

OCC Releases Long-Awaited Limited Purpose National Bank Charters For Fintechs

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On December 2, 2016, Comptroller of the Currency Thomas Curry [announced](#) the OCC's proposed [framework](#) for granting limited purpose national bank charters to fintechs during an event hosted by Georgetown Law's Institute of International Economic Law. This announcement follows on the heels of the OCC's "Responsible Innovation Framework" released in October 2016, which was silent on the topic of fintech charters, as discussed in our previous blog [post](#). Today's remarks bring long-awaited clarity to fintech firms on the potential availability of a fintech charter and the principles the OCC would apply in evaluating potential charter applicants. The OCC concurrently released a [paper](#) outlining and soliciting public comment on its fintech charter framework.

Comptroller Curry's remarks and the OCC's paper clarify that fintech firms chartered as limited purpose banks will:

- qualify for federal preemption and exemption from certain state licensing and registration requirements to the same extent as full-service national banks (e.g., state-level money transmitter licensing requirements);
- not be required to obtain federal deposit insurance, as long as the firm does not engage in deposit-taking activity (chartered fintechs that accept deposits other than trust funds, however, will still be required to be FDIC-insured);
- be required to be members of the Federal Reserve system and subject to oversight as member banks by the Board of Governors of the Federal Reserve System;
- be subject to federal consumer protection laws to the same extent as full-service national banks;
- be subject to other prudential conditions that could be included as enforceable conditions in the charter approval, including requirements similar to those under the Community Reinvestment Act (CRA) if the fintech engages in consumer lending activities, minimum capital and liquidity requirements and the development of business continuity, recovery and resolution strategies.

Fintech firms have been eagerly anticipating the possibility of a limited purpose OCC charter, given the potential ability to avoid state-by-state licensing, benefit from federal preemption and be exempt in the same manner national banks are from certain substantive state regulatory requirements. The framework announced today confirms that key benefits of the proposed fintech charter include the potentially significant reductions in regulatory uncertainty, cost and complexity arising from state-by-state compliance and registration obligations. Marketplace lenders and payments firms, in particular, stand to benefit the most from this proposed fintech charter framework, in part, due to the regulatory challenges they currently face arising from the patchwork state-by-state financial regulatory framework governing many of their core business activities.

Although some fintechs have anticipated a potential reduction in compliance obligations, today's release emphasizes that chartered fintech firms will generally be subject to the same laws, regulations, examination, reporting and ongoing supervision to which full-service national banks are subject, including BSA/AML laws, UDAAP requirements and federal consumer protection regulations. One key difference is that a chartered fintech firm, as a limited purpose bank, would not be required to obtain federal deposit insurance if it does not engage in deposit-taking activity. Accordingly, a chartered fintech would not necessarily be subject to requirements applicable to full-service national banks as FDIC-insured institutions, such as those under the CRA. Importantly, however, Comptroller Curry noted that similar requirements and other prudential conditions could be imposed on chartered fintechs as enforceable conditions of its charter approval.

In addition, Comptroller Curry emphasized during the Q&A session following his prepared remarks that the OCC is a “firm believer” in providing tailored supervision, and accordingly, the chartering process will be tailored to each applicant’s specific business model and risks. Specifically for payment services firms, Comptroller Curry noted that the OCC will consider the firm’s cybersecurity risk management, business continuity and recovery planning and data privacy compliance. Consumer lending firms, on the other hand, will likely need to address any risks associated with its funding model, particularly as many fintech firms may rely on more volatile market-based funding in lieu of more stable deposit funding.

We note that the OCC’s fintech charter concept could also have applicability outside the fintech space. For example, established non-financial companies that provide payment services and engage in consumer lending activities could seek to obtain fintech charters. In addition, a fintech charter could also benefit existing bank holding companies, who may seek to charter qualifying subsidiary entities as limited purpose banks, similar to trust banks held within a financial group.

There remain significant questions regarding whether a fintech charter would be viable for fintechs or merely a theoretical option that in practice is too expensive and offers too few benefits. A more detailed analysis on the OCC’s fintech charter framework will be released soon on BeyondSandbox.

Law Clerk Madison J. Roberts contributed to this post.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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