

[Banking and Finance Law Daily Wrap Up, FINANCIAL INTERMEDIARIES —SDNY agrees to hear remaining issue in ongoing fintech charter battle, \(Sept. 30, 2019\)](#)

Banking and Finance Law Daily Wrap Up

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By [Colleen M. Svelnis, J.D.](#)

The Southern District of New York has granted a request asking the court to decide on the sole remaining disputed provision in ongoing case regarding the OCC's decision to accept bank charter applications from fintech companies.

The U.S. Attorney's Office for the Southern District of New York, representing the Office of the Comptroller of the Currency and the Commissioner, has sent an OCC endorsed letter asking the U.S. District Court for the Southern District of New York to resolve an issue in an ongoing case between the OCC and the New York State Department of Financial Services (DFS) over the OCC's decision to accept bank charter applications from nondepository financial technology (fintech) companies engaged in the business of banking.

Judge Victor Marrero, from the United States District Court for the Southern District of New York has granted the request and asked for the parties' responses concerning the proposed judgment by Oct. 7, 2019.

OCC's Bank Charter Decision. The case involves DFS' complaint seeking declaratory and injunctive relief against the OCC in connection with the OCC's July 2018 decision to begin accepting applications from, and grant special-purpose national bank charters to, fintech companies—including companies that do not accept deposits. Under 12 U.S.C. § 27(a), the National Bank Act authorizes the OCC to grant a charter if it appears that the applicant is lawfully entitled to commence the "business of banking." The DFS filed suit in the district court challenging the OCC's decision to consider such applications. Following a May 2, 2019 decision by the court partially granting the OCC's motion to dismiss for either subject matter jurisdiction or failure to state a claim upon which relief can be granted, the OCC and DFS have been engaged in negotiations concerning the language of a proposed final judgment (see [Banking and Finance Law Daily](#), May 3, 2019).

According to the [letter](#), the parties agree that the May 2, 2019, order resolves the substantive legal issues and "renders the entry of final judgment appropriate." However, the parties have been unable to resolve their disagreement over a specific provision "concerning the geographic scope of the court's relief," and have agreed that the court should decide whether to include the disputed provision.

The letter requested that the court hold OCC's current deadline to answer the Complaint (presently Sept. 30, 2019) in abeyance, allow the parties to submit letters to the court presenting their positions on the language of the proposed judgment, and issue a final judgment.

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