



The OCC confirms special purpose national bank charters for fintech companies

Banking Alert

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In public remarks at the Georgetown University Law Center on December 2, 2016, the Comptroller of the Currency, Thomas J. Curry, announced that the Office of the Comptroller of the Currency (OCC) will move forward special purpose national bank charter applications from financial technology (fintech) companies that offer at least one of three core banking activities:

- Receiving deposits
- Paying checks or
- Lending money.

In coordination with this announcement, the OCC issued a white paper summarizing the agency's authority to grant special purpose national bank charters to fintech companies and the conditions under which it may do so. The summary makes clear that if the OCC decides to grant a national charter to a fintech company, that company will be held to the same standards of safety and soundness, fair access, and fair treatment of customers that all federally chartered institutions must meet.

The OCC is seeking feedback from the public on a number of questions listed on the last two pages of the white paper, specifically on the types of activities and expectations the OCC should require for entities seeking a special

purpose national bank charter.

During the course of his announcement, Comptroller Curry explained that the OCC's decision to move forward and make special purpose national charters available to fintech companies was motivated by three primary factors:

- (1) ***Fintech charters are in the public's interest.*** Comptroller Curry stated that fintech companies hold great potential to expand financial inclusion, empower consumers, and help families and businesses take more control of their financial matters. While not without some risks, fintech companies can also potentially deliver these products and services in a safer and more efficient manner. The OCC believes that responsible innovation is good for everyone.
- (2) ***Fintech charters offer innovators a valuable choice.*** The charters provide an option within the federal banking system for fintech firms to facilitate adaptation and evolution in the banking business and promote economic growth. The OCC believes that fintech companies offering banking products and services should have the choice to become national banks, seek state bank charters where available, or continue operating outside the banking system through other state and federally regulated means. This decision should be driven by a company's business model and potential efficiencies afforded by each option. Today, traditional banks can seek federal or state charters, which is essential to the dual banking system. By providing a national charter to fintech companies, the OCC is promoting responsible economic growth and meeting the needs of an evolving and diverse banking community, all while maintaining relevance and utility of the federal banking system for fintech firms.
- (3) ***Fintech charters retain institutional and consumer regulatory protections.*** Regulation improves the chances of institutional success and customer protection, and by offering national charters to fintech companies the OCC hopes to create a clear process, criteria, and standards to ensure that risks are identified and assessed and that the companies that receive charters have a reasonable chance of success. Appropriate risk management, effective consumer protection, and strong capital and liquidity will be closely assessed and monitored by the OCC.

The OCC will be developing and implementing a formal agency policy for evaluating special purpose national bank charters for fintech companies. The policy, which will be informed by comments received on its white paper, will articulate specific criteria for approvals, as well as issues that will be considered and conditions that should be met before a charter is granted. Comptroller Curry emphasized the importance of transparency in the application process, stating the OCC will consider the following, prior to approving any application:

- Safety and soundness
- Financial inclusion
- Consumer protection and
- Community reinvestment.

He also made clear that institutions who receive a special charter will be examined regularly and held to the standards that the OCC has established for all federally chartered institutions.

Comptroller Curry recognized that concerns have already been expressed, and placed those concerns into two categories:

- Consumer protection and financial inclusion and
- Regulatory fairness and supervisory rigor.

With respect to the first, Comptroller Curry used the example of the Community Reinvestment Act, which applies only to deposit-taking institutions insured by the FDIC and not to thousands of fintech companies that provide bank-like services. He noted that the OCC has the unique ability to impose such requirements through the chartering process by requiring companies to support financial inclusion in meaningful ways. Comptroller Curry also said he understood the worries about state law application to national banks, but stated that this concern is not exacerbated by granting special purpose charters. The OCC's position is that state laws aimed at unfair or deceptive treatment of customers also apply to national banks.

In response to concerns about regulatory fairness and supervisory rigor, Comptroller Curry noted that fintech companies who currently operate under a patchwork of supervision compete with national and state banks. By granting charters to these companies, he asserted that it will level the playing field because the regulatory framework for special purpose national banks (e.g., legal lending limits) will be consistent.

In an earlier release by the OCC, the agency reiterated its authority to resolve uninsured national banks through means outside the Federal Deposit Insurance Act. It is expected that, in some cases, fintech charters may not be insured by the FDIC if their business plan does not call for acceptance of deposits. This is a meaningful fact because it could impact the application of the Bank Holding Company Act (the BHC Act) to owners and investors in fintech charters – thereby potentially imposing “source of strength” requirements on these investors and limiting their activities to those that are financial in nature or closely related to banking. Such activity limitations would be inconsistent with many innovators in the fintech space, so the application of the BHC Act will undoubtedly be of primary interest going forward. To this point, the white paper simply notes that the BHC Act “could apply.” Those interested in pursuing a fintech charter should be cognizant of how their business plan and operations impact the need for deposit insurance and the application of the BHC Act.

Written comments on the white paper are to be provided by email to by January 15, 2017.

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