Banking and Finance Law Daily Wrap Up, TOP STORY—S.D.N.Y.: New York effort to block OCC fintech charter is premature, (Dec. 13, 2017)

Banking and Finance Law Daily Wrap Up

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By Andrew A. Turner, J.D.

Since the Office of the Comptroller of the Currency has not reached a final decision on whether to grant special-purpose national bank charters to financial technology companies, a New York regulator's challenge to the OCC's authority to grant fintech charters failed on standing and ripeness grounds. A federal district judge said that the New York Department of Financial Services's purported injuries are too future-oriented and speculative to confer standing. Similarly, the claims are unripe because they are "contingent on future events that may never occur" (*Vullo v. Office of the Comptroller of the Currency*, Dec. 8, 2017, Buchwald, N.).

The issue first arose when the OCC began considering the possibility of issuing special-purpose national bank charters to fintech companies under its regulations. To support its position that a fintech charter decision had been reached, DFS relied on several OCC documents:

- a White Paper—Exploring Special Purpose National Bank Charters for Fintech Companies;
- a speech by Comptroller Thomas J. Curry touting innovation in the fintech industry as a vehicle to expand financial inclusion for low-income individuals;
- a summary of public comments about the possibility of issuing charters to fintech companies; and
- the "Comptroller's Licensing Manual Draft Supplement: Evaluating Charter Applications From Financial Technology Companies"

Since the OCC has not yet determined whether it will issue charters to fintech companies, nor received any applications, DFS claims that the OCC had determined that it has the power to issue these charters were an insufficient basis for a claim. Without a decision that such licenses will be considered and potentially granted, in the court's view, the application process remains purely hypothetical.

In fact, the proposed issuance of fintech charters companies, a policy first discussed by an appointee of President Obama, has become increasingly uncertain under President Trump's two Comptrollers of the Currency, Keith Noreika and Joseph Otting, the court noted. By waiting for a decision, the court would be saved from issuing a decision that may turn out to be unnecessary if the OCC never issues a fintech charter or does so under an altered framework.

The case is 17 Civ. 3574 (NRB).

Attorneys: Matthew Lore Levine (NYS Department of Financial Services) for Maria T. Vullo in her official capacity as Superintendent of the New York State Department of Financial Services. Christopher Kendrick Connolly, U.S. Attorney's Office, for Office of the Comptroller of the Currency.

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