The Electronic Financial Services and Digital Currency Subcommittee will present a panel discussion on recent developments in the regulation of financial technology companies (“Fintechs”) and financial innovation. Panelists represent different stakeholders within the Fintech sector and include:

- Ms. Alison Rolleri, Assistant General Counsel, Bank of America
- Mr. Albert Chang, Counsel, Office of Innovation, Bureau of Consumer Financial Protection
- Ms. Alexandra Villareal O’Rourke, Partner, Financial Regulatory Lead and Fin-Tech Co-Lead, Womble Bond Dickson

Each panelist’s tentative discussion points appear below. A summary of the panel discussion will be published following the meeting.
I. What is Fintech?
   a. Use of technology to support, enable, or enhance banking and financial services
   b. Examples: Mobile banking apps, receiving mortgage statements online, person to person payments systems (Zelle), lending and servicing (Rocket Mortgage), wealth management and financial planning (Betterment), accounting (Quicken), artificial intelligence (Erica-video)

II. Who engages in Fintech?
   a. Financial services firms, banks, nonbanks, startups

III. How does Fintech impact you in your work?
   a. Technology is integral to how financial products and services are delivered to our customers, and a key factor informing what financial products and services our customers demand
   b. Focus: Consumer Data, Access to Consumer Financial Account Data, Artificial Intelligence

IV. How do regulators\(^1\) and policy makers think about Fintech and Innovation?
      i. Overview: Comprehensive overview of industry trends and challenges
      ii. Focus: Embracing Digitization, Data, and Technology and examples therein
      iii. Data Aggregation, Data Security and Breach Notification, Liability for Unauthorized Transfers, Artificial Intelligence
   b. Bureau of Consumer Financial Protection (BCFP)
      i. BCFP outlined principles for Consumer-Authorized Financial Data Sharing and Aggregation (October 2017). Response to RFI (2016)

\(^1\) The following lists examples of how some government agencies think about Fintech and financial innovation. This list is not exhaustive. Other regulators have share their viewpoint on Fintechs and financial innovation.
c. **Office of the Comptroller of the Currency (OCC)**

   i. Opened an Office of Innovation (October 2016)

   ii. Special Purpose National Bank Charter (2016)

   iii. Released Bulletin 2017-43 (October 2017) with guidance about how to prudently manage risks associated with new technology

   d. **Industry/Trade Groups**

   i. The Clearing House Banking Perspectives: Consumer Data in an API-Enabled World

   ii. Financial Services Information Sharing and Analysis Center (FS-ISAC) – Creation of Financial Data Exchange (FDX) (October 2018) (FIs, aggregators, Fintech developers, and others)

   iii. Secure Open Data Access framework (led by data aggregators)


V. **Considerations/Best practices**

   a. Stay informed -- Join / create working groups

   b. Internal technology committees & governance

   c. Think about data, innovation, information security, artificial intelligence, etc. in agreements

   d. Be mindful of differences in regulatory framework (financial institutions versus nonbanks)
DISCUSSION POINTS

ALBERT D. CHANG

BUREAU OF CONSUMER FINANCIAL PROTECTION ("BUREAU")

I. The Bureau’s Office of Innovation is tasked with promoting innovation, competition, and consumer choice in financial services. This is now a key priority for the Bureau.

II. Certain Bureau statutory purposes relate to innovation:

   a. This includes ensuring “that all consumers have access to markets for consumer financial products and services and that markets for [those products and services] are fair, transparent, and competitive.” 12 U.S.C. § 5511(a).

   b. This also includes ensuring that “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.” Id. § 5511(b)(5).

III. To that end, the Office of Innovation has begun to renew the Bureau’s focus on innovation.

   a. In September, the Office of Innovation issued a request for comment on its proposal to create a Disclosure Sandbox through a revised Policy to Encourage Trial Disclosure Programs.

   b. Under Section 1032(e) of the Dodd-Frank Act, the Bureau may “permit” companies to conduct trial disclosure programs, “limited in time and scope,” “to improve upon” existing disclosures. Id. § 5532(e)(1). Such permission may include providing a legal “safe harbor”; i.e., the Bureau may “deem[]” a company conducting such a program “to be in compliance with, or…exempt[] from, a requirement of a rule or enumerated consumer law.” Id. § 5532(e)(2).

   c. The Office of Innovation has carefully reviewed comments on the proposal, and once it finalizes the proposal, the Office of Innovation looks forward to reviewing applications.

      i. In Mr. Chang’s view, the revised Policy is now very much “designed to encourage” companies to conduct these programs -- important since the Bureau had not permitted a single trial disclosure program in the nearly five years since the original Policy was issued.

IV. The Office of Innovation is also evaluating the No-Action Letter program and other Bureau authorities that may help foster innovation.

2 Mr. Chang’s discussion points represent his own views and do not reflect the opinion or position of the Bureau of Consumer Financial Protection.
V. As the Office of Innovation considers products and services that may be suitable for a No-Action Letter or other relief, it will keep an open mind and recognize that it is ultimately the market – and not the Bureau – that will determine whether a product or service offers benefits to consumers and appropriately manages risks to consumers.

a. Some of these innovations that the Office of Innovation hears about on a daily basis while others are happening behind the scenes and in the back office – like in servicing and fraud detection.

b. Others may involve partnering innovative approaches with either emerging or traditional forms of lending.

i. A 2017 study by researchers from the Federal Reserve Bank of Philadelphia found that the use of “alternative” credit data may allow consumers with more limited traditional credit profiles to access credit.

ii. On the one hand, alternative data can be used by newer market participants to expand access to credit. As the recent Report on Nonbank Financials, Fintech and Financial Innovation by the U.S. Department of Treasury noted, “marketplace lenders are expanding access to credit for consumers and businesses in the United States.” Treasury Report at 11. Some of these “new platforms for lending…take advantage of new types of data and credit analysis, potentially serving consumer and small business borrower segments that may not otherwise have access to credit through traditional underwriting approaches.” Treasury Report at 7.

iii. On the other hand, alternative data might also be used in traditional forms of lending to expand access to credit and help consumers become credit visible. The Bureau’s Data Point: Becoming Credit Invisibles from last year on how consumers transition out of credit invisibility found that, across all age groups, having a credit card is the most common way in which consumers create a credit record for themselves. Data Point at 14.

iv. Certain traditional lenders were also some of the earliest adopters of alternative data in underwriting. Their use of alternative data may be part of the reason why, as the Data Point found, 65% of consumers who transition out of credit invisibility appear to do so by opening an account by themselves despite their lack of a credit history. Data Point at 33.

VI. In the final analysis, the Office of Innovation will carry out its mission with humility, just as the Bureau as a whole has committed in carrying out its overall mission and vision. See BCFP Strategic Plan: FY2018-2022 at 4.
I. Treasury Report
   a. Taking a side on long-standing debates
      i. The “valid when made” doctrine
      ii. The true lender model
      iii. Data aggregation
      iv. The OCC charter
      v. Recommendations to other agencies – the open letter approach
   b. Encouraging further innovation
      i. Alternative data & alternative models
      ii. Data sharing

II. Governor Brainard’s November 2018 Speech
   a. Applying model risk management guidance to AI
   b. Applying vendor risk management guidance to Fintech
   c. Addressing the “black-box” problem & explainability
   d. Taking a risk-weighted approach to oversight
   e. Model fairness & ethics concerns

III. State AG Activity
   a. New cops on the Fair Lending beat: who to watch
      i. The AG open letters on fair lending
      ii. New York’s disparate impact statement
b. AG enforcement actions against Facebook: the start of a new focus?
   i. Targeted advertising as redlining
   ii. Starting with vendors

c. The role of consumer and trade groups