OCC to Provide a Regulatory Framework for Fintech Companies

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On July 31, 2018, the Office of the Comptroller of the Currency ("OCC") announced that it will begin accepting applications for special-purpose national bank charters from financial technology companies ("fintech"). A successful application would allow fintechs to pay checks, lend money, and hold deposits. This decision coincides with an extensive U.S. Treasury Department (the "Treasury") report endorsing comprehensive fintech regulations (the "Treasury Report") and marks a new direction in the national financial regulatory framework.

The OCC's new policy allows for firms that do not operate like traditional banks—such as marketplace lenders, payment firms, and potentially cryptocurrency exchanges—to become integrated into the financial system. Indeed, as Comptroller Joseph Otting asserts, this new policy will provide "a path for fintech companies to become national banks" and will promote "economic growth and opportunity, modernization and innovation and competition." According to the OCC, fintech applicants will be supervised like similarly situated national banks but they will face an initial "heightened supervision," as typical for newly established banks. Applications will be open for public comment and the agency intends to make decisions within 120 days of receipt of applications.

The Treasury Report, meanwhile, provides a bevy of recommendations for fintech regulations and has broad implications for the industry. For example, the Treasury Report recommends the creation of "sandboxes" where, upon introducing new products or services to the market, fintechs would seek regulators' guidance in what proponents view as a controlled environment. The sandbox system would allow fintechs to safely experiment with innovative ideas without fear of penalization. If regulators fail to properly enact a sandbox, the Treasury has called upon Congress to enact legislation based on the sandbox systems existing in the United Kingdom and Singapore. The Treasury also urged congressional action in the face of the *Madden v. Midland Funding* decision. *Madden* asserts that debts sold across state lines can be subject to state usury laws. Industry advocates have been pushing for Congress to clarify that loans are "valid-when-made." The Treasury, however, supported this stance by recommending that Congress "codify the 'valid-when-made' doctrine to preserve the functioning of U.S. credit markets." The Treasury Report further emphasizes the need for more regulatory support for innovators and entrepreneurs.

The OCC's announcement and the Treasury Report, together, demonstrate a stronger governmental commitment to providing a regulatory framework for non-traditional banking institutions and processes. Proponents of the sandbox system believe that, if implemented, the system will allow for greater innovation in the financial technology industry. Prior to OCC's special-purpose charter announcement, fintech startups looking to provide financial services would often need to farm out key pieces of their operations to specialized banks. The charter will allow fintechs to gain more control over their operations and, consequently, may lead to greater efficiency.

Opponents of the special-purpose charter program include state regulators and consumer groups, who argue that the “OCC fintech charter is a regulatory train wreck in the making.” Prior to the charter’s official announcement, state bank regulators brought a lawsuit against the OCC—arguing that a plan to grant national special-purpose charters to fintech firms exceeded the OCC’s statutory authority. Regulators assert that fintechs are best regulated by states. The lawsuit was ultimately dismissed but, despite the OCC’s announcement, regulators are persisting in their opposition to the charter. According to John W. Ryan, president of the state regulators’ group that brought the lawsuit, states are “keeping all options open to stop this regulatory overreach.”

Kelley Drye continues to monitor the OCC’s implementation of the charter and the evolution of the fintech industry. If you have any questions regarding this recent development, please contact:

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