

**SCHWARTZ & BALLEN LLP**

1990 M STREET, N.W. • SUITE 500  
WASHINGTON, DC 20036-3465

WWW.SCHWARTZANDBALLEN.COM

TELEPHONE  
(202) 776-0700

FACSIMILE  
(202) 776-0720

**MEMORANDUM**

December 6, 2016

To Our Clients and Friends

Re: Comptroller of the Currency Requests Comment on Fintech Charters

The Comptroller of the Currency (“OCC”) is requesting public comment on whether to grant special purpose national bank charters to fintech companies and the standards and conditions that should apply. The charter would be available to fintech companies that engage in fiduciary or banking activities such as receiving deposits, paying checks or making loans. Comments are due by January 15, 2017.

A special purpose national bank charter would allow fintech companies to have a single national standard for their operations, permitting them to operate nationwide. Fintech companies seeking a charter will be expected to comply with capital, Bank Secrecy Act, other anti-money laundering and federal consumer protection requirements as well as other laws applicable to national banks, such as the Fair Credit Reporting and Equal Credit Opportunity Acts. Although the special purpose banks would be subject to state laws aimed at unfair and deceptive acts and practices, state licensing laws would not apply. Moreover, although not mentioned in the OCC’s release, it is likely that special purpose national banks would be able to export interest rates of the states in which they are located.

The OCC will expect a fintech company to satisfy the following requirements before it issues a national bank charter:

- **Well-developed business plan.** A company must clearly articulate why it is seeking a national bank charter and provide considerable detail about the proposed bank’s activities.
- **Governance structure.** A company must have the expertise, financial acumen, and risk management framework to promote safety and soundness.
- **Capital.** Key qualitative elements that influence the determination of capital adequacy include the scope and nature of the bank’s proposed activities, quality of management, funds management, ownership, operating procedures and

## SCHWARTZ & BALLEN LLP

controls, asset quality, earnings and their retention, risk diversification, and strategic planning.

- **Liquidity.** Key elements include projected funding sources, needs, and costs; net cash flow and liquid asset positions; projected borrowing capacity; highly liquid asset and collateral positions; requirements for unfunded commitments; and adequacy of contingency funding plans.
- **Compliance risk management.** A company must demonstrate a top-down, enterprise-wide commitment to understanding and adhering to applicable laws and regulations and to operating consistently with OCC supervisory guidance.
- **Financial inclusion.** Special purpose national banks will be required to provide fair access to financial services and fair treatment of customers. The OCC also expects the bank's business plan to explain its commitment to financial inclusion and meeting community needs. Moreover, if the bank is federally insured, it will be required to comply with the Community Reinvestment Act.
- **Recovery and exit strategies; resolution plan and authority.** The business plan must specify alternative business and recovery strategies to address various best-case and worst-case economic scenarios.

Special purpose national banks would be required to become members of the Federal Reserve. While not expressly discussed, special purpose banks may also be entitled to direct access to the Federal Reserve's payment system.

If a special purpose national bank plans to accept deposits, it will be required to apply to the Federal Deposit Insurance Corporation ("FDIC") to obtain deposit insurance. The OCC's proposal notes that if the special purpose national bank is FDIC insured, or both accepts transaction accounts and makes commercial loans, it is a bank under the Bank Holding Company Act. Accordingly, the bank's parent company will be required to apply to the Federal Reserve for approval to control the bank.

The OCC's proposal can be found on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Magda Gathani at (202) 776-0700.