

The OCC Speaks: How FinTech Applications Will Be Reviewed

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On March 15, 2017, the Office of the Comptroller of the Currency (the “OCC”) published for comment a draft supplement to the OCC’s existing *Comptroller’s Licensing Manual* providing detail on how the OCC will evaluate national bank charter applications from financial technology (“FinTech”) companies that engage in the business of banking, other than accepting deposits. In so doing, the OCC has moved one step closer to making its FinTech bank charter a reality. Below we provide a summary of the proposed OCC guidelines for accepting and approving a FinTech charter (the “FinTech Guidelines”).

Who may apply for a special purpose national bank charter?

The OCC has authority to grant charters for national banks and federal savings associations. That authority extends to the granting of charters for special purpose national banks (“SPNB”). SPNBs may limit their activities to fiduciary activities or to any other activities within the business of banking. However, with respect to the SPNB charter for FinTech companies, the OCC states that it will only accept applications from FinTech companies engaged in either (i) paying checks or (ii) lending money.

How will the application be reviewed?

In evaluating an SPNB application, the OCC will be guided by the following principles in evaluating a company, including:

- Operating in a safe and sound manner
- Providing fair access to financial services

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- Promoting fair treatment of customers and financial inclusivity
 - Ensuring compliance with all applicable laws and regulations
 - Fostering healthy competition in the banking marketplace

Step-by-Step Chartering Process Summary

The OCC's standard process for reviewing and taking action on charter applications would apply to applications from Fintech companies. The proposed FinTech Guidelines provide an outline of the basic procedures for applying for a Fintech charter, note some unique aspects that are different for a FinTech applicant and detail the expectations of the OCC in reviewing any prospective application.

Specifically, all national bank charter applications are reviewed and processed through the OCC's Licensing Department. Although the traditional national bank charter application involves four distinct stages, the OCC has suggested that the process for seeking a FinTech charter will involve additional stages as described below.

- **Initial Inquiry.** The OCC has suggested that a FinTech company seeking a special purpose charter make an initial inquiry concerning the charter application through the OCC's Office of Innovation. The OCC's Office of Innovation is the primary point of contact within the OCC for all FinTech inquiries, including the chartering process.
- **Exploratory Meeting.** If the FinTech company wishes to continue discussions after this initial inquiry, the company may request that the OCC schedule an exploratory meeting with the appropriate OCC staff, including the OCC Licensing Division. The relevant points to be addressed at this meeting are (i) the company's business model, (ii) the FinTech Guidelines, (iii) the OCC's expectations in reviewing any prospective application and (iv) any questions or comments that the FinTech company has regarding the regulatory environment and process.
- **Prefiling Communications.** Following the exploratory meeting, a prospective FinTech applicant will be expected to engage with the OCC in formal and informal communications to discuss its proposal, the chartering process and application requirements. During this stage, the OCC will begin to identify aspects of the FinTech company's proposed charter that present novel or complex issues. These issues will be discussed at one or more prefiling meetings with OCC staff.
- **Formal Prefiling Meeting.** Before the formal prefiling meeting, the FinTech applicant is expected to provide the OCC with the following: (i) an overview of the FinTech charter proposal, including a discussion of the business plan, the relevant market, novel policy or legal issues identified and any unique aspects of the proposal; (ii) information about the managerial experience and qualifications of senior management and directors; and (iii) a draft business plan. In addition, the OCC expects any FinTech company engaging in lending or providing financial services to customers to demonstrate a commitment to financial inclusion.
- **Filing.** Upon completion of the prefiling process, a FinTech applicant will submit both (i) its application and (ii) any appropriate Interagency Biographical and Financial Report on all identified insiders. In addition, national bank charter applicants are generally required to publish a notice of their application filing in a newspaper of general circulation. However, the OCC notes that it understands that FinTech applicants may be entirely digital (i.e., lacking a physical office location) and will consider the operations of the company in determining where notice is appropriate.
- **Review and Evaluation.** The OCC reviews the application and conducts background and field investigations to determine whether to approve the application. In so doing, the OCC is guided by the following principles: (i) senior management and directors are expected to have an appropriate level of skill and experience; (ii) the company must have adequate capital to

support the projected volume and type of business; (iii) any business plan must articulate a clear path and timeline to profitability; and (iv) any business plan is expected to appropriately describe the company's goals, approach, activities and milestones for serving its relevant market and community. In evaluating any charter application, the OCC may identify specific controls or requirements that are necessary for the company's success and to ensure the OCC's chartering standards are met.

- Preliminary Approval. The OCC grants preliminary approval that may be subject to certain conditions. This period is often referred to as the "organizational phase." The applicant may then raise capital and prepare for opening. Prior to opening, the OCC will conduct a preopening examination.
- Final Approval. Thereafter, the OCC determines whether the bank has met the requirements and conditions for opening. If the FinTech company has met those requirements and conditions, the OCC will grant final approval of the charter. Once the FinTech company received its charter, it can begin conducting its business as an SPNB. In addition, as an SPNB, the FinTech company will be subject to ongoing OCC supervision and regulation with periodic assessments and fees.

Supplemental Guidance on Submitting a Business Plan

In addition to the FinTech Guidelines, the OCC will look to the Business Plan Guidelines, *Comptroller's Licensing Manual*, in reviewing SPNB applications. The Business Plan Guidelines are separate from and remain unaffected by the FinTech Guidelines. Consequently, it is an additional source of guidance for FinTech applicants.

Pursuant to the Business Plan Guidelines, each applicant is required to submit a detailed business plan, including a description of the following: (i) the business; (ii) marketing plan; (iii) records, systems and controls; (iv) the financial management plan; (v) process for monitoring and revising the plan; (vi) alternative business strategies; and (vii) financial projections. However, the OCC recognizes that FinTech applicants may have structures and business models that are different from traditional, full-service national banks. Thus, in addition to these general requirements, FinTech applicants will be required to consider the following specific elements in any submitted business plan.

- Risk Assessment. A FinTech company will be expected to include a risk assessment that identifies and discusses inherent risks associated with its given business model. While risks may include typical risks such as concentration risk, compliance risk, reputation risk, strategic risk, operational risk and cybersecurity risk, the OCC expects a more detailed discussion concerning regulatory considerations (e.g., Bank Secrecy Act/Anti-Money Laundering, fair lending and consumer protection), and market economic and competitive conditions, including risks associated with individual products and services.
- Records, Systems and Controls. A FinTech company will be expected to describe the company's record keeping, transaction processing and internal controls that will enable the company to protect consumer data and ensure processing efficiency. Accordingly, the company should address in its business plan its (i) information technology program, (ii) compliance management program, (iii) plan to provide for independent testing of systems and controls and (iv) third-party risk management system.
- Financial Management. In general, FinTech companies will be expected to comply with the minimum leverage and risk-based capital requirements applicable to all national banks. However, the OCC understands that FinTech companies may have significant off-balance-sheet exposures not adequately captured by the capital adequacy framework. The applicant will be expected to provide (i) descriptions of these off-balance-sheet exposures and (ii)

propose minimum capital levels the company will adhere to initially (until profitability is reached) that are sufficient to support the company's business plan.

- **Alternative Business Strategy.** Depending upon the FinTech applicant's business model, the OCC may require the applicant to include a discussion of alternative business strategies detailing how the company will manage potential scenarios when expectations differ significantly from the original plan. However, all applicants are expected to discuss (i) realistic contingency plans, (ii) recovery planning and (iii) exit strategies.
- **Financial Inclusion Plan ("FIP").** The OCC's chartering standards require it to consider whether a FinTech company's business model promotes and provides fair access to financial services and fair treatment of customers. The OCC understands that the nature and scope of the FIP will vary depending on the applicant's business model and products/service offerings. However, a company will be expected to include in its business plan a description of the company's knowledge of and plans to serve the community. This description should include (i) proposed goals, (ii) approach, (iii) activities and (iv) milestones.

Conclusion

In an irregular step, the OCC has submitted the FinTech Guidelines to a thirty (30) day public comment period. While changes to the Comptroller's Licensing Manual are typically made without submission to the public for comment, the OCC seems to be taking a cautious approach to chartering FinTech companies due to the novel issues posed for regulatory review and oversight. With the expiration of this public comment period on April 14, 2017, absent any substantial changes to the FinTech Guidelines, the OCC may begin accepting applications for Fintech charters in the near-term.

While the FinTech applicant can anticipate a thorough vetting by the OCC, there is one bit of regulatory relief worth noting. An applicant for a full service national bank charter must also contend with the FDIC and, if a holding company is contemplated, the Federal Reserve. However, because a FinTech charter will not be authorized to receive deposits, an application for FDIC insurance will not be needed. Similarly, a FinTech charter bank will not be considered a bank for purposes of the Bank Holding Company Act. That is two less regulators to worry about.

To view the full text of the OCC's FinTech Guidelines, [click here](#).

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