

FinTech Banks or Not?

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Sherrod Brown, the Chairman of the Senate's Committee on Banking, Housing, and Urban Affairs recently sent a [letter](#) to Michael Hsu, the Acting Comptroller expressing his concern over a number of national trust charters granted by the OCC while under the direction of Commissioner Brooks. Chairman Brown specifically references the conditional charters granted by the OCC for Paxos, Protego, and Anchorage and reminds Acting Comptroller Hsu that the scope of the OCC's authority in this space has been challenged by Congress as well as by state banking regulators and community banks recently. Chairman Brown frames his arguments as one protecting consumers from harm by stating:

A firm that cannot meet the rigorous requirements applicable to other banks should not be allowed to present itself to the public as a bank. Paxos, Protego, and Anchorage seek to broaden access to cryptocurrencies and other risky and unproven digital assets and emerging technologies to traditional bank customers. Each company highlights their federally-chartered status – Paxos referring to itself as “Cutting-edge technology with bank-level oversight.” In other words, these companies suggest that the OCC’s approval of their charters guarantees their business model is as safe, stable, and dependable for customers as a local community bank. The fact is, given the many uncertainties present in the digital asset landscape as identified by other regulators, the volatility of digital asset valuations, and the disproportionate influence individuals can have on entire cryptocurrency markets, the OCC is not in a position to regulate these entities comparably to traditional banks.

Chairman Brown's concern over the use of the term “bank” is not novel. Usage of the term, and the implied coverage of deposit insurance, is already regulated at the federal and state levels. The FDIC has [specific regulations](#) in place governing all insured depository bank's usage of FDIC logos and advertisements. For non-OCC-regulated entities, states have regulations which commonly limit the use of “bank” within a corporate name or advertisements. Typically, registration of any corporate name using the word “bank” must be accompanied by an authority letter from a state bank regulator prior to filing with an applicable secretary of state. Should usage of this term be reserved solely to a fully-regulated traditional insured depository bank?

While some argue that these efforts could encourage cryptocurrencies and digital asset firms to avoid the United States, another potential impact of this effort could be to push more digital assets into the established banking industry. This could be a boon for banks directly offering products and services in the space given the potential “regulatory moat,” and it could force more FinTech firms to either

chase various state and federal licensure for each of their lines of business or partner with existing banks. The latter consideration is interesting as, within his letter, Chairman Brown also mentions that the Senate recently rejected the OCC's "[true lender rule](#)" which aimed to clarify that when a national bank or federal savings association makes a loan it is the "true lender," including when operating as part of a partnership between the national bank or federal savings association and a third party (a common model leveraged by various FinTechs).

While it was clear Comptroller Brooks was a proponent of FinTech charters, to gain insight into the OCC's current view you would need to look to the [recent statements of Acting Comptroller Hsu](#) when testifying in front of the House's Committee on Financial Services. Within his opening remarks he stated:

“Notwithstanding the strong oversight and enhanced provisions the OCC requires, some are concerned that providing charters to FinTechs will convey the benefits of banking without its responsibilities. Others are concerned that refusing to charter FinTechs will encourage growth of another shadow banking system outside the reach of regulators. I share both of these concerns. Denying a charter will not make the problem go away, just as granting a charter will not automatically make a FinTech safe, sound, and fair. I will expect any FinTechs that the OCC charters to address the financial needs of consumers and businesses in a fair and equitable manner and support the important goal of promoting the availability of credit. Recognizing the OCC’s unique authority to grant charters, we must find a way to consider how FinTechs and payments platforms fit into the banking system, and we must do it in coordination with the FDIC, Federal Reserve, and the states”.

It is unclear where this debate will settle, but a certainty in this space is that digital assets and blockchain systems are rapidly expanding and appear to be a primary driver for future growth in financial products and services. When paired with other recent political efforts increase tax oversight and reporting of cryptocurrency transactions, as well as efforts to expand bank compliance requirements in areas such as the Community Reinvestment Act, perhaps these comments, presage a larger fight to come related to tax revenue and diversity and inclusion.

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