# Financial Institutions Webinar: Understanding Regulatory Guidance Regarding FinTech Products and Services

April 28, 2016

David Gammell, Partner and Co-Chair, Emerging Company Practice, WilmerHale
Michael Gordon, Partner and Chair, CFPB Practice, WilmerHale
Elijah Alper, Counsel, WilmerHale
Michael Blayney, Counsel, WilmerHale
Carleton Goss, Senior Associate, WilmerHale

WILMERHALE®

WILMER CUTLER PICKERING HALE AND DORR LLP ®

*Attorney Advertising*

# Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
- Questions will be answered as time permits
- Offering 1.0 CLE credit in California and New York*
- WebEx customer support: +1 888 447 1119, press 2

WilmerHale has been accredited by the New York State and California State Continuing Legal Education Boards as a provider of continuing legal education. This program is being planned with the intention to offer CLE credit in California and non-transitional credit in New York. This program, therefore, is not approved for New York newly admitted attorneys. Attendees of this program also may be able to claim England & Wales Unaccredited CPD for this program. WilmerHale is not an accredited provider of Virginia CLE, but we will apply for Virginia CLE credit if requested. The type and amount of credit awarded will be determined solely by the Virginia CLE Board. Attendees requesting CLE credit must attend the entire program.

# Speakers

**David Gammell**
Partner
Co-Chair, Emerging Company Practice

**Michael Gordon**
Partner
Chair, CFPB Practice

**Elijah Alper**
Counsel

**Michael Blayney**
Counsel

**Carleton Goss**
Senior Associate

# FinTech is Booming

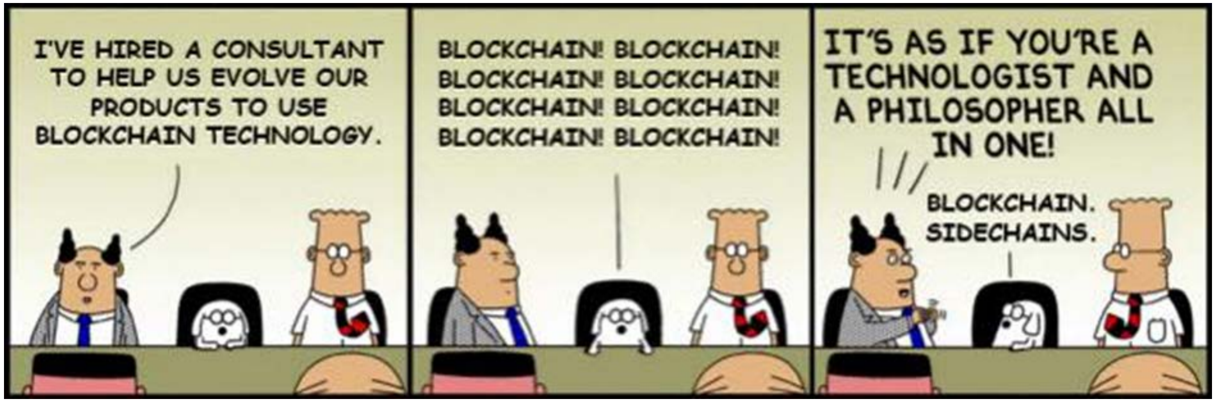
"Investments in financial technology have grown exponentially in the past decade – rising from $1.8 billion in 2010 to $19 billion in 2015 – with over 70% of this investment focusing on the "last mile" of user experience in the consumer space.  The majority of this investment has also been concentrated in the payments area and this is where banks are seeing the most competition with new entrants."

- **Digital Disruption, How FinTech is Forcing Banking to a Tipping Point,** Citi GPS: Global Perspectives & Solutions

# Responses to the FinTech Boom

- How are the regulators responding? (OCC, CFPB, FDIC, FinCEN, etc.)

- Is Congress going to weigh in?



# Regulators Respond

cfpb Consumer Financial Protection Bureau

Office of the Comptroller of the Currency
U.S. Department of the Treasury

United States Department of the Treasury
FinCEN
Financial Crimes Enforcement Network

FDIC
Federal Deposit Insurance Corporation

Board of Governors of the Federal Reserve System

New York State Department of Financial Services
Excelsior

National Credit Union Administration

# A Regulator’s Perspective

### *I want*

- Innovations that will help consumers.
- My banks to be able to compete with non-banks.
- Financial inclusion.
- Innovations that will boost risk management.

### *I don’t want*

- “Bad” innovations (e.g., no doc loans).
- To drive financial activity to unregulated corners of the market.
- Players to engage in regulatory arbitrage.
- Innovation to enable criminals.

# CFPB: No-Action Letters

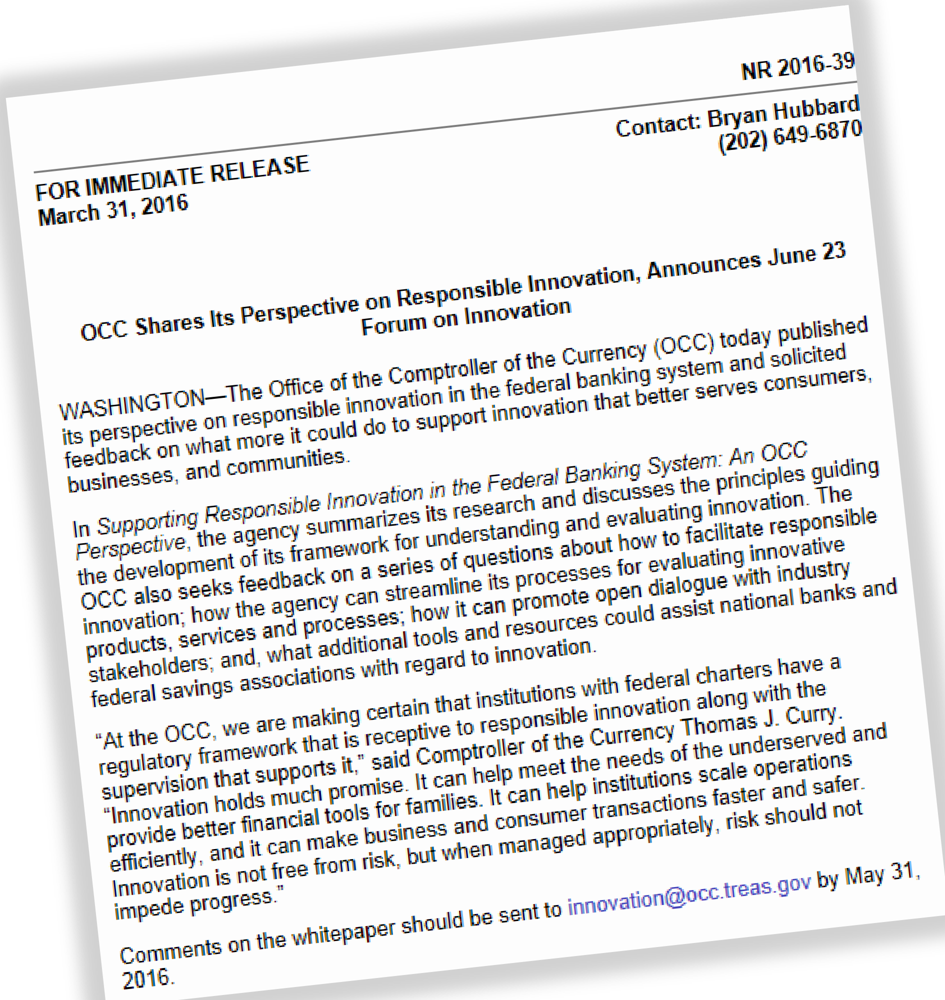
- Outgrowth of “Project Catalyst.”
- State staff has no current intention of recommending enforcement.
- Given for innovative financial products with substantial consumer benefits.

***BUT…***

- Will be provided rarely;
- May be conditioned;
- No state law protection; and
- Non-binding, and subject to modification or revocation at any time.


Source: ftcbeat.com/tag/sec

# OCC: “Responsible Innovation”



NR 2016-39

FOR IMMEDIATE RELEASE
March 31, 2016

Contact: Bryan Hubbard
(202) 649-6870

**OCC Shares Its Perspective on Responsible Innovation, Announces June 23 Forum on Innovation**

WASHINGTON—The Office of the Comptroller of the Currency (OCC) today published its perspective on responsible innovation in the federal banking system and solicited feedback on what more it could do to support innovation that better serves consumers, businesses, and communities.

In *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*, the agency summarizes its research and discusses the principles guiding the development of its framework for understanding and evaluating innovation. The OCC also seeks feedback on a series of questions about how to facilitate responsible innovation; how the agency can streamline its processes for evaluating innovative products, services and processes; how it can promote open dialogue with industry stakeholders; and, what additional tools and resources could assist national banks and federal savings associations with regard to innovation.

“At the OCC, we are making certain that institutions with federal charters have a regulatory framework that is receptive to responsible innovation along with the supervision that supports it,” said Comptroller of the Currency Thomas J. Curry. “Innovation holds much promise. It can help meet the needs of the underserved and provide better financial tools for families. It can help institutions scale operations efficiently, and it can make business and consumer transactions faster and safer. Innovation is not free from risk, but when managed appropriately, risk should not impede progress.”

Comments on the whitepaper should be sent to innovation@occ.treas.gov by May 31, 2016.

- OCC solicits comments on its proposed approach to financial innovation.
- OCC working to change its perception of having “low risk tolerance” for innovation.
- The OCC will host a forum in DC on June 23rd to discuss comments on its proposal and on financial services innovation.

# FDIC: “So, You Want To Own a Bank ...”

- Generally, three strategies for FinTech companies that want to be a bank:
  - Buy a bank;
  - Start a new bank;
  - Partner with a bank.

- Partnering with a bank most common option.

- Buying a bank or starting a new bank requires submission of business plan to regulators.

- FDIC recently shortened heightened supervision period from 7 to 3 years and issued guidance on bank business plans.

# FDIC: Marketplace Lending


Source: prescottnaster.com

# FDIC: Marketplace Lending, con't.

- FDIC issues guidance for FDIC-supervised banks working with marketplace lenders.
- Risk profile depends on whether bank is purchaser or originator of loans.
- Fair lending a potential pitfall given expansive definition of "Creditor."
- FDIC expects robust risk management program for marketplace lending activities.
- FDIC examiners instructed to assess risk management and address issues through reports of examination or enforcement actions.

# FinCEN & States: Money Transmission

- **Federal:** Anti-money laundering – registration & ongoing compliance
- **State:** Consumer protection – licensing & ongoing compliance
- Trends
  - FinCEN: Quick to act, slower to adapt
  - States: Shifting exemptions (payment processors, agents of payee)
- Enforcement
  - Emerging payments
  - Blockchain

# Emerging Regulatory Approaches

- Regulation of FinTech is proceeding within the framework of the existing regulations.
- Limited coordination among the regulators.
- Regulatory arbitrage?
- Other approaches are emerging:
  - Technology-specific: BitLicense
  - Activity-specific: Marketplace lending

# Congress Responds?

# Will Congress Act?

- Unlikely to be major legislative developments in near-term.

- However, some indicators of eventual federal legislation:
  - State legislation (both on a state-by-state basis and through multi-state coordination);
  - Formation of FinTech Caucuses;
  - Press reports of FinTech legislation;
  - FinTech lobbying by large, non-financial companies;
  - GAO.

# Engagement Strategies

- How can government / regulatory engagement strategies compliment my business objectives?
  - Regulated entities will lobby for a level playing field.
  - Start-ups will lobby against regulation restricting barriers to entry.
  - Can industry consortia compliment my business activities?
  - What about participating in regulator-sponsored forums?

# Questions?


**David Gammell**
Partner and Co-Chair, Emerging Company Practice WilmerHale
617.526.6839 | david.gammell@wilmerhale.com

**Carleton Goss**
Senior Associate
WilmerHale
202.663.6578 | carleton.goss@wilmerhale.com

**Michael Gordon**
Partner and Chair, CFPB Practice
WilmerHale
202.663.6214 | michael.gordon@wilmerhale.com

**Elijah Alper**
Counsel
WilmerHale
202.663.6487 | elijah.alper@wilmerhale.com

**Michael Blayney**
Counsel
WilmerHale
202.663.6505 | michael.blayney@wilmerhale.com