

[Banking and Finance Law Daily Wrap Up, TOP STORY—OCC set to accept fintech charter applications, \(Jul. 31, 2018\)](#)

Banking and Finance Law Daily Wrap Up

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Following months of speculation, and the July 31, 2018, release of Treasury Department report on identifying improvements to the regulatory landscape that will better support nonbank financial institutions, embrace financial technology, and foster innovation, the Office of Comptroller of the Currency has announced that it will begin accepting applications for national bank charters from non-depository financial technology (fintech) companies engaged in the business of banking.

Source of tremendous innovation. In making the announcement, Comptroller of the Currency Joseph M. Otting [stated](#), "Over the past 150 years banks and the federal banking system have been the source of tremendous innovation that has improved banking services and made them more accessible to millions." He added, "The decision to consider applications for special purpose national bank charters from innovative companies helps provide more choices to consumers and businesses, and creates greater opportunity for companies that want to provide banking services in America. Companies that provide banking services in innovative ways deserve the opportunity to pursue that business on a national scale as a federally chartered, regulated bank."

The road to fintech. The OCC began its process to create a special purpose national bank charter for fintech companies in August 2015 under the leadership of then-Comptroller of the Currency Thomas J. Curry. At that time Curry announced an initiative to improve the OCC's ability to identify and understand trends and innovations in the financial services industry (see [Banking and Finance Law Daily](#), Aug. 10, 2015).

The agency then followed up with a whitepaper, entitled "[Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective](#)," which discussed the principles that would guide the development of the OCC's framework for evaluating new and innovative financial products and services. A second paper entitled "[Exploring Special Purpose National Bank Charters for Fintech Companies](#)," discussed several important issues associated with the approval of a national bank charter (see [Banking and Finance Law Daily](#), [March 31, 2016](#) and [Dec. 2, 2016](#)).

To continue the process, the OCC proposed adding a [supplement](#) to its *Licensing Manual* that would address the unique factors that must be considered in evaluating special purpose applications. The proposed supplement also offered details on how a fintech company's compliance with those standards will be determined (see [Banking and Finance Law Daily](#), March 15, 2017).

OCC's roadmap. As part of the chartering process, the OCC released a [policy statement](#) and a final version of its [Comptroller's Licensing Manual Supplement](#) that provide a number of factors that will be considered when the OCC receives a charter application from a fintech company.

Among other things:

- each application will be evaluated on its unique facts and circumstances;
- fintech companies that receive a special purpose national bank charters will be supervised like similarly situated national banks, to include capital, liquidity, and financial inclusion commitments as appropriate;
- the expectations for promoting financial inclusion will depend on the company's business model and the types of planned products, services, and activities; and
- new fintech companies that become special purpose national banks will be subject to heightened supervision initially, similar to other de novo banks.

The policy statement and the *Comptroller's Licensing Manual Supplement* also stresses that the OCC has the authority, expertise, processes, procedures, and resources necessary to supervise fintech companies that become national banks and to unwind a fintech company that becomes a national bank in the event that it fails.

Industry reaction. Following release of the OCC's announcement, Rob Nichols, president and CEO of the American Bankers Association stated, "we are pleased to see the Office of the Comptroller of the Currency moving forward with their new fintech charter that maintains the strict safety and soundness requirements all banks face today. Today's OCC announcement supports a dynamic banking industry where all players must meet the same high standards, face the same regulatory oversight and share the same affirmative responsibility to serve their communities."

The road ahead. Now that the OCC has pushed ahead with the chartering process for fintech companies, will the legal challenges by the New York Department of Financial Services and the Conference of State Bank Supervisors be resurrected?

Following release of the OCC's initial plans to charter fintech companies, the CSBS and Maria T. Vullo, the Superintendent of the New York State Department, separately sued the OCC to prevent the agency from issuing charters to fintech companies. The CSBS [claimed](#), in its lawsuit, that the OCC's actions were "an unprecedented, unlawful expansion of the chartering authority given to it by Congress for national banks." Vullo's lawsuit [alleged](#) that the OCC's action were "lawless, ill-conceived, and destabilizing of financial markets that are properly and most effectively regulated by New York State" (see *Banking and Finance Law Daily*, [April 26, 2017](#) and [May 15, 2017](#)).

Both lawsuits were eventually dismissed on standing and ripeness grounds since the OCC had not reached a final decision on whether to grant special purpose charters to fintech companies (see *Banking and Finance Law Daily*, [Dec. 13, 2017](#) and [May 2, 2018](#)).

Companies: American Bankers Association; Conference of State Bank Supervisors

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