose national bank charter for nondepository financial technology companies on the basis that the CSBS continued to lack standing and its claims remained unripe for adjudication. *Con. of St. Bank Supervisors v. Office of Comptroller of the Currency*, No. 18-2249 (D.D.C. Sept. 3, 2019).

The court observed that not much has happened since the CSBS's first challenge was dismissed on the same basis in May 2018. No Fintech has applied for the special purpose Fintech charter and the OCC has not granted a charter. Since the first challenge was dismissed, the OCC has only finalized a procedure for handling Fintech charter applications. See DT ALERT of Aug. 1, 2018. The court concluded that the CSBS (i) still fails to plead an injury in fact that is either actual or imminent and (ii) fails to identify which particular member of the organization faces imminent injury.

With respect to ripeness, the court determined that the charter dispute still needs time to "sharpen" before deciding it. The decision noted that there are many procedural hurdles to overcome before a charter could be granted. It is possible that there may ultimately be no case to decide if the OCC does not charter a Fintech.

In May, a New York federal court allowed the New York Department of Financial Services' Fintech charter challenge to proceed. *Vullo v. Office of the Comptroller of the Currency*, No. 18-cv-0377 (S.D.N.Y. May 2, 2019). The New York court determined that the OCC had a clear expectation of issuing a Fintech charter given the "common-sense observation" that the OCC had spent numerous years developing the Fintech charter and coordinating the charter's creation with other federal banking regulators. See DT ALERT of May 3, 2019. As a result, the New York court found that the case was now ripe for decision. (In a footnote, the D.C. federal court said it respectfully disagrees with the New York court's conclusion to the extent that its reasoning conflicts with the D.C. court's opinions.)

The CSBS's case was dismissed without prejudice creating the opportunity for the CSBS to challenge the special purpose Fintech charter for the third time once a Fintech applies for a charter. The

prospects of a legal challenge that may delay the chartering process could deter some Fintechs from applying for the charter. The New York Department of Financial Services' pending charter challenge also could be a deterrent. □

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