

Client Update

Optimism and Innovation at the SEC's FinTech Forum

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On Monday November 14, the Securities and Exchange Commission (the "SEC" or the "Commission") held a public forum (the "Forum") to discuss technology innovation in the financial services industry ("FinTech"). The Forum, designed to foster collaboration and understanding between regulators and industry participants, featured a number of panels covering a broad range of topics. This update summarizes key themes from the Forum.

The discussion began with statements from Chair White and Commissioners Piwowar and Stein. While the remarks largely were introductory, most noteworthy was Commissioner Piwowar's statement that the Commission "should take the lead regulatory role in the FinTech space."¹ He also expressed concern that FinTech firms are required to navigate multiple regulatory schemes and noted that the SEC is uniquely situated to determine how FinTech fits, and should fit, within a financial regulatory structure.

The Forum included four panels dedicated to the following topics: (1) The impact of recent innovation in investment advisory services; (2) The impact of recent innovation on trading settlement and clearance activities; (3) The impact of recent innovation on capital formation; and (4) Investor protection in the FinTech era. Panelists included industry participants, academics, consultants and regulators.

OVERARCHING THEMES

Based on the discussions during the four sessions, we believe the following themes emerged.

¹ Commissioner Michael S. Piwowar, Statement at the Financial Technology Forum (Nov. 14, 2016) available at <https://www.sec.gov/news/statement/piwowar-statement-financial-technology-forum-111416.html>.

Collaboration between Regulators and Industry Participants Will Be a Necessary Part of Regulation and Innovation

- Industry members see robo-advisers (digital wealth managers) as able to provide asset management to a broader range of consumers, including lower-income households without previous access to such services. While industry members pointed out that regulatory uncertainty sometimes slows the launch of products, they noted that there are benefits to the Commission's monitoring function as a means to mitigate the risk of harm to consumers.
- Regulator and industry panelists seemed to coalesce around the idea that blockchain technology has the potential to revolutionize various aspects of financial services by, among other things, reducing the time and paperwork involved in financial transactions, while increasing transparency for regulators and industry participants through an easy audit trail.
- In marketplace lending, panelists noted that the industry could benefit from more simplicity and standardization in loan-level disclosures, fair allocation mechanisms, and communications to investors. Further, some participants stated that increased measures to collect small business origination data could facilitate further growth in the market (e.g., assisted by agency rulemaking efforts).

Investor Protection and Use of Data Raise Pressing Issues

- There is growing concern about privacy considerations regarding customer personal data and account information, both with respect to the uses and sharing by the FinTech companies that collect it and from cybersecurity threats.
- Regulators stressed that while they would work quickly to adapt their practices to the changing industry, they would not forget their core mission of investor protection.

The Future of FinTech Innovation Remains Open

- Panelists expressed optimism in the future of FinTech, both as a democratizing force, and a force for greater accountability in the industry.
- However, given that the FinTech industry's growth has been due to economically favorable conditions, panelists expressed some uncertainty about how the industry would perform in the event of a future economic downturn, and whether the various assumptions and models that underpin the industry could withstand changes in the economic environment.

- Tying into this concern was the need to ensure that the underlying technologies are consistent with the product being sold to consumers and maintenance of overall quality standards. Participants noted that as data quality or algorithmic issues surface, there could be potential for industry participants to suffer direct losses or a loss of consumer confidence.
- Finally, both regulators and industry participants noted that it remains to be seen whether regulations can be flexible enough to accommodate increased automation, which will certainly continue, perhaps at an accelerated pace.

CONCLUSION

The SEC's Forum reinforced the understanding between regulators and industry participants that regulation needs to continue to develop in conjunction with technology. Regulators are striving to be more adaptable and forward-thinking, but regulation is likely to continue to lag behind technological advances. However, the SEC appreciates these issues and seems focused on the need to create a regulatory framework around new technologies and business models. Given the number of regulators in the mix, whether the SEC will emerge as the leading regulator of FinTech remains to be seen.

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Please do not hesitate to contact us with any questions.