

Special Purpose National Bank Charter for FINTECH Firms

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The office of the Comptroller of the Currency (OCC) published a draft supplement to its licensing manual, to define and tailor the requirements for FINTECH companies that apply for special purpose national bank charters. This furthers the plans for such charters that the OCC announced last year (see "SEC and OCC Seek Accommodation with"SEC and OCC Seek Accommodation with FINTECH Firms," *Expect Focus*, Vol. IV, 2016). The draft makes clear that FINTECH special purpose banks will not be permitted to engage in any activity that is prohibited for other national banks and will be required to engage in at least one "core banking activity" such as lending money or paying checks. The OCC, however, would administer these requirements flexibly. For example, "issuing debit cards or engaging in other means of facilitating payments electronically may be considered the modern equivalent of paying checks." Therefore, a wide variety of FINTECH companies may be able to qualify for special purpose charters, avoiding some duplicative or conflicting regulation under state laws to which they otherwise would be subject, and, in some cases, escaping the purview of the Consumer Financial Protection Bureau or other federal regulators. Nevertheless, the OCC intends to hold special purpose FINTECH banks to high standards, such as:

- No inappropriate comingling of banking and commerce
- No predatory, unfair, or deceptive business practices
- No "light touch" supervision by OCC

To the extent that, as the OCC says, FINTECH special purpose banks will be held to the same high financial and regulatory standards as all other national banks, firms considering applying for special purpose charters will have to weigh the potential disadvantages of federal bank regulation. These include not only direct regulatory compliance costs and capital requirements, but also potential restrictions or delays in undertaking new business initiatives.

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