

Partner Catherine Brennan comments for Law360 on Second Circuit's fintech charter ruling

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On June 3, a Second Circuit panel ruled at the New York Department of Financial Services (DFS) lacked standing in its lawsuit challenging the Office of the Comptroller of the Currency's (OCC) federal fintech bank charter. According to *Law360*, while the ruling is technically a loss for DFS, it does not lift the cloud of legal uncertainty surrounding the fintech charter program. At the same time, the ruling may help preserve the OCC's flexibility as its new leadership revisits the chartering framework.

Hudson Cook Partner Catherine Brennan told *Law360* that the ruling raises questions about whether DFS and other state regulators will ever be able to clear basic procedural hurdles to bring their claims, potentially undermining their ability to bottle up the OCC's chartering ambitions. "The DFS position seems to assume they have a right to capture the market on regulating how fintechs go about their business, and I don't think that's supportable by law. I don't actually think that they will be able to allege an injury-in-fact unless you think that state government has the sole right to create a regulatory scheme for business," she said.

Catherine added, "I think ultimately there will be an affirmation of the fintech chartering authority, simply because it makes sense to be able to have a robust federal regulator overseeing these activities, particularly with lending." However, she noted that the fintech industry can't wait around for the OCC to make up its mind, nor can the industry afford to hang its hopes on the courts upholding the agency's chartering authority.

Catherine chairs the firm's Fintech practice. 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. Catherine also 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 currently serves as Vice Chair of the ABA's Business Law Section's Consumer Financial Services Committee.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

www.hudsoncook.com

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