

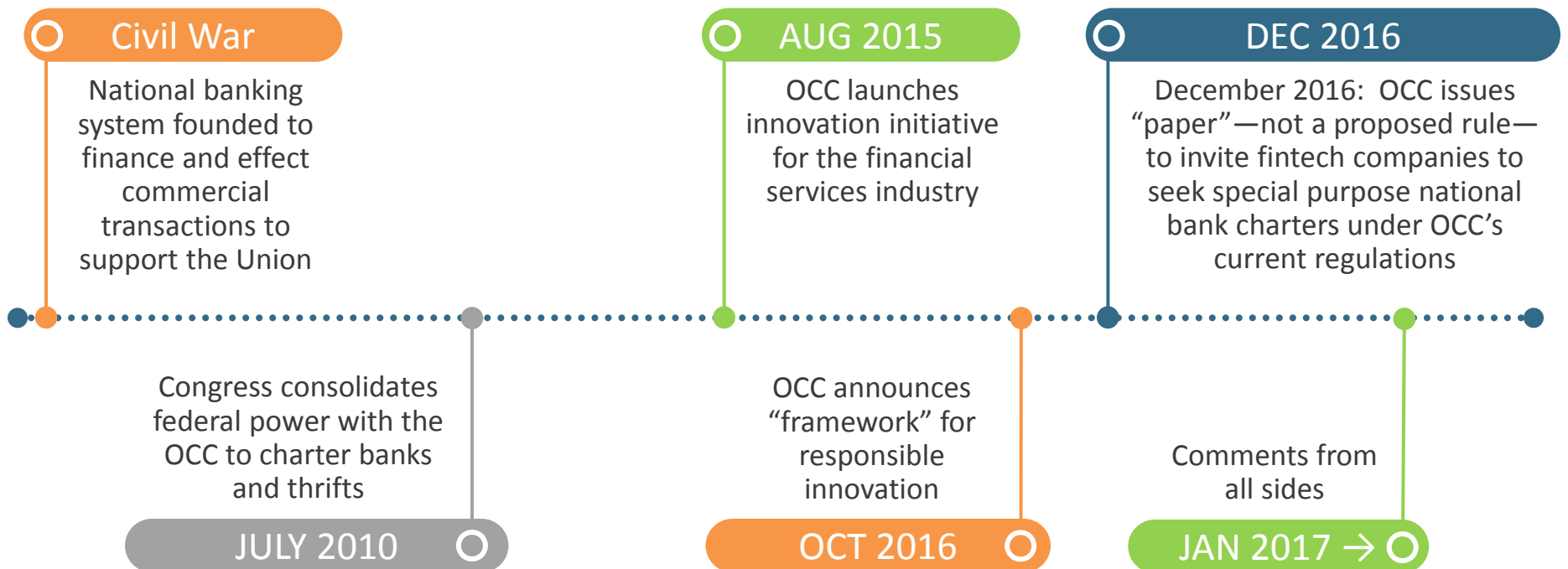
The OCC FinTech Charter: A New Model For Tech-Enabled Financial Services?

New York City

February 21, 2017



Introduction: Context and Procedure



OCC's Stated Objectives

Applying bank regulatory framework—

Fintech companies operate in a safe and sound manner, to serve customers “just as banks do that operate under full-service charters”

Make fintech companies subject to the OCC's “uniform supervision,” for consistency in the application of law and regulation

Make the federal banking system stronger

What Is a Bank?

“Banks, by definition, are institutions that take deposits and make loans.”

– *Patrick T. Harker, President and CEO
Federal Reserve Bank of Philadelphia*

- Maturity Transformation: Short-term liabilities enable long-term assets
- Effect Payments: Notes in circulation enable commercial transactions
- Bank, Thrift, or Credit Union May Be Authorized Under State or Federal Law
 - Store of Value: When Authorized to Engage in Banking, Extending Credit Actually Generates Money Stored in a Deposit Account



What Is a Special Purpose National Bank?

- OCC's regulations currently provide framework for—
 - Full-Service National Bank: Wide Range of Permissible Activities
 - Credit Card Bank: Limited to Credit Card Business
 - Trust Bank: Limited to Activities of a Trust Company
 - Special Purpose Bank: At Least One of the Core Banking Functions
- In all cases, bank's activities subject to supervision and examination—and may be restricted—by the OCC:
 - “The OCC would consider on a case-by-case basis the permissibility of a new activity that a company seeking a special purpose charter wishes to conduct.”



Fintech as a Bank? Why Not Just Stick to Tech?

- Organized under the National Bank Act: “State law applies to a special purpose national bank in the same way and to the same extent as it applies to a full-service national bank.”
 - Preemption of Licensing Requirements: State laws requiring licensure for a fintech company to engage in a covered activity—*e.g.*, lending money or money transmission—preempted by the NBA
 - OCC Is Exclusive Supervisor: “Limits on state visitorial authority also apply in the same way.”
 - State Attorneys General and Regulators Still Hold Enforcement Powers



Fintech as a Bank? Why Not Just Stick to Tech?

- Federal Reserve Act: “With rare exceptions, . . . national banks are required to be members of the Federal Reserve System.”
 - Bank Services: Even though a Reserve Bank may have discretion to impose terms and conditions, fintech company may be entitled to obtain services from the Reserve Bank, including direct access to account and payment services



Core Banking Functions



Receiving Deposits



Paying Checks



Lending Money

- Special purpose national bank needs to engage solely in one core function
- Once the special purpose national bank is established, the bank may engage in other permissible banking activities, subject to the OCC's oversight

Core Functions: OCC's Stated Examples



Paying Checks

- “[I]ssuing debit cards or engaging in other means of facilitating payments electronically are the modern equivalent of paying checks.”



Lending Money

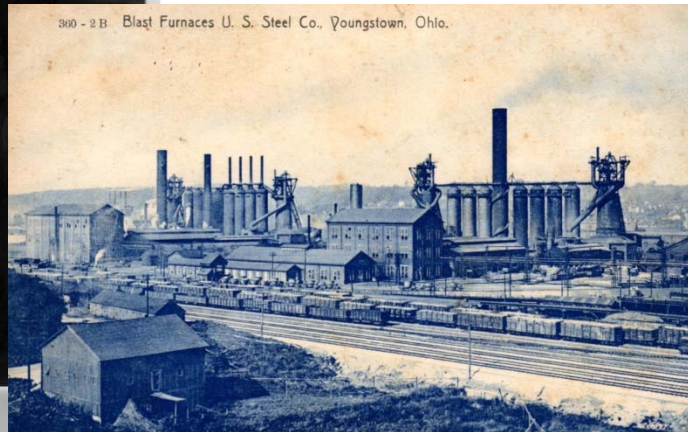
- “[D]iscounting notes, purchasing bank-permissible debt securities, engaging in lease-financing transactions, and making loans are forms of lending money.”



Receiving Deposits

- [...]

Historic Separation of Banking from Commerce



- National Bank Act: Engaging in the “business of banking” limits lines of business to “bank-permissible” activities
- Bank Holding Company Act: Prohibits control or ownership of a “bank” by any company, unless the company is a bank holding company, regulated and supervised by the Federal Reserve Board

- Uninsured Special Purpose National Bank Conceivably Could Be Controlled by a Commercial Company

Challenges



- OCC:
 - In addition to imposing “standard requirements” on a fintech-company applicant, the OCC “likely would impose” conditions “based on the fintech company’s business model and risk profile”
 - Need for standards that consistently can be applied to different types of fintech companies

Challenges

- Fintech Companies:
 - Navigating the application process



Fintech Companies: Key Elements for Application

Well-Developed Business Plan

“[B]usiness plan should be comprehensive, reflecting in-depth planning by the organizers, Board of Directors, and management”

Experienced Management

The OCC expects—

- Expertise
- Financial acumen
- Risk management framework for safety-and-soundness oversight
- Active oversight by Board of Directors

Fintech Companies: Key Elements for Application

Capital

OCC will “consider” adapting capital requirements to reflect fintech company’s specific risks, but applicant is “expected to propose a minimum level of capital that the proposed bank would meet or exceed at all times”

Liquidity

Special purpose national bank must maintain minimum and ongoing liquidity “commensurate with the risk and complexity of the proposed activities”

Fintech Companies: Key Elements for Application

Compliance Risk Management

Any applicant is expected to “demonstrate a culture of compliance that includes a top-down, enterprise-wide commitment” to compliance with OCC supervisory guidance

Financial Inclusion

Apart from the Community Reinvestment Act, OCC “encourages” a national bank “to provide fair access to financial services by helping to meet the credit needs of its entire community”