

SEC and OCC Seek Accommodation with Fintech Firms

December 22, 2016

In November, industry participants and their regulators convened at the SEC for a special forum on the use of financial technology (fintech). In recent years, large amounts have been invested in fintech platforms such as automated investment advisers (robo-advisers), distributed ledger (blockchain) technology for trading, settlement and clearing processes, and online portals (including crowdfunding) for capital formation. The SEC has balanced regulatory concerns that such platforms not be rushed to market to the detriment of investors with industry demands to accommodate for future growth and innovation. The forum focused on recent initiatives and trends to harmonize these advanced technologies/systems and the current regulatory landscape. The fintech industry does not want to be subject to an "antiquated" system that fails to address the unique features of these new technologies and regulatory concerns. The most prevalent platform, robo-advisers, perhaps best encapsulates these concerns. While robo-advisers generally are registered as investment advisers with the SEC, the SEC's current regulatory scheme is imperfectly equipped to handle the technologically nuanced advisory services. Among other things, robo-advisers may face unique challenges in tailoring compliance policies and procedures (including safeguarding client information and business continuity plans) to their own manner of operations. Nevertheless, it is encouraging to see regulators and robo-advisers discussing the growth and growing pains of emerging technologies in such a collaborative manner. Similarly, in another late-breaking example of such collaboration, the Comptroller of the Currency confirmed on December 2nd that his office (the OCC) is planning to issue special purpose national bank charters to fintech companies that offer bank products and services. This option may allow some fintech companies to escape some of the numerous and complex state regulatory requirements that may otherwise apply to them, as well as, in some cases, Consumer Financial Protection Bureau requirements. These special purpose bank charters would effectively regulate the fintech company as a federal bank under the National Bank Act. It is not yet clear what terms and conditions the OCC will impose in connection with such special purpose charters, and the OCC has asked for comments by January 15 on a related white paper that

it released. However, the idea of special purpose national bank charters for fintech companies has already started to draw opposition from some quarters, including traditional community banks concerned about unfair competition and state regulators concerned about the impact on their prerogatives.

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