Fintech Regulation In The United States

Financial technology, or “FinTech,” refers to the use of technology to facilitate financial services. This industry has seen an explosive proliferation of high technology in the recent times and tech-centric companies are seeking to disrupt the ways of transaction processing in areas as far-ranging as investment and retail payments, and the very nature of money itself. However, many financial institutions and fintech companies are being discouraged from innovation and entrepreneurship by the time and cost of registering and complying with regulations.

Fintech is a broad term, encompassing cryptocurrencies, blockchain technologies, online lending, mobile banking and more. As the new technologies develop, market participants, lawmakers and regulators are grappling with how to update a legal framework for financial issues largely erected before there were computers. Lobbying disclosures for the first quarter of 2019 show a wide swath of industries and advocacy groups focusing on financial technology issues, including the Association of National Advertisers, Intuit, Mastercard, Alibaba, FreedomWorks, IBM, the Entertainment Software Association and U.S. Public Interest Research Group.

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In the U.S. regulation of financial transactions is mainly exercised at the federal or state level. Each of the 50 state governments, as well as the governments of the District of Columbia and various US territories, has equal authority to regulate markets within its jurisdiction, and no legal authority to regulate it beyond that jurisdiction. Several federal and state authorities that may regulate fintech products and services is substantial. Some regulators include:

- Federal Deposit Insurance Corporation (FDIC): Federally insured depository institutions Primary regulator of state banks that are not members of the Federal Reserve System and state-chartered thrift institutions
- Federal Reserve: Bank holding companies and certain subsidiaries (e.g., foreign subsidiaries), financial holding companies, securities holding companies, and savings and loan holding companies Primary regulator of state banks that are members of the Federal Reserve System, foreign banking organizations operating in the United States, Edge Corporations, and any firm or payment system designated as systemically significant by the FSOC
- Office of the Comptroller of the Currency (OCC): National banks, U.S. federal branches of foreign banks, and federally chartered thrift institutions
- National Credit Union Administration (NCUA): Federally chartered or federally insured credit unions
- Federal Housing Finance Agency (FHFA): Fannie Mae, Freddie Mac, and Federal

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Home Loan Banks
- Federal Financial Institutions Examination Council
- Financial Crimes Enforcement Network
- SEC: Securities exchanges, broker-dealers; clearing and settlement agencies; investment funds, including mutual funds; investment advisers, including hedge funds with assets over $150 million; and investment companies
- Consumer Financial Protection Bureau (CFPB): Nonbank mortgage-related firms, private student lenders, payday lenders, and larger “consumer financial entities” determined by the CFPB
- Commodity Futures Trading Commission .

State level, relevant regulators usually include:

- State banking departments;
- Consumer protection agencies;
- Secretaries of state; and
- State securities commissions.

A ruling by a federal judge in October, 2019 impacted Fintech’s access to traditional banking. The New York judge ruled that the office of the Comptroller of the Currency (OCC), the regulator issuing the charters, didn’t have the authority to create a special charter for non-bank fintech companies. The OCC first proposed the charted in 2015 as a possible avenue for fintech firms to access the nationwide financial system without having to be licensed in all 50 states. Technology start-up trying to become banks, with this ruling, will take a slower and more traditional route to become banks. The “Fintech Charter” looked to expedite the process by allowing a start-up to offer lending or payments products without having to accept FDIC insurance or complying with banking regulations state-by-state. This “Fintech Charter” would have increased competition by allowing new entrants to the financial system. This ruling was a win for state regulators, which want to block fintechs and were probably supported by larger banks. While OCC does not have the statutory authority to issue federal banking charters to nonbanks, only Congress can make such a decision, especially as the charter creates public policy implications that must be debated in Congress.

The Financial Services Innovation Act of 2016, which did not reach a vote and has not been reintroduced later, would have created a system to reduce regulatory barriers to new products. while regulators abroad have found ways to promote innovation through nationally coordinated strategies that prioritize protecting consumers, U.S has fragmented institutional frameworks that do not adequately establish the regulator priorities or address consumer needs across the financial system. This should change in United States. Fintech companies should actively lobby federal government to create laws that encourage innovation and competitiveness, thereby

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allowing the industry to grow and be competitive in the domestic as well as global markets.

In the domestic market, to comply with multiple states' laws can be an uphill battle, especially for startups and smaller companies that lack resources to achieve or maintain the required compliance. It may also lead companies to structure activities to alter their regulatory profiles that may or may not really be beneficial to the business as well as to the industry. Some non-bank lenders, for example, partner with banks to originate loans in order to avoid having to register with, and adhere to, the lending law requirements of every state. This arrangement is an artificiality has little competitive benefit beyond easing regulatory compliance.1 Exhibit 1 provides a share of regulatory issues for community banks working with fintechs and the cost of regulatory actions involving fintechs in 20172.

While there are advantages to multiple regulators, like Competition among regulators to come up with a better regulations, transparency and broader democratic engagement, it is the disadvantages that cripple the industry as a whole. Inconsistent philosophy or methods applied by each state, uncertainty and Control by the most restrictive regulator are main issues to be addressed technology companies and new entrants. Exhibit 2 provides a picture of overlapping regulatory burdens, specifically the significant players that impact the industry.

Who regulates an industry can be as important as what the regulation is or how it is put together? It will also change as innovation occurs, and will often depend on weighing competing values. Given the diversity and scope of FinTech's impact following recommendations should be considered by startups, technology firms and regulators to be competent and relevant in the growing landscape of global fintech.

- Technology firms should have successful coalitions and persuade or lobby the state legislators to understand that government regulation is not always necessary. If market competitors as global compliance standards can sufficiently police market participants, the government action may not be needed.
- Where government regulation is necessary, try to structure it in such a way that best industry of the industry is considered and interstate policies are passed instead of local only state policies.
- Self-regulatory organizations can quickly to respond to emerging issues in a market, but should be regulated to prevent them from becoming tools for incumbents for stifling innovation.
- Lobby legislators with information about how regulation is preventing entry to new competitors who could improve service for consumers. It is highly likely that some consumer-protection regulations are counterproductive, and that consumers would be better served by having more options instead.
- Take actions to lobby, federal legislators to indicate any current divisions of regulation

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between states and the national government, or between national law that impedes consumer protection and industry growth.

- Technology firms should take extra care to avoid being scrutinized by lawmakers. U.S lawmakers were troubled by Facebook's Libra due to a pattern of failing to keep consumer data private. Technology firms should be proactive and should have government relations organizations or multiple coalitions with other companies with in the industry and should actively maintain government relations to avoid situations like that of Facebook.
- Firms should know what is happening in Washington as well as in the industry. Asset managers need to be fully informed about fintech innovations and regulators' current thinking in order to make important decisions about systems and processes throughout the business model. This includes investigating the technological capabilities, security policies and governance of not only outsourced service providers but also the suppliers' suppliers, as any risks that affect these downstream providers can ultimately impact the firm.
- Communication between fintech firms and regulators can help these firms better understand how regulators view a developing technology and potential regulatory concerns upfront before turning into major issues. Communications also helps make regulators aware of new fintech innovations when developing new or interpreting existing regulations.

Regardless of the approach fintech companies take to regulated markets they can increase their potential for success by having solid risk management controls in place. While having an increased regulatory attention and controls that allow transparency in the best interest of consumers and clients of a firm might help these firms to be successful.

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