

***The Consumer Finance Podcast*** – Taking It to the Bank: Why Fintechs Are Racing for Bank Charters

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**Guests:** Mark Furletti, James Stevens, and Taylor Gess

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**Chris Willis (00:05):**

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And today we're going to be diving into one of the hottest trends in fintech right now, and that's the pursuit of bank charters. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And of course, give our other podcasts a listen: The [FCRA Focus](#), [The Crypto Exchange](#), [Payments Pros](#), and [Moving the Metal](#). Those are all available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and tell us how we're doing. Now, as I said, we've noticed, and probably all of you as listeners have noticed, that there's been a surge of interest in non-bank consumer lenders and consumer payments-oriented companies pursuing bank charters as a result of the friendlier attitude espoused by the new administration. And today we're going to dive into that phenomenon, what's happening, why it's happening, and what advantages it has for people who do obtain a bank charter. And joining me to talk about that are three of my colleagues, James Stevens, Mark Furletti, and Taylor Gess. James, Mark, Taylor, thanks a lot for being on the podcast to discuss this with us today.

**James Stevens (01:23):**

Thank you.

**Chris Willis (01:24):**

So James, I want to turn to you first because chartering is really one of your areas of specialty. You do lots of bank chartering work and have for many years. And so this is something that I'm sure is very close to your practice. So the news has been filled with what I can only perceive as a spike in de novo bank applications filed by fintech companies. What's driving this flood of bank applications?

**James Stevens (01:49):**

Well, thanks for asking that, Chris. And you're right, the number of people seeking these charters has gone up dramatically in the past year. And the only thing that we can really point to is just a much better regulatory environment. There has always been some level of interest in bank charters, but there has been an overarching kind of cloud for the past, say decade, that regulators are somehow not in favor of those charters or not looking to approve them, or that the regulatory process has gotten harder or longer. Probably beyond the scope of this podcast, I'm

not really sure that all of that is correct, a lot of it is perception. But the reality is that the regulators today are very actively encouraging people to file bank charters, and people are filing them at a very high level compared to the past five to ten years.

**Chris Willis (02:43):**

James, you mentioned that a lot of the interest in these bank charters has been from fintech operators and people who want to run crypto and digital assets businesses. But the demand isn't limited to that, is it?

**James Stevens (02:55):**

No, it's not. I mean, certainly the fintech people are interested in it because a lot of them are having to partner with banks, and that is the situation no matter what their business is, whether that's creating loans, originating deposits, or facilitating payments. For all of those activities, it requires a bank partnership unless they can get a bank and do it directly. So that's certainly driving their interest. But yeah, we also see it from the crypto organizations. They're looking at it as a way to get access to payment card networks. A lot of banks are looking at getting into crypto. Well, crypto companies are, a lot of them are looking at getting into full-service banking and/or different aspects of banking. But there is also just a spike in demand from the traditional bankers, the people that want to start a bank to collect deposits around a demographic or around a community and that they want to loan that out, and they see a business plan there, maybe a need in their community or in their market. And so those people are also seeking charters at a very high level. Right.

**Chris Willis (03:56):**

So James, I've noticed in reading about this and hearing about it from clients that a lot of the de novo chartering activity is directed towards what's called national trust banks. And for my benefit and that of our listeners, do you mind explaining what's the difference between a national trust bank and a full-fledged national or state-chartered bank?

**James Stevens (04:15):**

Well, you're right, Chris. There has been, well, there's really been a spike in all types of charters. And so let me just touch on that before I get to your question. So we have certainly seen some very high-profile applicants for a full-service national bank charter, full-service state bank charter. And we've also seen an uptick in people seeking limited-purpose charters like the Utah Industrial Bank and some of the more novel ones that you're seeing at the state level, including the Georgia Merchant Acquiring Limited Purpose Bank charter, which we have here in Georgia where I'm located. But one of the biggest areas where we've seen growth that really was nonexistent until just last year is the national trust bank. And so a national trust bank is a national bank formed by the OCC, but it has limited powers that are related to fiduciary activities and activities related to those fiduciary activities. The important thing to know about national trust banks is that while it is possible to have a national trust bank that has insured deposits, that if you are a national bank with insured deposits, you're looked at much differently and you're regulated much more intensely than if you're a national trust bank without insured deposits.

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**James Stevens (05:26):**

And so, many of the applications that we're seeing are national trust banks that are seeking to be formed and not have insured deposits. So, the question is, well, why are they doing that? And the demand in that area is really driven by people in the crypto digital asset space. And they're looking at that charter for two reasons. One is, as an uninsured national bank, they can file for a Fed master account with the Federal Reserve. And very interesting news just came out today that a Tier 3 applicant for a master account was approved just yesterday. And so that's what these national trust banks are trying to do is to get access to the Federal Reserve payment networks by getting a master account. So that would give you access to ACH and wire.

**James Stevens (06:12):**

If you're running a digital assets business, that's how people give you fiat currency that you turn into the digital asset. And that's how you give people fiat currency back if they were to sell or get rid of that digital asset. The second reason that people or these digital asset firms are filing for this particular charter is that in the Genius Act that came out last year that created a framework for payment stablecoins, the Congress said that a issuer of payment stablecoins could include an uninsured national bank. And that's exactly what a national trust bank is if it doesn't have FDIC insured deposits. So while it's a little early, since we haven't seen the final rules go into place about exactly what that's going to look like and what a payment stablecoin issuer is going to have to do, those digital asset firms are positioning themselves so that when those rules become clear, they can use that charter to become a payment stablecoin issuer.

**Chris Willis (07:14):**

Thanks, James. And you mentioned industrial banks, and I'd like to dive in with you a little bit more on that. It seems like it's been popular for many years for consumer lenders to want to have industrial banks. And there's a wave of applications to form new industrial banks in the consumer lending space now, too. What exactly is an industrial bank and why is it so popular for consumer lenders?

**James Stevens (07:35):**

Sure. The biggest observation I would say about industrial banks is they look very, very similar to a regular state FDIC insured bank. They are a state FDIC insured bank, and they're only in several states. Most industrial banks are chartered in either Utah or Nevada. And the reason that people want to get this charter type, as opposed to a national bank charter or a regular full-service state bank charter, is that it has almost identical powers as a state bank charter, except that because of an exception in the law, the parent company of an industrial bank will not be regulated as a bank holding company under the Bank Holding Company Act. And so you see it a lot in the consumer lending space. We've seen multiple automobile companies in the past couple of years.

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**James Stevens (08:27):**

If you're trying to develop a financing arm of your existing business, selling cars or whatever else that you're doing outside of the financial activity that you're doing as an ancillary matter, you can establish one of these charters, eliminate having a bank partner that you're either partnering with or referring business to, and you can issue your own loans, you can join the payment networks, you can issue credit cards, you can do all the things that a regular state bank could do. But because you're organizing as an industrial bank, your parent company is not subject to bank holding company supervision and regulation. That is kind of a unicorn charter, and they're very few and far between. There was one approved last week. Edward Jones, which is a broker-dealer, got a charter just last week. But they are very few and far between and they are extremely valuable because of that sort of unicorn status they have.

**Chris Willis (09:16):**

Got it. Now as an aside, leaving chartering aside, you'd mentioned the relaxation in the regulatory environment, which is evident to everybody who's hearing your voice right now. Has that same relaxation in the regulatory environment driven an increase in banking as a service and other bank fintech partnerships? It seems like it would.

**James Stevens (09:36):**

Absolutely, yeah. And I think that world is a little bit different in the sense that the environment for bank fintech partnerships has been thawing for longer than the current administration has been in office. I think that we all observed between 2022 and 2024 a massive sort of crackdown, regulation by enforcement action, with respect to many banks that were involved in the banking as a service space. But what we started to see a couple of years ago is that a lot of the bad programs from a regulatory standpoint or the bad operators, the bad banks, whatever it is. The people that were out there pushing the envelope and maybe not doing things as the regulators would have liked to have been done, were identified and a lot of those programs were wound down or the banks that were offering them were put under enforcement actions, be it a public written agreement or consent order, or many more received informal MOUs or adopted board resolutions and things like that, to take remedial action with respect to banking as a service. And that really started to change in 2024. Kind of the last big enforcement action in the space was that summer with Evolve Bank.

**James Stevens (10:46):**

And we've only seen a handful of enforcement actions around banking as a service since then. So I think that there's just a lot fewer banks that were subject to potential criticism in that area. I think a second driving factor is that the regulators have gotten up to speed on that. I think that everything came at us very, very quick in the 2020, 2021 timeframe. Regulators were sort of scrambling to understand how these programs worked and what they needed to be looking at, what the risks were. And I feel like the regulators have gotten a lot more comfortable with it and they recognize that at some level, this is going to be part of the future of banking, and so they've gotten behind fear. So just like in the bank chartering world, regulators are saying, hey, we're open for business, we are in favor of innovation. We're not going to say categorically no to

things just because they're novel. And so you're seeing an uptick in those partnerships very similar to how you're seeing in the chartering space.

**Chris Willis (11:50):**

James, thanks a lot for that explanation about all the interest in bank chartering right now. And you know, one of the historic reasons that non-banks have been interested in bank charters and bank partnerships for that matter, is the ability to make loans at interest rates different than those that are allowed under state usury laws. And Mark and Taylor, let me turn to you now for a discussion about that. Mark, starting with you, if once a bank is chartered and it has its charter and it makes loans itself, what state laws generally would govern loans that are made by the bank?

**Mark Furletti (12:22):**

Sure. So Chris, this is a pretty complicated question and we've written long, long memos on this. So I think we're not going to get into great detail here, but at a high level, there's two kind of major factors. One is, what type of charter does the bank have? There could be a national bank charter, for example, there could be a state charter, there's whole preemption or federal savings banks. So this can vary based on the type of financial institution. But let's just stick with a bank generally, either the national charter or the state charter. If you have a national charter, then you have really good preemption under the National Bank Act. And that preemption would apply not just to laws that regulate interest that would be in other states, but it also applies to licensing under visitorial powers preemption and then also state laws that could materially burden the bank under the Barnett Bank standard. And so that preemption is really good and so it will allow a bank to effectively "export" its home state rates to other states. That preemption's really very strong and well recognized. On the state-chartered bank side, the preemption is under a different federal law, the Federal Deposit Insurance Act.

**Mark Furletti (13:35):**

That preemption, while it's good, is not as good. You don't get the licensing preemption generally, there's no visitorial powers preemption. You don't get the preemption of state laws that significantly interfere with the bank's power as you do under the National Bank Act. But you do get interest and interest-related fee preemption of state laws, which is favorable. A couple of caveats. One, states can actually opt out of this FDIA preemption, or at least states claim they can. And this is an issue that's being heavily litigated right now. But a state like Iowa or a territory like Puerto Rico have opted out and there's questions over exactly what that opt-out means. But generally speaking, there would be risk in a bank taking the position that it can export, some litigation and legal risk with a bank saying that it can export its home state rates into one of these opt-out jurisdictions to the extent that the law in the opt-out jurisdiction would otherwise apply and require a lower rate. So that is something to keep in mind. The second caveat, and it actually then relates to the other factor, which is where is the bank located?

**Mark Furletti (14:40):**

Because the only thing the bank can export is the law of its home state or possibly a branch state, which Taylor's going to talk about I think in a second. So this is why it's important to, if

folks are looking at banks, one of the first things they want to do I think is say, okay, we're about to either acquire or form a bank in whatever state it is. And you'd want to know, does that state authorize a bank to have, does it give really good usury authority to banks? As people know, historically, and this is reaching back into the '80s, Delaware and South Dakota were very good banks for credit card issuers, that a lot of card issuers are formed there. And that's because they can export very favorable interest rate and interest fee authority from those two states. And so basically, those are really favorable for credit cards. And so you'd want to look at, does the state law support good authority or is it bad authority, in which case all you can export is what you have from that authority. So at a high level then, it's basically the charter matters and the state in which you're either based or in which you have a branch matters. And so at a high level, that's how it works Chris.

**Chris Willis (15:58):**

So I've always, and I think most people in the industry understand the idea of exporting the interest rates of the bank's home state, like where it's located. But the branch angle is really a different wrinkle that I'd really like to hear more about. Taylor, do you mind talking to the audience about what's the effect of the branch, having a branch in a different state not where it's located or where its home base is? And what does that do to the analysis that Mark just gave us?

**Taylor Gess (16:21):**

Sure, Chris. So if a bank has a branch in another state, then the bank has the ability to export the law of the branch state in certain scenarios. And when we're seeking guidance on exporting branch state law, we generally look to FDIC General Counsel Opinion and some OCC interpretive letters. And those letters describe three non-ministerial functions related to the origination of credit. And the locations of those activities are relevant to the analysis of what state's law applies to the credit transaction. So first, we have the non-ministerial function of approval. And this is where the decision to extend credit occurs, for example, where a credit model is determined or where a person decisioning a loan is located.

**Taylor Gess (17:07):**

Second is disbursement, which is from where the loan proceeds will be disbursed. Then finally, we have the extension of credit, and that is where the first communication of the final credit extension to the borrower comes from. And so the general rule here is that a bank can export home state law as to a loan it originates unless the three non-ministerial functions of approval, disbursement, and extension of credit take place in a single branch state. If all three of those non-ministerial activities take place in the same branch state, then the branch state law applies rather than the home state law. If at least one non-ministerial activity happens in a branch state, then that branch state law can be exported if there's a clear nexus between the loan and the branch state based on an assessment of all the facts and circumstances of the credit transaction. And of course, this is all assuming that post Loper Bright deference is given to those FDIC and OCC interpretive letters.

**Mark Furletti (18:08):**

Got it. If I could just interject just for color. It so happens that one of the key letters, OCC interpretive letters here, is interpretive letter 822, and it was sent and obtained by our former partner, Jeremy Rosenblum, and someone with whom we still work. So anyway, just as an aside, Jeremy is, I'd say, one of the leading experts in the U.S. on this topic.

**Chris Willis (18:31):**

It's really cool that we have that background with this very important issue for our clients. Thanks a lot for talking about the sort of state law advantages of having a bank charter, which are very considerable. But I don't want to leave the audience with the impression that everything is all roses and sunshine with getting a bank charter. And James, let me go back to you for this. You spend a lot of time dealing with the federal banking regulators like the OCC and the FDIC, and we have a regulatory, sort of deregulatory period right now, but that's not necessarily going to last forever. And so I wonder if you could talk about sort of what non-banks should be prepared for if they achieve a bank charter during this period of time, looking further forward into the future?

**James Stevens (19:13):**

Sure, I think it's a good question. And I think that to me, the reality is probably not as stark as people may think. I do think that we are seeing a dramatic pullback in some of the federal regulation of consumer products. But where I sit, representing lots of banks and dealing with the prudential banking regulators on a daily basis, while they may be very receptive and very open to people coming into the regulatory perimeter, I don't know that the day-to-day is going to be much lighter than in normal times. I mean, those regulators have not been gutted, they are all there. If you have an exam, you're going to have 20 people inside your bank for three weeks, and that was how it was before, and that's how it is now. And so there are marginal and there are improved, not marginal, there are tangible improvements in the regulatory environment in the sense that I think the prudential regulators are trying to rationalize the way they come into banks, focusing on risk, de-emphasizing sort of the fuzzy things like reputational risk. And I think that those things could come and go depending on the political environment.

**James Stevens (20:23):**

And so you're right, it might be that right now there's a little bit less of a focus on, say, reputational risk that some kind of banking business might pose to a bank. And we could have that shift back in another administration where that becomes a focal point again. But I think that it's misguided for people to think that the environment is going to be easy now versus tough later. It's tough to be a bank. Day-to-day expectation, the obligation to respond to questions almost immediately. There are obligations, even the most basic things. Like sometimes I talk to people and they're shocked to know that there are laws that require that a bank board meet 10 times a year, for example. And when you have those meetings, you have to produce minutes, and regulators are going to actually read them, and they're going to ask you questions about it when they come in for an annual exam. And I think that when people think that being a regulated entity is just a massive, massive, massive change in being a non-regulated entity. It's not a license, it's a charter, and it's fundamentally different.

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**Chris Willis (21:28):**

Thanks a lot, James. And thanks to Taylor and Mark for being on today's episode as well. And of course, thanks to our audience for listening as well. As I said at the top of the show, don't forget to visit and subscribe to our blogs, [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.consumerfinancialserviceslawmonitor.com). And while you're at it, why not visit us on the web at [troutman.com](https://www.troutman.com) and add yourself to our Consumer Financial Services email list. That way, we can send you copies of the alerts and advisories that we produce from time to time, as well as invitations to our occasional industry-only webinars. And of course, stay tuned for a great new episode of this podcast hitting your podcast feed every Thursday afternoon. Thank you all for listening.

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