

## Special Alert: OCC Issues Highly-Anticipated Guidance for Evaluating Charter Applications from Fintech Companies

On March 15, 2017, the Office of the Comptroller of the Currency (OCC) issued further guidance regarding how it will evaluate applications by fintech companies to become Special Purpose National Banks (SPNBs). In its release, the OCC summarized the more than 100 comments it received in response to its December 2016 white paper and provided a draft supplement to the *OCC Licensing Manual* outlining proposed requirements for fintech companies to become SPNBs.

Last week's release is the latest in the OCC's efforts to support the intersection between banking and technology companies. In August 2015, Comptroller Thomas Curry announced the OCC's intent to assemble a team of policy experts, examiners, attorneys, and other agency staff to begin researching innovative developments in the financial services industry. In March 2016, the OCC published a summary of its initial research and plans to guide the development of responsible financial innovation. In September 2016, the OCC issued a notice of proposed rulemaking clarifying the framework and process for receiverships of national banks without FDIC-insured deposits. That proposal applied to all non-depository national banks, including those with special purpose national bank charters. In October 2016, the OCC detailed its plans to implement a responsible innovation framework and announced the establishment of the Office of Innovation, a dedicated, central point of contact for fintech companies as well as requests and information related to innovation. Finally in December 2016, the OCC published a white paper announcing its intent to create a SPNB charter for fintech companies and invited comments and posed discrete questions for consideration regarding the proposals.

The March 15 guidance took into consideration the comments received from the industry and provides more context for how the OCC will evaluate SPNB charter applications, the OCC's expectations for providing fair access to financial services and fair treatment of customers, and the OCC's approach to supervising those fintech companies that become national banks. The OCC made it clear that any fintech companies granted the charter will be held to the same high standards as all federally chartered banks and would not benefit from a "light-touch" supervisory approach.

The SPNB charters are available to fintech companies engaged in one of the core banking functions of lending or paying checks, but will not be available to companies engaged in deposit-taking activities.

### **Charter Applications**

Fintech companies seeking a SPNB charter should begin by making an inquiry for a charter application with the OCC's Office of Innovation, which will serve as the primary point of contact and will manage follow-on meetings with OCC staff, including the Licensing Division, to discuss the company's business model and any novel or complex issues that might arise from the company's application. The OCC expects

an iterative pre-application process involving formal and informal interactions before a fintech company will be permitted to file a formal application.

SPNB applicants will have to demonstrate that they are engaged in a core banking function, such as lending or paying checks (which the OCC notes includes modern equivalents of discounting notes or facilitating payments electronically). The OCC expects that some potential applicants may be engaged in activities that have not previously been determined to be part of, or incidental to, the business of banking or to fall within an established core banking function. The OCC invites such companies to conduct legal analysis supporting the conclusion that such activities fall within one of the core banking categories and to discuss the analysis during the pre-filing meetings.

Applicants will also need to demonstrate that *all* their activities are national bank-permissible under a statute, regulation, federal judicial precedent, or through a specific OCC determination.

The charter filing procedures mirror those of any other national bank charter filing, including the need for a published notice and public comment period.

### **Standards for Charter Evaluations**

The OCC considers the following principles when evaluating a company for a charter, including:

- Maintaining a safe and sound banking system
- Providing fair access to financial services by helping to meet the credit needs of an applicant's entire community
- Ensuring compliance with laws and regulations
- Promoting fair treatment of customers, including efficiency and better service
- Whether an applicant can reasonably be expected to achieve and maintain profitability
- Whether approving its charter will foster healthy competition

In evaluating prospective applicants, the OCC also seeks to ensure that there would not be inappropriate commingling of banking and commerce, that no unfair or deceptive products or services would be involved, and that if approved, the charter would be consistent with sound banking principles. The OCC will also significantly consider the proposed company's organization and management, capital supply, and business plan.

### **Business Plan Submissions**

Like all applicants for a national bank charter, applicants for the SPNB fintech charter are required to submit a comprehensive proposed business plan, including the company's financial projections, analysis of risk, and planned risk management systems and controls.

Each business plan must include a detailed description of the business; marketing plan; management plan; records, systems, and controls; the financial management plan; monitoring and revising the plan; alternative business strategies; and financial projections.

In last week's release, the OCC acknowledges that applicants for an SPNB charter may have structures and business models that differ from those of traditional, full-service national banks, and accordingly provided supplemental guidance on specific parts of the required business plan.

For fintech companies, the OCC will be particularly focused on the following elements:

- **A risk assessment** identifying and addressing the risk appetite of the company as well as particular risks the proposed bank may face given its business model, including, for example, concentration risk, compliance risk, reputation risk, strategic risk, and operational risk, including cybersecurity risk
- **Customer record keeping and transaction processing systems**, internal controls to protect those records and systems, and a compliance management program for adhering to applicable laws and regulations
- **A financial management program** covering regulatory capital levels, on- and off-balance sheet exposures, growth prospects, a proposal to handle adverse market conditions and market volatility, and a discussion of liquidity and funds management
- **A plan for the company's board of directors** to monitor and revise the business plan as appropriate
- **An alternative business strategy** with realistic contingency plans, recovery planning, and exit strategies
- **A financial inclusion plan** detailing how the company plans to serve the community

### Charter Decisions

As with national bank charters, the OCC will first grant a preliminary conditional approval of the charter, signaling that the OCC has approved the application. The preliminary conditional approval will trigger a number of standard and special requirements and conditions on the company, specific to the SPNB's business plan and operations. Once the SPNB receives final approval from the OCC, the OCC will issue the charter and the company can begin conducting banking business. The SPNB will then be supervised by the OCC as any other national bank is, with periodic on- and offsite monitoring and examinations.

### Conclusion

The OCC has invited comments on the draft supplement to the Licensing Manual and will consider comments received through April 14, 2017.

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If you have questions about the guidance or other related issues, visit our [Financial Institutions Regulation, Supervision & Technology \(FIRST\)](#) and [FinTech](#) practice pages for more information, or contact a Buckley Sandler attorney with whom you have worked in the past.