Current Developments in Fintech

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Fintech developments are cropping up nearly every day in the United States with much interest coming from legislatures, regulatory and enforcement actions, and private actions. We will survey important developments since the Annual Meeting, including Arizona’s “fintech sandbox” and the OCC’s “fintech charters.”
An Overview of the Current State of FinTech Regulation

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Speakers:

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Cyberspace Law Committee
So You Want to Be a FinTech

FinTech companies have two primary choices with regard to regulatory status:

1. Obtain a charter or license

2. Partner with an entity that already has a charter or license
### Types of Charters/Licenses Available

<table>
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<th>Federal</th>
<th>State</th>
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<tr>
<td><strong>Banking</strong></td>
<td>Bank, Credit Union, Trust</td>
<td>Bank, Credit Union, Trust, Industrial Loan Corp.</td>
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<td><strong>Payments</strong></td>
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<td>Money Transmitter</td>
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<td><strong>Lending</strong></td>
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<td>Mortgage, Lending</td>
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<td><strong>Virtual Currency</strong></td>
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<td>Money Transmitter, BitLicense, Virtual Currency Business</td>
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Federal Regulators

Office of the Comptroller of the Currency (OCC) – prudential
Federal Deposit Insurance Corp. (FDIC) – prudential
Federal Reserve Board (FRB) – prudential
National Credit Union Administration (NCUA) – prudential

Bureau of Consumer Financial Protection (BCFP) – consumer protection
Federal Trade Commission (FTC) – consumer protection

Financial Crimes Enforcement Network (FinCEN) – money laundering
Office of Foreign Assets Control (OFAC) – sanctions

Internal Revenue Service (IRS) – tax
Securities and Exchange Commission (SEC) – securities
Commodities Futures Trading Commission (CFTC) – commodities
OCC’s Proposed FinTech Charter

OCC announces it will consider issuing a “FinTech” charter (Mar. 2016)
OCC issues additional guidance on scope of the FinTech charter and considerations for granting such a charter (Dec. 2016 and Mar. 2017)

State regulators sue to block the OCC FinTech charter (Mar. and Apr. 2017)
State lawsuits are dismissed as not yet ripe (Dec. 2017 and Apr. 2018)

OCC says it will begin accepting FinTech charter applications (July 2018)
State regulators file new lawsuits to block the OCC FinTech charter (Sept. and Oct. 2018)
FinTechs May Also Partner with a Bank

• Option 1 – vendor or third party service provider
  • Provide services to the bank to support its customers
  • Subject to bank’s Third Party Risk Management (TPRM) requirements

• Option 2 – be a “Program Manager”
  • Allows FinTech to provide customer-facing services and “be the brand”
  • Requires more robust oversight by the bank; unique contractual terms
  • The model is Program Managers for prepaid cards and accounts
  • Regulators are familiar with, understand and have approved program manager relationships in prepaid and should be open to them in other FinTech contexts