A Look At US And EU Fintech Regulatory Frameworks

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The transformative potential and accelerated growth of companies operating in the fintech space have challenged policymakers to reflect on the most appropriate regulatory framework to encourage innovative technologies, on the one hand, and to address important public policy considerations, on the other. These considerations include the safety and soundness of the financial system, consumer protection, cybersecurity, anti-money laundering, and the combating of terrorist financing.

Fintech companies are often situated outside of traditional banking organizations and unburdened by legacy information technology infrastructure, distribution channels, branch networks, and operational siloes. This freedom allows them to develop models that have the potential to unbundle the services that banks have traditionally offered and provide alternative, tech-enabled financial services that fall outside of the vertically integrated and highly regulated banking model. Fintech companies already offer services in retail and wholesale payments, peer-to-peer lending and other innovative credit-provision platforms, and financial market infrastructure.

The regulatory fragmentation on the federal level, and at the U.S. state and EU member state levels, however, can present challenges and uncertainty for many fintech companies. The resolution of these uncertainties will directly impact the evolution of this sector and its market structure and govern the interaction between incumbent financial institutions and technology companies, whether as partners or competitors. This article provides an overview of the regulatory frameworks in which fintech companies in the United States and the EU operate, providing examples from France, and discusses a range of regulatory risks that these companies face.

Fintech Companies in the United States

Overview of Fintech Regulation and Supervision in the United States

There is no singular regulatory framework for fintech companies in the United States. In the first instance, fintech companies are generally regulated at the state level. For example, many states have enacted legislation governing the extension of credit and money transmission within a state, as well as imposed an array of licensing requirements for such activities. State usury laws, for instance, restrict the interest rates that many types of lenders — including fintech lenders — charge to borrowers in a state, and other state consumer protection laws may restrict the terms on which a lender can extend credit. Indeed, even though fintech companies may not have a brick-and-mortar presence in a state, they may still be subject to the jurisdiction of each state where their customers are located. Financial services is a highly regulated sector, and fintech companies operating outside of the banking space should be prepared to face regulatory scrutiny comparable to that historically given to traditional financial services providers.

In light of the compliance challenges posed by different state-by-state regulatory requirements, some fintech companies may find a bank charter advantageous, depending on the mix of products and services they seek to offer. A bank typically enjoys broad powers to engage in the business of banking without having to obtain separate state licenses or rely on third-party banks to engage in particular activities, such as extending credit or transmitting money. Moreover, banks enjoy federal preemption of certain state and local laws. National banks are creatures of federal law, and are thus afforded a broader preemptive scope than state banks.[1] In practice, federal preemption via federal or state chartering would allow a fintech company to "export" the rates governing a consumer loan in its home state to borrowers in other states.

Fintech companies must weigh the advantages of greater uniformity in the standards that apply to their operations on a national basis against more exhaustive prudential regulation and supervision. Ultimately, while the decision to obtain a bank charter may reduce the number of regulators to manage, it may not reduce the overall compliance burden, given the high regulatory standards to which banks are held.

State-Level Nonbank Regulation

Thus far, many fintech companies remain regulated at the state level and without any type of bank charter, and have obtained licenses on a state-by-state basis for their particular products and services. Fintech companies that are not engaged in a business that requires a bank charter would generally not be subject to bank-like regulation for safety and soundness.

To the extent that there are different regulatory and licensure requirements in each state, some states have begun efforts to harmonize their requirements. The Conference of State Bank Supervisors, a group comprised of banking regulators from each state and the District of Columbia, has begun a project to draft model regulatory requirements that each state can choose to adopt in the interest of regulatory harmony. Although the prospects for these efforts are unclear, the efforts are similar in theory to so-called "uniform" acts that have been drafted through a coordinated effort and then adopted in all (or most) states. Meanwhile, fintech companies may be able to take advantage of the existing Nationwide Multistate Licensing System and Registry, a uniform license application that can be submitted to multiple states for approval. Efforts to streamline state-level regulation will be particularly important for fintech companies, given that a decentralized financial system with a myriad of regulatory bodies and a fragmented legal environment increases compliance costs.

Bank Charters and Federal Preemption

Federal law offers tools that could enable fintech companies to avoid certain regulations at the state level. Most notably, fintech companies can avail themselves of federal preemption by obtaining a national bank charter. Fintech companies can also seek a state bank charter, which could include an industrial loan company, or ILC, charter, to limit their exposure to regulation under the usury laws of other states.

National Bank Charters

As with traditional, brick-and-mortar institutions, fintech companies may apply for a national bank charter from the Office of the Comptroller of the Currency. As a national bank, a fintech company could take advantage of federal preemption of various state licensing requirements and laws. While federal preemption could provide considerable benefits to fintech companies primarily engaged in lending or payment services, national banks must also obtain deposit insurance from the Federal Deposit Insurance Corp. and abide by FDIC regulations. To date, the full-service national bank charter has not been a popular avenue for fintech companies.[2]

The OCC has recently floated the idea of permitting fintech companies to obtain a special-purpose national bank charter.[3] This so-called "fintech charter" would allow fintech companies to take advantage of federal preemption. Fintech companies that choose a fintech charter would be regulated and supervised by the OCC. Although the OCC has not yet determined whether it will actually issue nondepository fintech charters, it has asserted its authority to grant a fintech charter to fintech companies that do not take deposits.[4] These fintech companies would not be insured, in the ordinary course, by the FDIC and, therefore, would not be subject to certain regulations applicable specifically to insured depository institutions, such as the Community Reinvestment Act. However, the OCC has indicated that fintech applicants will have to submit a financial inclusion plan as part of the fintech charter approval process.

Fintech companies that do not take deposits may also not be subject to bank control regulations, which would otherwise pose additional challenges for fintech companies with concentrated ownership, including those with stock option-based compensation plans. Institutions that hold a fintech charter and that maintain federal deposit insurance, though, would be subject to these regulations and others, and all institutions holding a fintech charter would be subject to restrictions on affiliate transactions under Sections 23A and 23B of the Federal Reserve Act. Moreover, as part of the fintech charter application process, a fintech applicant would need to submit a three-year business plan, and any variations from the plan during that period would require OCC review and approval. Fintech companies would also have to hold regulatory capital, potentially at higher levels than those applicable to banks because of off-balance-sheet exposure. Fintech companies holding special-purpose charters would also have to prepare formal resolution plans. The extent to which different federal banking regulations apply to fintech companies with a fintech charter depends considerably on the types of businesses in which they are engaged (notably deposit-taking), whether they carry FDIC insurance, and the conditions imposed on them by the OCC in connection with issuing their charters.

The fintech charter has generated controversy among many state regulators — notably the New York State Department of Financial Services, or DFS — which believe that it inappropriately encroaches on their regulatory jurisdiction. DFS and the Conference of State Bank Supervisors have both filed lawsuits challenging the OCC's authority to issue fintech charters.[5] The OCC is vigorously defending the concept.[6] The DFS lawsuit was dismissed on Dec. 12, 2017.

State Bank Charters

Although fintech companies may choose from a variety of state bank charters, organizing as an ILC may be an attractive form for fintech companies. An ILC is a state-chartered financial institution. It may be owned by a commercial firm, but the commercial firm is not subject to consolidated supervision as a bank holding company. Importantly, although an ILC may be limited in its ability to accept certain demand deposits,[7] it may obtain FDIC insurance and export nationwide the interest rate limit from the state usury law in the state in which the bank is located.

Critics of ILCs believe they are inconsistent with the traditional separation of banking and commerce in the United States and question whether FDIC insurance should be extended to such actors. There was substantial controversy in the mid-2000s regarding applications by certain commercial firms to establish new ILCs. A moratorium on new ILCs was imposed in 2006 and remained in effect until 2013.[8] Although no new ILCs have been chartered since the moratorium expired, some fintech companies are now showing interest in chartering or acquiring ILCs.

Partnerships With Banks

Fintech companies may seek to enter partnerships with banks rather than become banks themselves. The partnership model could be particularly well-suited in cases where fintech companies offer services that augment or streamline existing financial institution processes. For example, a fintech company might locate potential borrowers and develop underwriting and pricing models, but a bank partner would actually extend the credit to borrowers. Alternatively, a fintech company could license its underwriting and pricing models to a bank and remain effectively invisible to the consumer. Fintech companies could also have partnerships with banks through which a bank would refer to a fintech lender a loan applicant that does not meet the bank's underwriting standards.

The partnership model also presents risks. For example, both regulators and the courts have scrutinized arrangements in which a nonbank plays a significant role in the extension of credit, such as when the bank is allegedly not the "true lender" because it does not bear significant risk from a loan. In Madden v. Midland Funding LLC,[9] the U.S. Court of Appeals for the Second Circuit held that a credit card loan originally issued by a national bank but subsequently sold to a nonbank was no longer subject to federal preemption for the purpose of New York's usury law. More generally, banking regulators may assert examination authority over fintech companies that partner with banks or assert jurisdiction as "institution-affiliated parties," depending on the nature of the relationship. Ultimately, the success of the partnership model will also depend on whether customers have a preference for incumbent-driven technological innovation.

Fintech Companies in the EU

Overview of Fintech Regulation and Supervision in the EU

As in the United States, there is no dedicated legal framework for fintech companies at the EU level or at the EU member state level. Under EU law, licensing is required regardless of whether the service is provided by a bank or a nonbank. EU fintech companies that conduct certain specified activities, or a combination of them, have access to the EU passporting framework, which allows them to provide financial services or branch in other EU member states under the regulatory supervision of their home country. Fintech companies that conduct activities that are not regulated at the EU level are potentially subject to different member state licensing requirements and regulation at both the parent and subsidiary levels throughout the EU. Member state licensing requirements impact the ease with which the companies can conduct cross-border business.

Fintech Companies Operating Under Passportable Licenses

Certain services that fintech companies provide, such as retail banking,[10] payment services[11] and financial market services,[12] fall within EU's licensing and passporting framework. Under this framework, companies that obtain a license to provide banking or other covered financial services in their home state are entitled to provide the same services or to establish a branch in other member states of the European Economic Area, called "host states."[13] The EU passporting framework frees EU-licensed institutions from obtaining licenses from individual EU member states and provides for a lighter-touch authorization process for banks and financial institutions. Member state-licensed fintech companies wishing to establish a branch or provide passportable services in another member state can apply to their home state regulator for the applicable passport, which, after review, the home state authority will forward to its counterpart in the relevant host state.

Once its passport is obtained, a fintech company continues to be regulated and supervised by its home state regulator. Host state regulators can regulate the conduct of business of passported branches. Their powers to regulate the conduct of business of passported services offered on a cross-border basis, though, are narrower, and so called "general good" provisions and nonharmonized consumer protection laws can also apply.[14] These rules include professional secrecy, fraud prevention and suspicious activity reporting.[15]

Fintech Companies Operating Under Member State Regimes

Activities not governed by EU law and, therefore, not eligible for passporting, are subject to member state-level regulation.[16] To avoid regulatory gaps, member states have created licensing frameworks to address fintech activities that do not currently fall within the scope of EU law. For example, France recently created a number of specific legal regimes governing financial investment advisers (conseillers en investissement financier), banking transactions and payment services intermediaries (intermédiaires en opération de banque et service de paiement),[17] crowdfunding intermediaries (intermédiaires en financement participatif), and crowdfunding advisers (conseillers en financement participatif). They involve licensing, authorization or registration requirements by the ACPR (the French authority responsible for supervising the banking industry), the AMF (the French Stock Exchange Authority) or ORIAS.[18]

Although licenses obtained at the member state level for non-EU governed activities are not eligible for passporting, the legal requirements for obtaining them are often less stringent than those required to obtain passportable licenses. For example, in France, a fintech company providing marketplace lending services may choose among four different regulatory statuses. It may operate as a (1) credit institution, (2) finance company (société de financement), (3) crowdfunding intermediary or (4) intermediary in banking transactions. The first two statuses require a license from the ACPR, to which EU passporting rights attach. These licenses come with rigorous minimum capital, management qualifications and liquidity supervision requirements. In contrast, the last two regulatory statuses, which are not eligible for passporting, require mere registration with ORIAS and lighter regulatory requirements (e.g., show proof of adequate professional skills, subscribe to a relevant professional insurance, and prove eligibility to take part in commercial activities).

Partnerships With Banks

As in the United States, fintech companies operating in Europe may seek to enter into partnerships with banks rather than become banks themselves. Using partnerships, fintech companies can distribute their services widely without building large client bases of their own, while banks can access market-ready, innovative technologies without first incurring development costs. EU regulators, such as the ACPR, view partnerships as a "natural evolution" of the fintech market, and encourage them as long as they are organized in a way that does not harm consumers.[19] Some member states also encourage fintech company-bank partnerships. For instance, a fintech company can act as an intermediary between a credit institution or payment service provider and the service recipient using member state licensing regimes such as, in France, the recently created status of "intermediary in banking transactions and payment services."

At the EU level, there have been steps to regulate more actively the relationship between banks and emerging fintech players. The Second Payment Services Directive, or PSD2,[20] expands EU regulations relating to electronic payments and explicitly mandates cooperation between banks and fintech companies under certain circumstances.[21] Notably, the PSD2 requires that banks and other traditional payment institutions provide certain emerging service providers access to customer account information where customers have consented to, and the relevant supervisory authority has authorized, such access. The PSD2 divides these new service providers into two general categories: (1) payment initiation service providers,[22] which establish a software bridge between a merchant's website and an online banking platform, and (2) account information service providers,[23] which allow consumers the ability to review on a single platform their various bank accounts. In other words, the PSD2 requires that banks open their doors to authorized[24] fintech companies regardless of whether a formal bank-fintech company partnership exists or not. The European Commission believes this requirement, and the PSD2 more broadly, will lead to "more competition, greater choice and better prices for consumers," while ensuring enhanced security and transparency among stakeholders.[25]

Despite the considerable opportunities offered by bank-fintech company partnerships, they are not risk-free.[26] Among these risks are bank operational and outsourcing risks and increased cybersecurity and data protection risks stemming from the sharing of consumer data across a wider group of parties.[27] Banks and financial institutions providing services through fintech companies can be held liable for breaches committed by a fintech intermediary. For example, in France, such liability is expressly provided for in the context of consumer credit and payment services[28] pursuant to the general principles of agents and intermediaries.[29]

Ongoing Initiatives to Foster and Regulate the EU Fintech Industry

In an effort to support fintech companies by providing them a one-stop-shop regime at the EU level and by shoring up gaps in the EU and member state regulation of fintech activities, the EU has expanded the scope of its rules to include services that EU fintech companies offer to consumers. Moreover, the European Banking Authority recognizes the benefit in protecting consumers when they use financial services offered by firms outside the traditional financial services sector.[30] It recommends defining consumers' rights in the fintech space, creating effective procedures for processing consumer complaints, improving the quality of disclosures to consumers in a digital environment, and increasing consumer financial literacy.[31]

In light of the potentially inconsistent regulatory regimes to which EU fintech companies are subject, the European Commission has been considering the implementation of an EU-wide framework dedicated to fintech companies. Consultations are generally launched to inform and guide the commission's approach to regulating the EU single market. They are often the first step toward issuing a directive or regulation proposal. The commission may propose either (1) a dedicated "fintech directive/regulation," using an entity-based approach, or (2) additional activity-based directives/regulations. The latter would be consistent with EU's traditional financial regulatory approach.[32]

In March 2017, the European Commission published a consultation paper titled "Fintech: A More Competitive and Innovative European Financial Sector." The consultation phase ended this summer, and responses were received from over 200 stakeholders, including member state and European financial authorities. In analyzing the responses received, the commission identified four key areas "where broad support for EU-level action is required." The first was establishing a clear EU framework for crowd- and peer-to-peer financing. Respondents cited the dual regulation system at the EU and member state level as a particular impediment. Second, they sought more clarity and convergence across the EU on how supervisors handle licensing. Though the commission received mixed reviews about the need for new licensing programs in areas where fintech companies operate, the respondents overwhelmingly desired more competency in these areas from supervisory authorities. Third, respondents wanted IT systems between firms to communicate with each other through global standardization. Respondents cited national and regional standardization as roadblocks to implementing advancements in distributed ledger technologies in particular. Lastly, they sought enhanced cybersecurity for participants in the global financial markets, and enhanced competency in cybersecurity issues among supervisory authorities. These responses suggest that the next item on the commission's agenda relating to fintech companies may be implementing a crowdfunding regulation or directive.

Other Considerations Relating to Fintech Companies

Fintech companies face additional challenges beyond choice of licensing regime and the potential application of prudential regulations. Cybersecurity-related regulations in both the United States and the EU may apply to them. Likewise, they should be cognizant of data privacy and bank secrecy laws. Particularly in the EU, fintech companies may have to comply with an array of laws governing how they can collect, process, store and disseminate personal and financial data. Although less restrictive, U.S. laws still impose important restraints regarding consumer financial data that may be applicable to fintech companies. Finally, just like other financial institutions, fintech companies may be subject to money laundering, tax evasion, terrorist financing and compliance obligations. Where fintech companies rely on information supplied online by customers, noncompliance risks may escalate. In addition, certain types of fintech companies, such as those involved with cryptocurrencies, present risk of exploitation for criminal purposes.

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Fintech companies have disruptive potential for the financial services industry and have attracted substantial — and increasing — interest from investors. Fintech companies may bring considerable changes to the ways in which financial services are delivered to consumers and may alter the value chain and profit centers that incumbent financial institutions currently possess. Although regulators on both sides of the Atlantic have shown interest in promoting fintech companies through changes to regulatory frameworks, fintech companies will continue to face a complex regulatory environment.

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[1] Barnett Bank of Marion Cty. NA v. Nelson, Fla. Ins. Comm'r, 517 U.S. 25 (1996), provides the standard for national bank preemption. Federal preemption generally applies to state banks only in the context of the exportation of the bank's home-state usury rate.

[2] But see Telis Demos, Fintech Firm Backed by Warburg Pincus Files for Bank Charter, Wall St. J. (July 25, 2017, 7:15 am), https://www.wsj.com/articles/fintech-firm-backed-by-warburg-pincus-files-for-bank-charter-1500981409 (discussing Varo Bank, a digital banking platform, and its recent application for a full-service national bank charter and deposit insurance).

[3] See Office of the Comptroller of the Currency, Exploring Special Purpose National Bank Charters for Fintech Companies (Dec. 2, 2016); see also Brian D. Christiansen et al., Federal Regulator Signals Willingness to Grant National Bank Charters to Fintech Companies, Skadden Arps Slate Meagher & Flom LLP (Dec. 8, 2016), https://www.skadden.com/-/media/files/publications/2016/12/federalregulatorsignalswillingnesstograntnationalb.pdf.

[4] Keith Noreika, Acting Comptroller of the Currency, Remarks Before the Online Lending Policy Summit (Sept. 25, 2017), https://www.occ.gov/news-issuances/speeches/2017/pub-speech-2017-110.pdf.

[5] The Conference of State Bank Supervisors filed its lawsuit in April 2017, arguing that the OCC is exceeding its statutory authority under the National Bank Act by authorizing fintech charters for companies that do not take deposits. DFS filed its lawsuit the following month, similarly arguing that the OCC is exceeding its statutory authority. DFS also added a Tenth Amendment claim that the OCC is infringing on New York's police power to regulate financial services and products delivered within its geographic borders, absent an express congressional intent to preempt state law.

[6] E.g., in a July 2017 speech, then-Acting Comptroller Keith Noreika defended the OCC's fintech charter, arguing that the "business of banking" should not be defined "too narrowly or in a stagnant way that prevents the system from evolving or taking proper and responsible advantage of advances in technology and commerce." Keith Noreika, Acting Comptroller of the Currency, Remarks Before the Exchequer Club, Washington, D.C. (July 19, 2017), https://www.occ.gov/news-issuances/speeches/2017/pub-speech-2017-82.pdf.

[7] If an ILC has total assets of $100 million or more, it may not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties. See 12 U.S.C. § 1841(c)(2)(H)(i).

[8] The FDIC imposed a formal moratorium on ILCs from 2006 to 2008 and then informally until a formal moratorium under the Dodd-Frank Act went into effect. The Dodd-Frank moratorium expired in 2013. Jalena McWilliams, who has been nominated to serve as FDIC chair, signaled in her confirmation hearing on Jan. 23, 2018, before the Senate Committee on Banking, Housing, and Urban Affairs that, if confirmed, she would ensure that the FDIC moves swiftly to consider ILC applications.

[9] Madden v. Midland Funding LLC, 786 F.3d 246, 255 (2d Cir. 2015)

[10] See Council Directive 2013/36/EU, 2013 O.J. (L 176); Council Regulation 575/2013, 2013 O.J. (L 176) (EU).

These regulations are collectively referred to as the Fourth Capital Requirements Directive ("CRD IV").

[11] See Council Directive 2015/2366, 2015 O.J. (L. 337) (EU) (the Second Payment Services Directive (PSD2)); Council Directive 2009/110/EC, 2009 O.J. (L267) (the E-Money Directive (EMD)). The PSD2 went into effect on Jan. 13, 2018. See discussion infra Section II.A.3.

[12] See Council Directive 2014/65/EU, 2014 O.J. (L 173); Council Regulation 600/2014, 2014 O.J. (L 173) (EU). These regulations are collectively referred to as the Markets in Financial Instruments Directive, or MiFID II, which went into effect on Jan. 3, 2018.

[13] According to a recent fintech industry mapping conducted by the European Banking Authority, 18 percent of fintech companies are payment institutions under the PSD, 11 percent are investment firms under MiFID, 9 percent are credit institutions under the CRD and 6.5 percent are electronic money institutions under the EMD. Thus, nearly half of the fintech companies in the EBA's sample benefit from passporting rights.

[14] Council Directive 2013/36, art. 44, 2013 O.J. (L 176) 365 (EU) (addressing credit institutions).

[15] Code monétaire et financier [Monetary and Financial Code] art. L. 511-33 (Fr.); Case C-559/15, Onix Asigurri SA v. Istituto per la Vigilanza Sulle Assicurazioni (IVASS), 2017 EUR-Lex CELEX LEXIS 316 (Apr. 28, 2017) (concerning an insurance company providing services under European passport); Case C-211/91, Comm'n v. Belgium, 1992 E.C.R. I-06757; see also Council Directive 2015/2366, art. 30, 2015 O.J. (L 337) 77 (EU); Council Directive 2013/36, art. 43, 2013 O.J. (L 176) 365 (EU).

[16] Today, 14 percent of EU fintech companies are subject to member state registration or licensing regimes, and 31 percent are not subject to any regulatory regime under EU or member state law. European Banking Authority, Discussion Paper on the EBA's approach to financial technology (FinTech) 37 (Aug. 4, 2017), https://www.eba.europa.eu/documents/10180/1919160/EBA+Discussion+Paper+on+Fintech+%28EBA-DP-2017-02%29.pdf (hereinafter Fintech Discussion Paper).

[17] By exception, credit intermediaries can benefit from passporting rights to provide cross-border services relating to real estate loans to consumers. Council Directive 2014/17, art. 32, 2014 O.J. (L. 60) 64–56 (EU); Code monétaire et financier [Monetary and Financial Code], art. L. 519-7 (Fr.).

[18] ORIAS is the French association under the supervision of the General Directorate of the Treasury in charge of banking/insurance intermediaries registration. It manages and updates the register of insurance, banking transactions, payment services and crowdfunding intermediaries, financial investment and crowdfunding advisers and tied agents of investment services providers, and finance intermediaries on behalf of the French Government. See ORIAS, Annual Report 2016 (2016).

[19] Andréa Toucinho, ACPR, Nathalie Beaudemoulin, pole ACPR Fintech Innovation(Sept. 2017) https://acpr.banque-france.fr/sites/default/files/medias/documents/20170926_interview_n_beaudemoulin_point_banque.pdf

[20] Council Directive 2015/2366, supranote 10. The commission issued the first Payment Services Directive in December 2007 to lay the groundwork for the Single Euro Payments Area, an initiative designed to harmonize the regulations applicable to payment services in the EU. Council Directive 2007/64, 2007 O.J. (L. 319) (EC).

[21] See Summary of legislation, Revised rules for payment services in the EU (last update March 8, 2017), http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:2404020302_1&from=EN&isLegissum=true.

[22] Council Directive 2015/2366, supranote 10, art. 66.

[23] Council Directive 2015/2366, supranote 10, art. 67.

[24] It should be noted that Article 5 of the PSD2 establishes a rigorous application process in order to become authorized to take advantage of the PSD2's provisions. The supervisory authority in each member state must implement an application process that includes a description of the applicant's three-year business plan, its organizational structure, and its data security policies. See Council Directive 2015/2366, supranote 10, art. 5. Once granted, however, the authorization is valid throughout the EU/EEA. Id.at art 11.

[25] See Summary of legislation, Revised rules for payment services in the EU, supranote 20.

[26] See Fintech Discussion Paper, supranote 15, at 37. The European Banking Authority noted that "the potential rewards and opportunities that credit institutions aim to achieve by engaging with Fintech do not come without potential risks, which will need to be thoroughly and comprehensively assessed." Id.

[27] See Fintech Discussion Paper, supranote 15, at 36–37.

[28] See Code de la consommation [Consumer Code], art. L311-51 (Fr.); Code monétaire et financier [Monetary and Financial Code], art. L. 523-3.

[29] Dominique Legeais, Les intermédiaires sans contrôle, Revue de Droit bancaire et financier n° 1, dossier 11 (Janvier 2013).

[30] See Fintech Discussion Paper, supranote 15, at 44–45.

[31] See generally id., supranote 15, at 44–52.

[32] Many commenters appear to oppose stand-alone legal regimes for fintech companies. For example, the European Securities and Markets Authority indicated in its answer to the consultation that "one should be cautious about the idea of regulating and supervising [fintech] companies in a different manner for the reason that they are start-ups and they would need more flexibility to develop. What should be regulated is the provision of a service or an activity independent of the form of the firm providing this service or activity. Therefore, we do not see a strong case for the creation of specific licensing categories for Fintech start-ups." The French AMF similarly indicated its preference to continue to adhere to an activity-based approach to financial regulation, all the while harmonizing, where possible, pre-existing member state regimes that were created to regulate fintech activities. For example, the AMF suggested creating an EU passportable crowdfunding legal framework that would harmonize pre-existing member state legal regimes across the EU level. The AMF also suggested creating a passportable European-Digital Investment Solution Platform regime that would apply to fintech companies, especially to those that offer wealth management advisory (conseil en gestion de patrimoine) or that market financial products (distribution de produits financiers).