Insights: Publications

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

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One year ago, the Office of the Comptroller of the Currency (OCC) decided to move forward with considering applications from financial technology (fintech) companies to become special purpose national banks. In early 2017, the OCC provided additional guidance on evaluating special purpose national bank charter applications from fintech companies that engage in the business of banking a nd highlighted unique factors that the agency will consider in evaluating a fintech company application. In July, then Acting Comptroller of the Currency Keith A. Noreika stated that the OCC had not determined if it will actually accept or act upon applications from nondepository fintech companies for SPNB charters, and it had not received, nor is it evaluating, any such applications from nondepository fintech companies. Noreika noted, however, that the OCC will continue to hold discussions with interested companies while the agency evaluates its options.

Key Developments since our last update:

- On December 12, the United States District Court for the Southern District of New York dismissed the lawsuit filed by the New York Department of Financial Services (NYSDFS) challenging the OCC's authority to grant SPNB charters to nondepository fintech companies. The district court found that the NYSDFS's claims were based on the premise that the OCC had reached a decision on whether it would issue SPNB charters to fintech companies, but that the NYSDFS had failed to show that the OCC had reached such a decision. With respect to Article III standing, the district court concluded that the injuries that the NYSDFS alleged would result from the charter decision “would only become sufficiently imminent to confer standing once the OCC makes a final determination that it will i ssue SPNB charters to fintech companies.” Without a charter decision, the district court concluded that NYSDFS's “purported injuries are too future-oriented and speculative to constitute an injury in fact.” The district court also concluded that NYSDFS's claims were neither constitutionally nor prudentially ripe.
- In April 2017, another lawsuit was filed by the Conference of State Bank Supervisors (CSBS) in the District Court for the District of Columbia challenging the OCC's ability to create a SPNB charter for fintech companies. On December 5, the case was reassigned to Judge Dabney L. Friedrich. The OCC's motion to dismiss in that case remains pending.
- Joseph Otting, the new Comptroller of the Comptroller who was sworn into office on November 27, has not yet taken a public position on the SPNB charter proposal.