

5 KEY DEVELOPMENTS

Fintech & Banking 2017: Further Exploration of Bank Charters for Fintech Companies

In May, Kilpatrick Townsend Partner [Christina Gattuso](#) and Counsel [Eamonn Moran](#) discussed the Office of the Comptroller of the Currency's (OCC) decision to move forward with considering applications from financial technology (fintech) companies to become special purpose national banks. They provided an overview of the additional guidance provided by the OCC on evaluating special purpose national bank charter applications from fintech companies that engage in the business of banking and highlighted unique factors that the agency will consider in evaluating a fintech company application.

Key Developments since our last update:

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In July, Acting Comptroller of the Currency Keith A. Noreika stated that he thinks granting special purpose national bank (SPNB) charters to fintech companies "is a good idea that deserves the thorough analysis and the careful consideration we are giving it." He noted that the OCC "should be careful to avoid defining banking too narrowly or in a stagnant way that prevents the system from evolving or taking proper and responsible advantage of advances in technology and commerce." While acknowledging that, on principle, "companies that offer banking products and services should be allowed to apply for national bank charters so that they can pursue their businesses on a national scale if they choose, and if they meet the criteria and standards for doing so," he emphasized that the national charter option "exists alongside other choices that include becoming a state bank or operating as a state-licensed financial service provider, or pursuing some partnership or business combination with existing banks."

However, the OCC has not determined if it will actually accept or act upon applications from nondepository fintech companies for SPNB charters, and it has not received, nor is it evaluating, any such applications from nondepository fintech companies. The OCC will continue to hold discussions with interested companies while the agency evaluates its options. In the interim, companies can continue to seek a national bank charter using other authority under the OCC to charter full-service national banks and federal saving associations, as well as other long-established SPNBs, such as trust banks and banker's banks.

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The OCC has filed motions to dismiss two separate lawsuits – by the Conference of State Banking Supervisors and the New York State Department of Financial Services – and the agency asserted that the lawsuits are speculative since the OCC has not yet issued a SPNB charter, and that the OCC has the authority to grant SPNB charters to fintech companies that do not take deposits "in appropriate circumstances." This litigation is ongoing as regulators file responses to the OCC's motions to dismiss.

A major fintech company – Social Finance (SoFi), which offers student loans, mortgages, personal loans, and other financial products – filed an industrial loan charter application with the Federal Deposit Insurance Corporation (FDIC) in June. According to SoFi, the purpose of the charter is to solely provide customers with an FDIC-insured deposit account and a credit card product. Rep. Maxine Waters (D-Cal.), ranking member of the House Financial Services Committee, has called for the FDIC to hold at least one public hearing on SoFi's application. Others have urged the FDIC to reject the application. The comment period for the charter closed July 6. The FDIC decision remains pending.

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Significant political issues and legal uncertainty surrounding the OCC initiative remain. There are continued concerns about extending the existing regulatory framework to fintech companies, including whether it is appropriate for fintech companies to have access to federal deposit insurance. There also have been renewed calls for the OCC to work with Congress to design a federal regulatory framework for fintech companies.

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