There has been unprecedented growth in the FinTech industry, with investment in the sector estimated to be upwards of $19 Billion in 2015. Technology companies have achieved success in the mobile payment space, while peer-to-peer lenders have services challenging traditional bank loans. Tech companies are starting to offer blockchain and similar distributed ledger products that challenge the role of settlement intermediaries. Not to be outdone, bank and other financial institutions have moved aggressively into FinTech and compete head-to-head with tech rivals.

Unsettled regulatory framework

Both technology companies and financial institutions alike have complained that the regulatory landscape is unsettled and causing longer launch times and internal compliance reviews while lawyers try to apply regulatory guidance from traditional financial services to new and disruptive technologies. Until recently, financial regulators in the U.S. had been largely silent on the regulation of FinTech but new regulatory approaches are emerging.

No action letters

On February 18, 2016, the Consumer Financial Protection Bureau (CFPB) issued its final policy on innovation. In that policy, the CFPB establishes a process for FinTech companies to proactively seek "No Action" letters as a means of removing regulatory uncertainties as barriers to development. In essence, a No Action letter would indicate to the addressee that the CFPB does not intend to take regulatory enforcement action in relation to a proposed innovation. Applications for No Action letters need to describe the expected consumer benefits and potential consumer risks of a FinTech product/service, and a demonstration of why it would be appropriate for the CFPB to issue the requested No Action letter.

A principle-based framework

On the heels of the CFPB policy, the Office of the Comptroller of the Currency (OCC), the regulator that oversees the national bank chartering system, issued a white paper on March 31, 2016 entitled "Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective", laying out
a framework for responsible innovation in the FinTech sector. "Responsible innovation" is defined as "the use of new or improved financial products, services and processes to meet the evolving needs of consumers, businesses and communities in a manner that is consistent with sound risk management and is aligned with the bank’s overall business strategy." The framework consists of eight principles which can be categorized as follows:

**Principles encouraging FinTech growth in a prudent manner within the financial services industry**

1. **Support Responsible Innovation.** The OCC is reviewing its processes for evaluating innovative products and services and is considering establishing a central innovation office to review FinTech proposals before any formal review or marketplace launch.
2. **Encourage Responsible Innovation that Provides Fair Access to Financial Services and Fair Treatment of Consumers.** The OCC is considering issuing guidance on its expectation for serving the needs of low income communities through FinTech, including innovations that may qualify for grants under the Community Reinvestment Act.
3. **Further Safe and Sound Operations Through Effective Risk Management.** The OCC will focus on how its regulated institutions address risks arising from new technologies, including cyber risks.
4. **Encourage Banks of All Sizes to Integrate Responsible Innovation into their Strategic Planning.** The OCC will encourage banks to evaluate their FinTech products and services and activities with nonbank innovation partners as part of their long-term strategic plan.

**Principles for developing the OCC’s FinTech expertise:**

1. **Foster an Internal Culture Receptive to Responsible Innovation.** The OCC will assess its own knowledge base, seek to close gaps in its expertise to evaluate FinTech risks, and enhance its internal training programs to better understand and support responsible innovation in financial services.
2. **Leverage Experience and Expertise.** The OCC is considering designating lead experts to support its supervision on innovation trends in the banking system.
3. **Promote Ongoing Dialogue through Formal Outreach.** The OCC intends to bring together bank and nonbank stakeholders to discuss responsible innovation, including through a regular forum.
4. **Collaborate with Other Regulators.** The OCC will coordinate with other financial regulators, such as the CFPB, to support responsible innovation in the financial sector and avoid inconsistent guidance.

**Outlook**

US banking regulators recognize that while they must maintain prudential standards to avoid the reckless innovations that contributed to the Great Recession, they must also create a regulatory environment that encourages responsible innovation in the financial sector. The OCC’s white paper, together with the CFPB’s innovation policy, signal the regulators’ intent to come up with a collaborative framework that involves FinTech stakeholders and provides opportunities for early review of innovations. These approaches are encouraging and a step in the right direction.

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