

OCC Outlines Process for FinTech Companies to Apply for Special Purpose National Bank Charters and Seeks Public Comment

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The **Office of the Comptroller of the Currency** (the “OCC”) has released for public comment its proposed Licensing Manual Supplement (the “Supplement”) for evaluating charter applications submitted by financial technology (“FinTech”) companies. The Supplement explains how the OCC will apply the licensing standards and requirements of its existing regulations and policies to FinTech companies applying for a special purpose national bank (“SPNB”) charter. The OCC is accepting public comment until April 14, 2017. The standards set forth in the Supplement are generally consistent with the guidance provided by the OCC in a FinTech forum it held in 2016 and a number of white papers it has released over the past year. Applicants and the industry should recognize that this process will continue to evolve over the coming years as the OCC gains experience in reviewing SPNB applications as well as supervising SPNBs.

The Supplement explains how the OCC will apply the licensing standards and requirements in its existing regulations and policies to FinTech companies that apply for an SPNB charter. Consistent with its past statements, the OCC noted that an SPNB applicant will be held to the same chartering standards and procedures as an applicant seeking to become a full service national bank. An SPNB will become subject to the laws, regulations and federal supervision that apply to all national banks except as may be appropriate due to its limited charter. Perhaps one of the great challenges in obtaining an SPNB charter will be the integration of an unregulated technology culture with a regulated environment.

Basis for Decision

The OCC gave several reasons for its decision to authorize the chartering of SPNBs, including that the proposed SPNB charter would:

- provide a framework of uniform standards and supervision designed to ensure that SPNBs, like other federally-chartered banks, conduct business in a safe and sound manner while effectively serving the needs of consumers, businesses and communities;
- support the dual banking system by offering FinTech companies the option of offering banking

products and services under a federal charter and operating under the supervision of federal regulatory authorities rather than individual state authorities;

- strengthen the financial system by promoting growth, modernization and competition; and
- deepen the expertise of the OCC in developing technologies and financial innovation to better evaluate and respond to the risks that accompany the delivery of emerging technologies.

Process

FinTech companies seeking an SPNB charter should make an initial inquiry with the OCC Office of Innovation. If further discussions are appropriate, one or more exploratory meetings with OCC staff will be scheduled to discuss the applicant's business model and the OCC's expectations. Prior to any pre-filing meetings, an overview of the applicant's proposal and a draft business plan, as well as the qualifications of the organizers and senior management, should be submitted. Consistent with its past statements, the OCC will require that the applicant whose business plan includes lending or providing financial services to consumers or small businesses demonstrate a commitment to financial inclusion. The OCC anticipates that SPNB applicants will likely propose to be engaged in payment services and/or lending and not deposit taking, which would require a separate application to the FDIC.

As with an application for a full service national bank, a notice of the filing of an SPNB application will be published in the community where the SPNB will be located. Portions of the business plan of an SPNB, such as the financial inclusion plan ("FIP"), will be included in the public file and thus available for public inspection. The OCC also noted that an applicant will be expected to publish its FIP for public comment. An uninsured SPNB will not be considered a bank for purposes of the Bank Holding Company Act, and therefore it is not expected that the Federal Reserve will require a holding company application. However, any investors in the SPNB following its organization that would be in a control position would have to file a change in control notice with the OCC.

Organizing Group, Directors and Management

As with a full-service national bank, the OCC expects the organizers, directors and management of an SPNB to be well qualified and possess diverse experience in relevant areas. Although the OCC would expect that some members of this group have experience in regulated financial services, other relevant experience will depend upon the specific products or services that will be offered by the SPNB. For example, it will be important for one or more member of the board or management to have experience in technology based products or services. It will also be important for one or more members of the board or management to have traditional banking experience.

Capital

All SPNBs will be subject to the minimum leverage and risk-based capital requirements of the OCC. These requirements, which measure regulatory capital levels relative to an entity's assets and off-balance-sheet exposure, may not be sufficient for measuring capital adequacy for an SPNB. The risks posed by an SPNB with limited on-balance-sheet assets and or non-traditional strategies may not be captured in reported balance sheet assets or off-balance-sheet exposures. As a result, the OCC noted that additional approaches may be necessary to determine the level of capital that should

be required. The amount of capital that will initially be required will be based on qualitative and quantitative factors such as the proposed activities, plans and prospects for growth, stability or volatility of sources of funds and access to capital. The OCC expects that capital requirement will increase beyond the initial minimum as the size, complexity and risks of the SPNB evolve. This may be one of the most difficult requirements for the SPNB to satisfy due to the lack of many of the objective measurements contained in a typical bank balance sheet.

Financial Inclusion

The OCC expects an SPNB whose business plan includes lending or providing financial services to consumers or small businesses to demonstrate a commitment to financial inclusion. As part of the pre-filing process the OCC expects a FinTech company to provide information describing how it proposes to engage with its relevant market and community, including underserved populations, and how it proposes to identify and address that community's financial needs. The OCC recognizes that outreach to interested community and consumer groups may be helpful in this regard. A FinTech company's application should include in the FIP section a description of its proposed goals, approaches, activities and milestones in serving the relevant market. The OCC will include as a condition in the conditional approval of an SPNB an enforceable condition that will require the SPNB to implement its FIP. The OCC also noted that the commitment to meet financial inclusion objectives that support fair access to financial services and fair treatment of customers will be ongoing; therefore, the OCC will expect an SPNB to update its FIP as appropriate. Since many SPNBs may be serving customers on a nationwide basis, the identification of a relevant community and its financial needs may present a challenge. The use of a strategic plan, an option currently available for assessing Community Reinvestment Act compliance, could be an option for SPNBs to identify their relevant communities.

Business Plan

As with an application for a full service bank, an SPNB application must contain a business plan. The OCC noted that proposals from applicants without established business records will be subject to a higher degree of scrutiny to evaluate whether they have a reasonable likelihood of long-term success. The OCC release provides supplemental guidance to the Interagency Business Plan Guidelines that should be used by FinTech companies in preparing their business plan, including:

- depending upon the applicant's proposed business strategy and structure, the OCC may require an applicant to include an alternative business strategy detailing how the SPNB will manage potential scenarios when expectations such as operating expenses, marketing costs or growth rates differ significantly from the original plan;
- applicants should discuss exit strategies that provide a means for the SPNB to unwind in an organized manner;
- as with an application for a full service bank, the OCC will not approve any proposals that would result in an inappropriate commingling of banking and commerce; and
- if the activities proposed for the SPNB have not been previously determined to be a part of, or incidental to, the business of banking, the applicant may be requested to provide a legal analysis supporting its view that the activity is permissible.

Supervisory Considerations

The OCC noted that centralized oversight will provide a consistent approach to supervision. Accordingly, the supervisory framework for SPNBs will incorporate core elements already in place for national banks. SPNBs will be assigned individual portfolio managers and will be overseen by an Assistant Deputy Comptroller based in Washington, D.C. SPNBs will be subject to the same examination rating framework as other national banks.

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