

Client Update

Regulatory Focus on Innovation Grows: The OCC and CFPB's Differing Approaches

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This is the fourth client update in our series examining the increased regulatory scrutiny on new and innovative financial technologies (“FinTech”).¹

This update considers the initiatives of two federal regulatory agencies—the Office of the Comptroller of the Currency (the “OCC”) and the Consumer Financial Protection Bureau (the “CFPB” or “Bureau”)—and their approaches to balancing regulation with FinTech innovation.² In examining these two models, we first discuss the OCC’s recent issuance of a framework regarding responsible innovation and the establishment of an office to implement the framework. Then, we discuss the CFPB’s Project Catalyst, and its recent report on its efforts (the “Report”). Finally, we compare and contrast these initiatives.

REGULATORY DEVELOPMENTS

OCC’s Responsible Innovation Framework and Office of Innovation

Building on the OCC’s Whitepaper, *Supporting Responsible Innovation in the Federal Banking System*,³ on October 26, 2016, the OCC announced the implementation of several initiatives as part of its Framework for Responsible

¹ See [Regulators Set Sights on Online Marketplace Lenders](#), DEBEVOISE & PLIMPTON LLP (May 5, 2016); [Regulators Probe Marketplace Lending Business Model](#), DEBEVOISE & PLIMPTON LLP (June 30, 2016); [Regulatory Developments in the FinTech Space](#), DEBEVOISE & PLIMPTON LLP (Oct. 7, 2016).

² The Securities & Exchange Commission also plans to host a FinTech Forum on November 14, 2016. [SEC to hold Fintech Forum on Nov. 14](#).

³ OCC, [Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective](#) (Mar. 2016).

Innovation (the “Innovation Framework”).⁴ Of particular note, the OCC announced the establishment of an Office of Innovation, which would begin operating in the first quarter of 2017 and would be responsible for the implementation of the Innovation Framework “to identify, understand, and respond to financial innovation affecting the federal banking system.”⁵

In short, the Innovation Framework’s recommendations—approved by the OCC and its Executive Committee—ask the agency to take the following steps:

- Create an Office of Innovation, which the agency announced will be led by Beth Knickerbocker as acting Chief Innovation Officer, and will include staff, such as Innovation Officers, an Innovation Technician, and Innovation Fellows, located in Washington, D.C., New York and San Francisco;
- Establish an Outreach and Technical Assistance Program to engage in ongoing dialogue with stakeholders, such as banks, nonbanks, as well as community and consumer groups, in order to ensure agency awareness of innovation trends and developments;
- Build, within the OCC, a training program to facilitate awareness among the agency’s staff as a means to ensure adequate expertise related to new products, services, and processes;
- Encourage coordination and facilitation by improving the timeliness and transparency of OCC decision making related to innovative products and services, engaging in industry research regarding innovation, and streamlining the process to facilitate potential pilot programs to test new innovative products or services;
- Promote interagency collaboration with the CFPB, Department of the Treasury and others, including internationally, through the exchange of ideas and discussion of innovation.

These efforts build on other recent actions by the OCC, including its proposed rulemaking on a receivership framework for uninsured national banks and an updated version of the “Charters” booklet of the Comptroller’s Licensing Manual—both of which were released in September of this year and could begin

⁴ OCC, [Recommendations and Decisions for Implementing a Responsible Innovation Framework](#) (Oct. 2016).

⁵ Press Release, OCC, [OCC Issues Responsible Innovation Framework](#) (Oct. 26, 2016).

to lay the foundation for possible new, limited-purpose, uninsured national bank charters for FinTech firms.⁶

CFPB Project Catalyst Report

On October 24, 2016, the CFPB released its report on Project Catalyst, discussing the evolving financial marketplace, key features of Project Catalyst and recent marketplace developments.⁷ Project Catalyst, which was first conceived in 2012, is a Bureau initiative to encourage consumer-friendly innovation in markets for consumer financial products and services.

In its Report, the Bureau highlights a number of topics related to innovative developments, among others, in cash flow management, improved credit assessment, consumer financial data access, credit reporting accuracy and transparency, peer-to-peer payments, and savings.⁸ As part of the Report, the CFPB indicates concerns regarding consumers with lower-income levels. For example, the Report notes the inability of lower-income consumers to manage cash flow as a result of uneven income, thus driving them to payday lenders. Further, in the Report, the Bureau continues to express concern over consumer access to banking and the burden to consumers of student loan debt.

In addition to describing the FinTech landscape as the CFPB sees it, the Report highlights how Project Catalyst engages with the FinTech industry:

- The Office Hours Program allows CFPB staff to learn from members of the industry how they develop new products and services. Further, Project Catalyst has also engaged in outreach to government agencies, domestically and internationally, to understand the FinTech industry more broadly.
- Project Catalyst allows FinTech companies to pitch ideas for consumer-friendly innovation projects on which to collaborate with the CFPB, which has resulted in several research pilot programs. For example, through Project Catalyst, the CFPB has partnered with companies like American Express to better understand how to promote savings among low-income and economically vulnerable consumers.

⁶ OCC Bulletin 2016-29, [Revised Comptroller's Licensing Manual Booklet](#) (Sept. 28, 2016).

⁷ Press Release, CFPB, [Project Catalyst report: Promoting consumer-friendly innovation](#) (Oct. 24, 2016).

⁸ CFPB, [Project Catalyst report: Promoting consumer-friendly innovation](#) (Oct. 2016).

- Project Catalyst has also engaged in a trial disclosure waiver program, by which firms can conduct “controlled disclosure testing” to explore new ways of disclosing costs and risks of their financial product to consumers.
- In addition, as part of Project Catalyst, the CFPB developed a No-Action Letter policy, which is “designed to allow innovations that promise consumer benefits to be developed and ... facilitate compliance with consumer protection laws,” where the financial product or service may fall outside of traditional regulatory bounds.⁹

COMPARING THE APPROACHES OF THE OCC AND CFPB

Thomas Curry, the Comptroller of the Currency, has stated that the OCC’s Office of Innovation is intended to be complementary and “consistent with the [CFPB’s] catalyst program.”¹⁰ While the OCC’s Innovation Framework is still in its nascent stages, it would appear that although the OCC and the CFPB are focused on the FinTech industry, these two regulatory initiatives take differing approaches in balancing regulation with innovation.

The OCC plans to take a more active role in the FinTech industry, by not only engaging with these companies and monitoring the developments, but helping FinTech companies to develop technologies and actively conducting research in these technologies. Through its Innovation Framework, proposed receivership framework and the newly created Office of Innovation, it would appear that the OCC is positioning itself potentially to be the leading regulator for at least some FinTech companies. We expect the OCC to take further action in this space in the near future.

The CFPB, on the other hand, has been less focused on regulating FinTech firms in such a comprehensive way. Rather, as CFPB Director Richard Cordray has noted, “Project Catalyst has concentrated on encouraging marketplace innovation so that new products can be made safe for consumers.”¹¹ Director Cordray’s remarks highlight the CFPB’s approach, which focuses on encouraging consumer-friendly innovation—*e.g.*, by providing consumers with easier access to their financial data (including through third parties)—and its openness to encouraging technological experimentation through Project Catalyst, which

⁹ [Policy on No Action Letters](#), 81 Fed. Reg. 8686 (Feb. 22, 2016).

¹⁰ Evan Weinberger, [OCC to Open Innovation Office to Boost Fintech at Banks](#) (Oct. 26, 2016, 5:58 PM).

¹¹ Richard Cordray, CFPB Director, [Prepared Remarks of CFPB Director Richard Cordray at Money 20/20](#) (Oct. 23, 2016).

could function as a type of regulatory sandbox. It is possible, based on the OCC's Innovation Framework, that the Bureau—through its other broad authorities—may step up its efforts to scrutinize the FinTech industry, while retaining Project Catalyst's mission to encourage consumer-friendly innovation.

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Please do not hesitate to contact us with any questions.