

## [Banking and Finance Law Daily Wrap Up, TOP STORY—OCC sets stage for fintech charter applications, \(Dec. 2, 2016\)](#)

Banking and Finance Law Daily Wrap Up

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Noting that "no topic in banking and finance has drawn more interest than innovative financial technology," the Office of the Comptroller of the Currency has announced that it "will move forward with chartering financial technology companies that offer bank products and services and meet our high standards and chartering requirements." The announcement was made in [remarks](#) by Comptroller of the Currency Thomas J. Curry at the Georgetown University Law Center's Institute of International Economic Law.

Curry also noted that the OCC had released a paper, entitled "[Exploring Special Purpose National Bank Charters for Fintech Companies](#)" that discusses several important issues associated with the approval of a national bank charter.

The paper discusses:

- features and attributes of a national bank charter;
- baseline supervisory expectations; and
- the chartering process.

The OCC is also seeking comments on 13 specific questions listed in the paper. These comments must be provided by Jan. 17, 2017.

**Innovation initiative.** The OCC's paper is the latest step that the agency has taken regarding the use of innovative financial technology.

The process began in March 2016 with the release of a white paper entitled "[Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective](#)," discussing the principles that will guide the development of the agency's framework for evaluating new and innovative financial products and services. The framework builds upon the OCC's mission to ensure that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations (see *Banking and Finance Law Daily*, [March 31, 2016](#)).

The next step in the process was the September 2016 proposed rule that would establish a framework to address the conduct of receiverships for national banks that are not insured by the Federal Deposit Insurance Corporation. The [proposed rule](#) would implement the provisions of the National Bank Act that provides the legal framework for receiverships of uninsured banks (see *Banking and Finance Law Daily*, [Sept. 12, 2016](#)).

The final step was the creation of the OCC's Office of Innovation in October 2016. The Office of Innovation part of the OCC's "[Recommendations and Decisions for Implementing a Responsible Innovation Framework](#)," which will be the blueprint that the agency will use to support the ability of national banks and federal savings associations to fulfill their role of providing financial services to consumers, businesses, and their communities through responsible innovation that is safe and sound, consistent with applicable law, and protective of consumer rights. Commenting on the Office of Innovation, Curry [noted](#), "By establishing an Office of Innovation, we are ensuring that institutions with federal charters have a regulatory framework that is receptive to responsible innovation and the supervision that supports it" (see *Banking and Finance Law Daily*, [Oct. 27, 2016](#)).

**"A few basic reasons."** In deciding to move forward with the chartering process, Curry stated there were "a few basic reasons" to do so, with the public interest being the "first and foremost reason." Curry cited the choice to become a national bank as another reason. A third reason was to provide a "clear process, criteria,

and standards" that ensures regulators and companies openly vet risks so that fintech companies "have a reasonable chance of success, appropriate risk management, effective consumer protection, and strong capital and liquidity."

**Addressing concerns.** Curry's remarks also addressed some of the concerns the OCC is already addressing through its innovation initiative, namely consumer protection and financial inclusion, and regulatory fairness and supervisory rigor.

**Financial inclusion.** Noting that fintech companies that "provide bank-like services today ... are not encouraged to meet the credit needs of the communities they serve through the application of [Community Reinvestment Act]," Curry stated that the OCC "has the unique ability to *impose* requirements in some or all of these areas through the chartering process to require companies seeking national charters to support financial inclusion in meaningful ways."

**State regulation.** Seeking to soothe concerns that granting a federal fintech charter would affect state law, Curry noted, "State law applies to special purpose national banks in the same way and to the same extent as traditional national banks." He also reiterated the OCC's position that "state laws aimed at unfair or deceptive treatment of customers also *apply* to national banks."

**Supervisory rigor.** Finally, Curry dispelled the notion that by providing a special purpose national bank charter, we are somehow tipping the balance of competition by allowing special purpose banks to compete with full-service banks without assuming any of the responsibility. He noted that there would be no "lighter touch" supervision and "if the OCC grants a national charter in this area, the institution will be examined regularly and held to the high standards the OCC has established for all federally chartered institutions."

**Industry reaction.** Rob Nichols, president and CEO of the American Bankers Association [stated](#), "We are strongly encouraged by the OCC's comments on a potential special purpose charter for fintech companies. This is a bank charter for fintech companies that will hold them to the same standards of safety, access and fair treatment. Maintaining high-standards is the best way to ensure customers have access to the best financial products and services."

As part of his "[Richard's Rapid Fire](#)," Consumer Bankers Association president and CEO Richard Hunt said, "We applaud the OCC for their efforts to further explore chartering, and we will provide the agency with our reactions—particularly in regard to ensuring a level playing field on regulation and supervision to ensure safety and soundness, competitive fairness and comparable expectations for community inclusion."

Independent Community Bankers of America president and CEO Camden R. Fine expressed concerns over the OCC's action. He [noted](#), "ICBA continues to have serious concerns with the establishment of a limited 'fintech' charter for nonbank online lenders. While ICBA supports oversight of these unregulated financial firms, a fintech charter poses risks to taxpayers and the financial system by endowing these nonbank companies with a federal bank charter." Fine added, "ICBA has been deeply concerned that nonbank online lenders' lack of oversight has provided them with regulatory advantages over other institutions—such as highly regulated community banks—while putting consumers and the financial system at risk."

Companies: American Bankers Association; Consumer Bankers Association; Independent Community Bankers of America

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