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OCC Weighing Next Steps in NYDFS Lawsuit Challenging Fintech Charter

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As we reported, a dark cloud is now hanging over the OCC's decision to accept applications for special purpose national bank (SPNB) charters from fintech companies [as a result of the opinion issued on May 2](#) by a New York federal district court in the lawsuit filed by the New York Department of Financial Services (NYDFS) seeking to block the OCC's issuance of the charters. In denying the OCC's motion to dismiss, the court concluded not only that the NYDFS had established standing to sue and that its claims were ripe for decision, but also that the NYDFS had stated a claim under the Administrative Procedure Act. In doing so, the court found that the term "business of banking" as used in the National Bank Act "unambiguously requires receiving deposits as an aspect of the business."

For the reasons we discussed in our blog post, we commented that the court's conclusion struck us as incorrect and outcome-oriented. We also commented that in light of the importance of the issue and because the decision casts doubt on SPNB chartering, we would welcome a Second Circuit decision at the earliest opportunity and described two options available to the OCC: seeking an interlocutory appeal (which would require consent of both the district court and the Second Circuit) or agreeing to entry of judgment on the pleadings in favor of the NYDFS (which might make it difficult for the OCC to contest some of the NYDFS' allegations as to the consequences of SPNB chartering).

Yesterday, the OCC [submitted a letter](#) to the district court in which it requested a two-week extension to answer the NYDFS's complaint and stated that that NYDFS has consented to the request. To explaining the reason for its request, the OCC stated:

"OCC believes the Court's order likely renders the matter ripe for entry of a final judgment. We therefore request additional time to complete our internal deliberations on this issue and confer with plaintiff's counsel."

The court has entered an order extending the date by which the OCC must answer or otherwise move with respect to the complaint until May 30, 2019.

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