

Alert

OCC's Brooks Indicates National Payments Charter to Be Offered Later This Year

June 29, 2020

In the June 24, 2020 episode of the *American Bankers Association's Banking Journal Podcast*, Brian Brooks, Acting Comptroller of the Office of the Comptroller of the Currency ("OCC"), provided a high-level preview of what is being referred to as the OCC's "Payments Charter," after floating the idea in various interviews over the past several weeks. Mr. Brooks noted that "Version 1.0" of the Payments Charter — which would be "a national version of a state money transmission license," — could be unveiled as early as this fall, and "Version 2.0" of the Payments Charter — which would involve chartered companies having direct access to the Federal Reserve System ("Fed") — could be rolled out approximately 18 months later.

During the interview, Mr. Brooks offered his view that payments companies offering services on a global basis should have access to a single national licensing and regulatory authority, like the OCC, and explained that the advantage of obtaining a Payments Charter Version 1.0 would be to have "a national platform with preemption, plus the prestige of having the supervision of the OCC which gives customers a lot of confidence in [the company's] platform." The Payments Charter would presumably be offered as a new type of special purpose national bank ("SPNB") charter, and would be expected to gain interest from state-licensed money transmitters as well as payment processors and financial technology ("fintech") companies that do not take deposits.

With respect to Version 2.0 of the Payments Charter, which would involve direct access to the Fed, Mr. Brooks believes the Federal Reserve Board, after observing the OCC's supervision and regulation of the Payments Charter for a length of time, will become increasingly comfortable with the idea of such companies having access to the Fed. He emphasized, however, that even without access to the Fed (as is currently the case with most payments companies), companies with a Payments Charter will obtain valuable benefits for the reasons discussed above.

Mr. Brooks also touched on some issues that the OCC is currently considering, including supervision, safety and soundness and financial inclusion requirements. As an example, he explained that his office is in the process of deliberating how to impose capital standards on payments companies that do not generally bear any credit risk, though they do have momentary exposure to payments flows as they cross their platform. It is possible the OCC will look to state money transmitter laws and regulations — which are primarily safety and soundness measures — for guidance. With respect to financial inclusion requirements, though companies that would obtain Payments Charters would generally not be involved in deposit-taking activity (and, as a result, would generally not be subject to Community Reinvestment Act requirements), Mr. Brooks noted that "these charters will have some kind of financial inclusion expectation," particularly if and when they are granted direct access to the Fed.

The Payments Charter would be a different SPNB charter than the OCC's previously proposed (and embattled) SPNB charter for fintechs, better known as the "fintech charter," which contemplated the ability to lend money in addition to engage in payments activities. The fintech charter has been subject to litigation from state regulatory authorities and, since late 2019, the OCC has been blocked from granting fintech charters as a result of a judgment in favor of the New York Department of Financial Services against the OCC, which is currently under appeal in the Second Circuit. While we expect resistance and challenges from states in connection with the OCC's offering of the Payments Charter, we note that the consumer protection principles in the payments space are not as broad and varied as in the lending space (e.g., usury limits, related fees, etc.), which may devalue certain of the states' consumer protection policy-based arguments.

Money transmitters have been licensed and supervised at the state level for a long time, and such supervision and regulation has been evolving. The state banking regulators are currently coordinating on a revised, state-based regulatory regime to address similar concerns the OCC is attempting to address. The success of the OCC's Payments Charter proposal may depend on the scope of the proposal and the extent to which the OCC obtains buy-in from the industry. We would expect the industry to be interested in the relative powers and regulatory burden of the OCC's Payment Charter relative to state money transmitter licenses, and we would expect the states to be concerned about consumer protection issues such as disclosures and protection of consumer funds. Mr. Brooks' recent round of interviews should elicit reaction from such interested parties and stakeholders.

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