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## *CFPB FinTech Regulatory Innovation Initiatives Echo International Regimes*

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The Consumer Financial Protection Bureau (“CFPB”) is taking a more active role in the U.S. FinTech regulatory space by placing innovation at the top of its agenda. In mid-September the CFPB announced new programs that invite firms into a regulatory conversation to facilitate innovation, identify consumer benefits, and provide regulatory clarity. These initiatives appear to reflect the lessons learned from the U.K.’s Financial Conduct Authority’s (“FCA”) approach to innovation, which is either coincidental or illustrates the effectiveness of the knowledge sharing under the Global Financial Innovation Network (“GFIN”).

The CFPB’s recent initiatives involve the establishment of two regulatory sandboxes as part of its innovation mission to promote common goals of “innovation competition and consumer financial access,”<sup>1</sup> both of which echo similar regulatory principles, statutory objectives, and resources that the FCA Innovate’s team uses:

1. **Trial Disclosure Program**<sup>2</sup> established under authority granted to the CFPB under the *Dodd–Frank Wall Street Reform and Consumer Protection Act*<sup>3</sup> to provide certain legal protections to firms to conduct trial programs. Currently, U.S. federal law provides that accurate and effective disclosures assist consumers in understanding the costs, benefits, and risks of various financial products and services. The CFPB is inviting firms to design and improve existing disclosures through context, format, or delivery mechanisms to advance consumer benefits, and not necessarily just for new products. This enables in-marketing testing of alternative disclosures for a set time, where firms benefit from a streamlined process and a waiver from existing rules where necessary.
2. **Compliance Assistance Sandbox** (“CAS”)<sup>4</sup> which enables firms to test a financial product or service in order to seek regulatory clarity on how it is regulated. The CFPB will assess whether a firm’s product or service complies with relevant law, and if approved, that firm will have protection from liability under the *Truth in Lending Act* governing credit transactions,<sup>5</sup> the *Electronic Funds Transfer Act*, governing electronic payments,<sup>6</sup> or the *Equal Credit Opportunity Act* addressing discrimination in lending.<sup>7</sup> The firm’s approval in the sandbox will end when its testing period ends, rather than be revoked. Further, this CFPB sandbox is focused on federal consumer law issues and therefore the CAS policy does not envision state pre-emption.



The CFPB's policy approach and regulatory environment in these two sandboxes echoes a somewhat broader sandbox process that firms receive in the U.K., where the FCA affirmatively assesses a firm's application into a sandbox cohort in accordance with certain eligibility criteria, e.g., whether there is a genuine innovation, the firm needs the sandbox, and what the consumer benefits would be. Once the FCA approves the application, the sandbox firm will work with a dedicated case officer to establish testing parameters, consumer safeguards, and expected outcomes. Depending on the type of firm, product, or service offered, the FCA broadly has the power to offer sandbox firms: (1) waivers for particular rules; (2) individual guidance on an interpretation of applicable rules; (3) restricted authorizations to carry on a regulated activity; and (4) a no enforcement action letter, which states that the FCA would not engage in enforcement proceedings against testing activities. As of April 2019, the FCA has 29 businesses in its fifth cohort of firms, having received 99 applications.<sup>8</sup> When the FCA did a stocktake of its sandbox in 2017, it found that 75% of firms successfully completed testing, and approximately 90% of firms would undergo a wider market launch after the sandbox.<sup>9</sup>

Moreover, the CFPB recently announced an updated **No Action Letter** ("NAL") policy<sup>10</sup> that would provide firms with a statement, which suggests the CFPB will not bring a supervisory or enforcement action against a company for providing a particular consumer product or service under agreed circumstances. The updated NAL policy streamlines the review process with more of a focus on consumer benefits and risks. However, the NAL is restricted via a statement that there are no "legal conclusions regarding the meaning or application of the laws and/or regulations." The CFPB has already issued its first NAL under this revised policy to the Department of Housing and Urban Development ("HUD") in a letter addressing existing uncertainties around the application of the Real Estate Settlement Procedures Act ("RESPA") and asserting that the CFPB would not take enforcement or supervisory action under its authority in certain scenarios, providing clarity over how it would use its powers.<sup>11</sup> Through publishing this NAL, the CFPB has also provided other firms with a HUD template, as well as a NAL HUD application.<sup>12</sup>

The CFPB also announced a strengthening of its existing work in its Office of Innovation, which includes a "pitch a pilot" initiative, where a firm can approach the CFPB after having identified an issue and solution with a financial regulation.<sup>13</sup> This also mirrors the approach of the FCA's Innovate Hub where, aside from the sandbox, it provides tailored support to innovative firms through its advice unit or direct support. The CFPB is further complementing the FCA's approach on **Tech Sprints** by filing a notice in the *Federal Register*<sup>14</sup> requesting comments. Tech Sprints are workshops aimed at developing technology and sharing ideas that address specific industry challenges, and they have been an initiative the FCA has run successfully in the U.K. since 2016, including on topics such as anti-money laundering.<sup>15</sup> It will assist the CFPB in understanding the technology used in the market and work with industry and other stakeholders to develop effective tech-based solutions for certain consumer risks for FinTechs in existing U.S. regulations.

Unlike consumer financial services regulation in the U.K. largely under the FCA's supervision, the U.S. has a patchwork of consumer protection legislation adopted by states and at the federal level, with several different regulators involved in consumer financial services and Fintech innovation. To bridge that gap, and in order to promote cohesion and consistency on these issues, the CFPB is also launching the **American Consumer Financial Innovation Network** ("ACFIN") to coordinate efforts between federal and state regulators to further shared objectives of consumer access, financial inclusion, and competition to ensure that consumer markets are free from fraud, discrimination, and deceptive practices. The initial members of the ACFIN<sup>16</sup> are the states attorneys general of Alabama,



Arizona, Georgia, Indiana, South Carolina, Tennessee, and Utah, making it a promising beginning and attempt to streamline U.S. consumer FinTech policy.

The CFPB and the FCA are part of GFIN, an international network of financial services regulators and authorities formally launched in January 2019, collaborating and sharing knowledge on FinTech for the benefit of consumers. GFIN aims to provide a more efficient way for innovative firms to interact with regulators, helping firms navigate between countries as they look to scale new ideas.<sup>17</sup> This includes a cross-border testing environment colloquially known as the global sandbox, which is a pilot for firms wishing to trial innovative products, services, or business models across more than one jurisdiction.<sup>18</sup> The CFPB is a coordinating GFIN founding member and as it develops its knowledge on new technologies from international know-how, this will enable the CFPB to apply that know-how to existing U.S. regulations, and present itself as a leader in the U.S. on Fintech issues, as well as provide regulatory certainty for firms at a federal level.

These initiatives illustrate that the CFPB has recognized that FinTechs need regulatory clarity, coordination, and support and are offering innovative programs that have proved successful abroad. Paul Hastings routinely advises FinTechs on a broad range of new products and regulations that could take advantage of the CFPB's renewed focus on innovation and consumer interests.

Paul Hastings attorneys actively represent clients before both the CFPB and the FCA. Please contact us if you have any questions.



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  - <sup>2</sup> CFPB, *Policy to Encourage Trial Disclosure Programs*, Docket No. CFPB-2018-0023 (Sept. 2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_final-policy-to-encourage-tdp.pdf](https://files.consumerfinance.gov/f/documents/cfpb_final-policy-to-encourage-tdp.pdf).
  - <sup>3</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
  - <sup>4</sup> CFPB, *Policy on the Compliance Assistance Sandbox*, Docket No. CFPB-2018-0042 (Sept. 2019), [https://files.consumerfinance.gov/f/documents/cfpb\\_final-policy-on-cas.pdf](https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf).
  - <sup>5</sup> 12 C.F.R. § 1002. *et seq.*
  - <sup>6</sup> *Electronic Fund Transfer Act*, [https://www.federalreserve.gov/boarddocs/caletters/2008/0807/08-07\\_attachment.pdf](https://www.federalreserve.gov/boarddocs/caletters/2008/0807/08-07_attachment.pdf).
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