

Alert

CSBS' Challenge to OCC's Fintech Charter Is Dismissed

September 6, 2019

On Sept. 3, 2019, the U.S. District Court for the District of Columbia, for the second time, dismissed a lawsuit brought by the Conference of State Bank Supervisors ("CSBS") that sought to block the Office of the Comptroller of the Currency's ("OCC") special purpose national charter for financial technology firms (better known as the "fintech charter"), but the charter's long-term survival remains uncertain due to an identical, but separate, lawsuit filed by the New York Department of Financial Services ("NYDFS").

In dismissing the action, Judge Dabney L. Friedrich reasoned that the CSBS lacked standing because the OCC has not yet received a fintech charter application (which we note is partially due to the uncertainty caused by the lawsuits brought against the OCC), similar to the reasoning she used when she dismissed the CSBS' lawsuit against the OCC in May 2018. The court also noted that no event concerning the fintech charter since the prior case's dismissal, including the OCC's decision to begin accepting applications for fintech charters and its finalization of its fintech charter policy on July 31, 2018, cured the original jurisdictional deficiency.¹ As Judge Friedrich explained in her opinion, "[n]ot much has happened since [the original CSBS lawsuit] that affects the jurisdiction analysis."²

Though the CSBS' lawsuit was dismissed, there is still active litigation concerning the fintech charter in the U.S. District Court for the Southern District of New York, where the NYDFS brought a lawsuit against the OCC seeking to block the charter. On May 2, 2019, Judge Victor Marrero ruled against the OCC's motion for dismissal and ruled that the NYDFS' claims against the OCC and its fintech charter are ripe for adjudication.³ In her opinion concerning the CSBS' lawsuit, Judge Friedrich noted her disagreement with Judge Marrero's decision.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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¹ See *Conference of State Bank Supervisors v. Office of the Comptroller of the Currency*, Dist. Ct. D.C., 18-cv-2449DLF (Sept. 3, 2019), available [here](#).

² *Id.*

³ See *Maria T. Vullo v. Office of the Comptroller of the Currency*, S.D.N.Y., 18-cv-08377VM (May 2, 2019), available [here](#).

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