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New Federal “Fintech Charter” Framework Released

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The Office of the Comptroller of the Currency (OCC) recently came one step closer to making its fintech bank charter a reality. On Wednesday, March 15, it released a Licensing Manual Supplement (Supplement) with proposed licensing requirements for fintech companies seeking a special purpose national bank charter (Fintech Charter).

The OCC seeks immediate industry engagement and has called for comments to the framework to be submitted within 30 days.

The OCC plans to accept applications only from those who plan to engage in either “paying checks” (which today is construed to mean offering a payments system) or lending money. Those seeking deposits must look elsewhere. Likewise, the Supplement would not apply to applicants engaged in fiduciary activities or to applicants that would otherwise meet the requirements of a trust bank.

In order to guide new applicants, the Supplement contains an outline of the basic procedures for applying for a Fintech Charter. However, because the OCC already possesses extensive regulations and policies relevant to the chartering process that apply to all applicants for any charter, the Supplement mainly expounds on issues unique to Fintech Charter applicants. For instance, it outlines special expectations for the application process, requirements for financial inclusion, and details regarding OCC supervision of new fintech banks.

Special application procedures would veer slightly from the traditional requirements. The OCC requires all applicants for any national bank charter to conduct a prefiling meeting, to summarize their proposal, and to submit a business plan. For Fintech Charter applicants, the business plan must also contain a risk assessment that assesses everything from operational to regulatory and cybersecurity risk, a detailed description of internal controls regarding compliance management, record keeping, and transaction processing, proposals for minimum capital levels both pre- and post-profitability, and other details regarding financial management such as liquidity and funds management.

In addition, some entities may be required to submit an alternative business strategy triggered when operating expenses, marketing costs, growth rates, or other expectations vary significantly from initial projections.

All Fintech Charter applicants would be expected to summarize novel policy or legal issues and other unique aspects of the proposal for the prefiling meeting. They may also be called upon to provide the rationale for why an innovative financial product or service should qualify as a “core banking function.”

Financial inclusion, generally understood to mean ensuring communities have fair access to financial products and services, will make up a crucial part of the application process. With innovative financial technology comes the risk that a particular generation, gender, income class, race, or other social group may get left behind.

To mitigate any risk of exclusion, the Supplement would require companies engaged in lending or providing financial services to consumers or small businesses to provide a Financial Inclusion Plan (FIP) in addition to the business plan. Thus, applicants providing purely commercial financial services that do not reach consumers or small businesses would likely not be required to provide an FIP.

While applicants may request confidential treatment under the Freedom of Information Act for their application materials, the FIP would not be kept confidential, as the Supplement requires applicants to publish the FIP for public comment.

Supervision of newly-chartered fintech banks will be nuanced. The Supplement notes that certain federal banking laws would not normally cover Fintech Charter applicants because those laws only apply to banks with deposit insurance. However, the OCC would seek to make portions of these laws applicable to fintech banks by imposing special conditions on Fintech Charter applicants. Specifically, it would "work with a fintech company to achieve the goals" of otherwise-inapplicable statutes or regulations by either imposing special conditions in the preliminary approval letter or requiring the applicant to sign an operating agreement before obtaining a charter.

The OCC proposes to impose other special conditions prior to charter approval, such as modified assessments and fees that account for the scope and activities of the proposed bank. All conditional approvals will be published by the OCC and will disclose the existence of an operating agreement. The Supplement's proposed ad hoc approach ensures that applicants must individually negotiate during the application process for regulatory and supervisory provisions that would affect their business in the long haul.

Newly chartered fintech banks should note that the OCC will subject them to more frequent and intensive supervision in their early years.

Last year, the OCC showed its desire to become a major player in fintech. This year, it may live up to its wish as it places the finishing touches on the application process for a Fintech Charter.

Read the Supplement and for more information, please contact the lawyers listed here. Comments must be submitted to **specialpurposecharter@occ.treas.gov** by April 14.