

[Banking and Finance Law Daily Wrap Up, FINANCIAL TECHNOLOGY—New York regulator sues OCC to block proposed fintech charter, \(May 15, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [Charles A. Menke, J.D.](#)

The New York Department of Financial Services (DFS) has sued the Office of the Comptroller of the Currency in an effort to block the agency from creating a new special purpose fintech charter. The [complaint](#), which was filed in the U.S. District Court for the Southern District of New York, alleges that "[t]he Fintech Charter Decision is lawless, ill-conceived, and destabilizing of financial markets that are properly and most effectively regulated by New York State." The DFS action comes in the wake of a similar lawsuit filed against the OCC by the Conference of State Bank Supervisors (see [Banking and Finance Law Daily](#), April 26, 2017).

Risks. The DFS contends that the fintech charter poses serious threats to New York consumers and businesses because the charter would include vast preemptive powers over state law. The DFS specifically cited the following risks:

- weakened regulatory controls on usury, payday loans, and other predatory lending practices;
- consolidation of multiple non-depository business lines under a single federal charter; and
- creation of competitive advantages for large, well-capitalized fintech firms that could overwhelm smaller market players, and restrict innovation in financial products and services.

Monetary injury. The proposed fintech charter would also injure the DFS monetarily, the complaint alleges, because DFS operating expenses are funded by assessments levied by the OCC on New York licensed financial institutions. According to the DFS, every non-depository financial firm that receives a fintech charter from the OCC special purpose in place of a New York license deprives DFS of crucial resources that are necessary to fund the DFS' regulatory function.

Relief. The DFS seeks declaratory and injunctive relief prohibiting the OCC from implementing the fintech charter proposal because it: (1) exceeds the OCC's statutory authority under the National Bank Act; and (2) conflicts with state law in violation of the Tenth Amendment of the U.S. Constitution.

CSBS support. In a [release](#), the CSBS said it "strongly supports the [DFS] lawsuit" and reiterated that "[t]he OCC does not have the authority to issue federal charters to non-banks, and its unlawful attempt to do so will harm markets, innovation and consumers."

Companies: Conference of State Bank Supervisors

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