



Partner Catherine Brennan comments for Law360 on OCC fintech charter interest

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On May 15, *Law360* reported that New York Department of Financial Services' (DFS) challenge to the national fintech charter offered by the Office of the Comptroller of the Currency (OCC) could likely deter potential applicants. Partner Catherine Brennan agreed, noting that "anyone who goes first" will be opening themselves up to a lawsuit.

"They want a little bit more certainty," Catherine said. "If there's no value added from pursuing a national bank charter, I think people will just continue what they're doing and deal with the devil that they know rather than the devil that they don't."

Law360 reported that a central contention in the case is the interpretation of the OCC's chartering authority under the National Bank Act, which permits the agency to charter firms that engage in the "business of banking." DFS had argued that the OCC is "impermissibly redefining the 'business of banking'" to exclude deposit-taking as a required minimum function. Catherine expects the OCC to prevail in this "political or turf battle" with New York, but would not expect "a substantive ruling on a motion for summary judgement" until 2020.

Catherine Brennan assists national and state banks, investment banks, consumer and commercial finance companies, mortgage bankers, installment lenders and other licensed lenders in the development and maintenance of nationwide consumer and commercial lending programs. She engages in credit due diligence on behalf of investors in fintech firms, bank partnership platforms, small business lenders, merchant cash advance companies, consumer finance companies, title loan companies and payday lenders.

Subscribers to *Law360* may [click here](#) to read the article. For more information on the NY DFS battle with the OCC, [click here](#) to read yesterday's *American Banker* story.

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