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5 Top Takeaways: Fintech and Banking in 2017: Exploring Special Purpose National Bank Charters for Fintech Companies

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Kilpatrick Townsend Partner **Christina Gattuso** and Counsel **Eamonn Moran** recently 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 the unique factors that the agency will consider in evaluating applications from fintech companies.

Key Takeaways from the presentation include:

- In December 2016, then Comptroller of the Currency Thomas J. Curry announced that the OCC would move forward with considering applications from fintech companies to become special purpose national banks (SPNBs). In March 2017, the OCC provided additional detail on evaluating national bank charter applications from fintech companies that engage in the business of banking. The detail came in the form of a draft supplement to the agency's existing *Licensing Manual*.
- The draft supplement explains how the OCC will apply the licensing standards and requirements in existing regulations and policies to fintech companies applying for special purpose national bank charters. The draft also describes unique factors that the agency will consider in evaluating applications from fintech companies; expectations for promoting fair access, fair treatment, and financial inclusion; and the agency's approach to supervising those fintech companies that become national banks.
- While the activities of fintech companies interested in a national bank charter may vary significantly, the OCC highlights that national bank charter applicants are held to the same chartering standards and procedures whether seeking to become a full-service national bank, a national trust bank, or an SPNB. In each of these cases, an applicant that receives OCC approval for a charter becomes a national bank subject to the laws, regulations, and federal supervision that apply to all national banks. Many of the charter application procedures for an SPNB will be substantially the same as those applicable to any other national bank, although the OCC may tailor certain criteria to particular SPNBs as appropriate.
- Ms. Gattuso discussed how fintech companies that want to operate in the regulated space will choose different ways of doing so, and the SPNB charter is one option of many. It remains to be seen if fintech companies decide to opt for the new charter or look for other ways to increase access to customers, such as partnering with banks.
- Mr. Moran explained that there remain significant political issues and legal uncertainty surrounding this initiative. Comptroller Curry stepped down on May 5, 2017, and Keith A. Noreika is serving as Acting Comptroller of the Currency. A new Comptroller may have a different view on the subject. 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.

Ms. Gattuso focuses her practice on corporate and securities matters, financial institution regulatory matters and mergers and acquisitions. Her securities practice includes serving as counsel for both issuers and underwriters in public and private offerings of debt and equity securities and counseling on disclosure and other requirements under the federal securities laws. Mr. Moran has extensive experience handling matters in the financial services industry including those pertaining to consumer financial services, consumer protection, fair lending, TARP, the Dodd-Frank Act, and the Consumer Financial Protection Bureau (CFPB) where he previously served as counsel in the Office of Regulations.

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