Insights: Alerts

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

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During recent months, Kilpatrick Townsend Partner **Christina Gattuso** and Counsel **Eamonn Moran** have provided regular updates regarding 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.

Key Developments since our last update:

- Social Finance Inc. (SoFi) and Square, Inc. decided to apply for industrial loan company (ILC) charters with the Federal Deposit Insurance Company (FDIC) – a sign that that there is at least some interest within the fintech community for companies to seek a bank charter of some sort for lending purposes and to provide other types of credit and banking services without partnering with a traditional bank. These moves have reignited the discussion and debate regarding what a "bank" should be for purposes of a bank charter. However, earlier this month, SoFi announced that it is withdrawing its application in the wake of several senior executives departing the company, including co-founder and former CEO Mike Cagney. Even without a charter, SoFi can still make good on its plan to provide customers with deposit accounts. It will just have to do so through partner banks.

- In late July 2017, one fintech company – Varo Money, Inc. – a mobile banking startup helping customers solve financial problems, manage money and reach financial goals, decided not to wait for the OCC to finalize its controversial fintech charter plan. Instead, it applied to the OCC for a national bank charter and to the FDIC for federal deposit insurance to form Varo Bank, N.A.

- Acting Comptroller of the Currency Keith A. Noreika recently discussed innovation and financial technology during a speech at Georgetown University Law Center's Institute of International Economic Law's Fintech Week. His remarks highlighted his optimism for innovation enhancing products and services for consumers and he provided an update on activities related to the Office of the Comptroller of the Currency's Office of Innovation, including the latest on the agency's thinking regarding a charter for fintech companies that offer banking products and services.

    - Building upon remarks he made in July, Noreika reiterated his views that companies that offer banking products and services should be allowed to apply for national bank charters in order to pursue their businesses on a national scale if they choose, so long as they meet the criteria and standards for doing so. He again emphasized that national charters should be just one choice for companies interested in banking, and should exist alongside other options that include becoming a state bank or state industrial loan company (ILC), or operating as a state-licensed financial service provider. Furthermore, fintech

companies could also pursue partnerships or business combinations with existing banks, or even consider purchasing a bank.

- “If, and it is still an if, a fintech company has ambitions to engage in business on a national scale and meets the criteria for doing so, it should be free to seek a national bank charter,” Noreika stated. That includes pursuing a charter under the OCC’s authority to charter special purpose national banks or the OCC’s long-existing authority to charter full-service national banks and federal saving associations, as well as other long-established limited-purpose banks, such as trust banks, bankers’ banks, and other so-called CEBA credit card banks.

- Noreika pointed to the many examples where commercial companies are already allowed to own banks at the state and federal levels, including national credit card banks, state merchant processing banks, state-chartered ILCs. He did want to be crystal clear about one thing, however: “[t]he chartered entity, regulated by the OCC, would be a bank, engaged in at least one of the core activities of banking – taking deposits, paying checks, or making loans.”

Related People



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