

Memorandum

FinTech Update: OCC Financial Inclusion Rules Present Uncertainties for Applicants

April 7, 2017

In late December, the Office of the Comptroller of the Currency (“OCC”) announced that it would begin granting limited-purpose national bank charters to financial technology, or “fintech,” companies that offer bank products and services. In March, the OCC issued draft licensing procedures on the chartering process for fintech companies. These procedures outline a set of supervisory criteria specific to fintech companies that the OCC will use when evaluating applications for fintech charters, including a requirement that a fintech applicant demonstrate its commitment to “financial inclusion” if it intends to engage in lending or providing financial services to consumers or small businesses.

To demonstrate its commitment to financial inclusion, a fintech applicant must include a “financial inclusion plan” in its fintech charter application. According to the draft licensing procedures, the financial inclusion plan will provide detail on “proposed goals, approaches, activities, and milestones for serving the relevant market and community.” Among other things, the financial inclusion plan should describe the products or services that the applicant will offer, including any products or services that will foster financial inclusion, whether defined by income, geography, or other criteria such as unserved or underserved populations. The OCC will review the adequacy of an applicant’s financial inclusion plan based on whether it would support “fair access to financial services and fair treatment of customers.”

The OCC has acknowledged that fintech companies that do not accept deposits would not be subject to the Community Reinvestment Act (“CRA”), since the CRA applies only to insured depository institutions. However, the OCC’s draft licensing procedures fall short of explaining the extent to which the fintech “financial inclusion” requirements would resemble the requirements under the CRA, and how such requirements would be satisfied by fintech applicants.

Additionally, the fintech charter’s “financial inclusion” requirements may, in effect, subject fintech applicants to greater enforcement risk than depository institutions are subject to under the CRA. While the failure of a depository institution subject to the CRA to adequately serve the needs of its communities would typically result only in a downgraded CRA performance rating for the institution, a similar failure by a chartered fintech company subject to the “financial inclusion” requirements could result in a formal enforcement action.¹

Because of these uncertainties, we expect these financial inclusion rules will be an area of significant discussion with OCC staff during the application process.

Ordinarily, the OCC does not solicit comments on procedural manuals and supplements, but it has announced that it will accept comments on these fintech licensing procedures through April 14. This comment period may be an appropriate forum for industry participants to voice concerns to the OCC regarding these “financial inclusion” requirements.

¹ In its draft licensing procedures, the OCC noted that it would require a fintech applicant to implement its financial inclusion plan as an “enforceable condition” to the OCC’s approval of the fintech charter application. Any such condition to implement a financial inclusion plan, along with any other conditions imposed by the OCC in connection with the approval of a fintech charter, would be considered “conditions imposed in writing” and enforceable under the OCC’s statutory enforcement authority. *See* 12 U.S.C. § 1818.

For more information on the OCC's new fintech charter, please contact any member of the Firm's Financial Institutions Group.

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