CARLTON FIELDS

Time to Disrupt Insurance Regulation?

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Innovators are not only disrupting the financial industry but also financial regulation as regulators weigh how to monitor financial technology (fintech) innovators and their new products and services. As they begin to address insurance industry innovation, or "insurtech," U.S. insurance regulators can benefit from the work of other countries' financial regulators. Overseas financial regulators have been examining how to balance the needs for consumer protection and a sound financial system with a climate that fosters innovation in financial services. For example:

- In October 2014, the UK Financial Conduct Authority launched its Project Innovate to help innovative businesses understand the regulatory framework, and to review the UK's regulatory framework to remove barriers to entry and encourage and support innovation while continuing to protect consumers and the integrity of the UK financial system. It subsequently launched its Regulatory Sandbox as a safe space for innovators to test "innovative products, services, business models and delivery mechanisms in a live environment without incurring all the normal regulatory consequences."
- In April 2015, the Australian Securities and Investments Commission (ASIC) launched its Innovation Hub to help fintech startups develop innovative financial products or services for navigating the ASIC regulatory system. ASIC also proposes a regulatory sandbox for fintech start-ups to test their ideas with live customers.
- On June 1, France's Autorite de Controle Prudentiel et de Resolution created the FinTech Innovation Unit to analyze banking and insurance innovations and recommend changes to the regulatory framework and supervision practices.

In the United States, the Consumer Financial Protection Bureau (CFPB) and the Office of the Comptroller of the Currency (OCC) lead the way in considering regulation's impact on innovation. In August 2015, the OCC announced an initiative to develop a comprehensive framework to identify and understand financial services industry trends and innovations. In March, the OCC issued its white paper "Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective," setting forth eight guiding principles for the OCC's approach to responsible innovation and seeking requests for comments. Key principles include:

- Supporting responsible innovation – the OCC seeks an improved process to provide a clear path for banks and other stakeholders to seek the agency's views and guidance and is considering a centralized innovation office. A goal of this improved process would be to clarify expectations and promote better understanding of the regulatory regime.
- Encouraging responsible innovation that provides fair access and fair treatment – the OCC believes innovations should broaden access to financial services by delivering more affordable products and services to the unbanked and underbanked.
- Encouraging banks to integrate responsible innovation into their strategic planning – the OCC reminded banks that in considering innovative products and services, traditional strategic planning criteria apply.
- Promoting ongoing dialog through formal outreach – the OCC plans to hold a variety of workshops and meetings to discuss responsible innovation in the financial industry and innovation fairs to bring innovators together with OCC experts to discuss financial industry regulatory requirements and supervisory expectations. The first such dialogue took place on June 23, at the OCC's Forum on Supporting Responsible Innovation in the Federal Banking System. Developments, opportunities, and challenges related to financial innovation were discussed.

The CFPB established its Project Catalyst to encourage consumer-friendly innovation for consumer financial products and services. On February 18, the CFPB finalized its no-action process for innovators, which provides them some comfort regarding their new products or services. While Iowa Commissioner Nick Gehart has encouraged innovators to gain an understanding of insurance law and the regulator's role, U.S. insurance regulators have yet to begin to comprehensively address innovation and consider whether potential regulatory changes are necessary to address insurtech. To date, insurance regulators have focused on innovations already used by insurers (e.g., price optimization and big data) and on other innovations impacting the insurance industry, such as the sharing economy. Insurance regulators, however, must start to look ahead as insurtech begins to accelerate. In addressing innovation in insurance, considerations for insurance regulators include:

- Uniformity across jurisdictions. If some type of uniformity is not developed, innovators and the insurance industry will face regulatory uncertainty. This will either stymie innovation or result in an unlevel playing field as some innovators will simply operate outside the lines of insurance regulation. If regulations subsequently address and allow new innovations, the current industry players would be adversely affected by the first mover advantage gained by innovators operating outside the lines.

- Proactive engagement with innovators. To avoid playing catchup, other financial regulators are actively engaging innovators in a manner that allows them to openly discuss their ideas and seek meaningful regulatory input. This engagement also lets regulators work with innovators to ensure appropriate consumer protection safeguards are built into their new products and services and that innovators bear appropriate risk levels. The question remains, how will this engagement with insurance regulators take place—with individual jurisdictions or in a centralized manner?
- In reviewing new innovation, insurance regulators may need additional resources (e.g. personnel, technology, expertise, etc.). Acquiring these resources in a timely manner will be critical.

Insurance regulators and the industry must collaborate with innovators to harness the power of emerging insurtech. Re-examining insurance regulation is one step in that process.

Authored By

Ann Young Black

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