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THE OCC “FINTECH CHARTER”

A fintech company considering applying for a national bank charter must thoroughly understand what the OCC has proposed for such charters. The authors lay out this subject by describing (1) what is available; (2) the potential benefits; (3) what is required; and (4) whether it is worthwhile. They conclude that, given the rigorous requirements, the significant benefits of a charter would be worthwhile only for well-established and stable fintechs with deep financial and human resources.

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The necessary first step for any fintech company considering the possibility of applying for a national bank charter is to acquire a complete and accurate understanding of what the U.S. Office of the Comptroller of the Currency (“OCC”) has proposed. This article is intended to facilitate that knowledge by addressing four basic questions: (1) what is available? (2) what are the potential benefits? (3) what is required? and (4) is it worthwhile?

1. WHAT IS AVAILABLE?

In its recently-issued draft Supplement to its Licensing Manual (the “Supplement”),¹ the OCC dispels the persistent misconception that it is attempting to create a “national fintech charter.” Rather, as described in the Supplement, a nationally chartered fintech would

engage in new and innovative activities within the well-established parameters of a national bank charter. This view is reflected in the Supplement’s stated purpose, which is to “explain[n] how the OCC will apply the licensing standards and requirements in its *existing* regulations and policies to fintech companies applying for an SPNB [special purpose national bank] charter.”² The Supplement elaborates that differences in the respective business models of national banks “do not signify a difference in the character of the national bank charter.”³ In every instance, regardless of its particular business plan, “an applicant that receives OCC approval for a charter becomes a national bank subject to the laws, regulations, and federal supervision that apply to all national banks.”⁴

Because the OCC interprets and enforces but cannot *make* laws, its ability to adapt existing requirements to

¹ OCC *Comptroller’s Licensing Manual, Draft Supplement, Evaluating Charter Applications From Financial Technology Companies*; <https://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf>.

² *Supplement*, p. 2 (emphasis added).

³ *Id.*

⁴ *Id.*

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