

Second Circuit issues ruling on OCC's national fintech charter

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On June 4, 2021, the U.S. Court of Appeals for the Second Circuit ruled that the Office of the Comptroller of the Currency (OCC) can issue federal bank charters to fintech companies that do not accept deposits. This ruling reverses a 2019 district court ruling in favor of the U.S. District Court for the Southern District of New York, remanding the case to the district court with instructions to enter a judgement of dismissal without prejudice.

According to *Bloomberg Law*, the litigation is part of an ongoing battle between state regulators and the OCC over who should regulate financial technology firms that don't take deposits or operate as traditional banks. Hudson Cook Partner Catherine Brennan told *Bloomberg* that fintechs had been slow to warm to the OCC's special purpose charter while the litigation was ongoing, and the absence of clarity on the agency's authority in the decision means companies are unlikely to seek one in the near future. "I don't know a single company that has high on their list pursuing a fintech charter at this time, because no one wants to be the target" of state regulators, she said.

New York Superintendent of Financial Services Linda Lacewell said her agency will continue to challenge the OCC's fintech charter program. Several other state regulators are challenging the OCC's fintech charter through litigation by the Conference of State Banking Supervisors.

Catherine Brennan 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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