

Insights: Alerts

Acting OCC Comptroller Provides Update on Granting Special Purpose National Bank Charters to Fintech Companies

July 26, 2017

Written by Gary R. Bronstein, Christina M. Gattuso, Edward G. Olifer,

As [previously reported](#), the Office of the Comptroller of the Currency (OCC) recently decided to consider applications from financial technology (fintech) companies to become special purpose national banks (SPNBs). In our May [webinar](#), we highlighted the unique factors under consideration when evaluating applications from fintech companies, while offering insights based on ongoing, related litigation and Comptroller Thomas Curry's resignation earlier this year.¹

Last week, Acting Comptroller Keith A. Noreika addressed the Exchequer Club about the current status of the initiative.² His remarks provided updates on the agency's Office of Innovation, as well as answered the question most frequently asked of him since becoming Acting Comptroller: "What are your thoughts on granting national bank charters to financial technology companies?"

While unable to discuss the matter in detail due to ongoing litigation by the New York State Department of Financial Services and the Conference of State Bank Supervisors challenging the OCC's authority to grant SPNB charters to fintech companies, he did say that he thinks "it is a good idea that deserves the thorough analysis and the careful consideration we are giving it."³ He noted that the OCC's authority "clearly includes granting charters to companies engaged in the business of banking," and "[w]e 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."⁴ 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."

He also observed that the national charter option would help level the playing field in the marketplace, since he believes that the current status quo (fintech companies competing against banks without the oversight and requirements facing national banks and federal savings associations) disadvantages banks, and that companies that provide banking products and services should be regulated and supervised like a bank. Noreika also said that changes in consumer protection and preemption over the last decade, including the Dodd-Frank Act

coupled with other statutes and regulatory requirements, mitigate the consumer protection concerns raised about granting national bank charters.

In what he described as a “potential spoiler” to the OCC’s upcoming litigation filings, Noreika stated affirmatively that the OCC believes it has the authority to grant national bank charters to financial technology companies that do not take deposits “in appropriate circumstances.” In particular, he noted that the OCC clarified eligibility for receiving a special purpose national bank charter in a 2003 regulation. This signals that the agency plans to defend this authority vigorously.

Finally, Noreika commented that, at this point, the OCC has not determined whether 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 remains interested in the subject, however, and 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. According to Noreika, “[m]any fintech business models may fit well into these long-established categories of special purpose national bank charters.”

In sum, while the OCC appears to have no imminent or concrete plans to charter an uninsured special purpose fintech national bank that rely on a particular regulation,⁵ the OCC encourages fintech companies to seek a national bank charter using other statutory authorities that the OCC has.

¹Specifically, Comptroller Curry stepped down on May 5, 2017, and Keith A. Noreika is serving as Acting Comptroller of the Currency. In addition, state regulators have filed lawsuits against the OCC, claiming that the OCC did not have statutory authority for the creation of such a special purpose bank charter and that the decision was arbitrary, capricious, and unconstitutional. State regulators and others also have voiced concerns that the national charter would enable fintech companies to avoid state consumer protection laws. The key issues appear to be what a bank should be for purposes of a national bank charter, and whether the OCC should request specific congressional authorization to grant fintech charters.

²Remarks by Keith A. Noreika, Acting Comptroller of the Currency, before the Exchequer Club, Washington, DC (July 19, 2017) (Noreika July 2017 Fintech Speech), *available at* <https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-occ-2017-82.html>

³*Id.*

⁴*Id.*

⁵ 12 C.F.R. § 5.20(e)(1).

Related People



Gary R. Bronstein

t 202.508.5893

gbronstein@ktslaw.com



Christina M. Gattuso

t 202.508.5884

cgattuso@ktslaw.com



Edward G. Olifer

t 202.508.5852

eolifer@ktslaw.com