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## BANKS AND THEIR FINTECH PARTNERS: WHO WILL REGULATORS HOLD ACCOUNTABLE?

*The author discusses recent enforcement actions involving banks and their Fintech partners. He finds that regulators have exercised discretion as to whom to charge based on a variety of factors, have apportioned civil money penalties among the parties, and have used the amorphous UDAAP as a basis for charges.*

By Stephen T. Middlebrook \*

The financial services industry is full of talk about the rise of new financial technology (FinTech) companies, questions as to if and how banks should interact with the new entities, and worries about what regulators will do if bank/FinTech partnerships encounter problems. Discussions often focus on which entity – the bank or the FinTech company – will be held liable by regulators for compliance failures. This paper looks at several recent enforcement actions involving financial services provided by a financial institution in partnership with a FinTech company and identifies emerging trends in how regulators may approach these relationships. The guiding principle appears to be flexibility: regulators are preserving their ability to take different approaches to different situations.

### RECENT ENFORCEMENT ACTION INVOLVING BANKS AND FINTECH PARTNERS

The Government Accountability Office (“GAO”) recently issued a report looking at how existing regulatory frameworks are being applied to FinTechs and making recommendations on how regulators should respond.<sup>1</sup> It noted that the extent to which FinTech

companies are subject to federal regulatory oversight varies based on what the firm does and how it structures its relationships. GAO interviews with agency staff revealed that the federal regulators were not routinely examining the FinTech partners of financial institutions.<sup>2</sup> FinTech companies that choose to partner with federally regulated financial institutions, however, “may receive indirect oversight from federal financial regulators as part of their efforts to ensure that their regulated entities are adequately managing the risks of these arrangements.”<sup>3</sup> Regulators have provided detailed guidance on how financial institutions should evaluate and manage the risk posed by third-party service providers, including FinTechs.<sup>4</sup>

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*footnote continued from previous column...*

*Oversight*, GAO-18-254 (March 2018) available at <https://www.gao.gov/products/GAO-18-254>.

<sup>2</sup> *Id.* at 32.

<sup>3</sup> *Id.* at 30.

<sup>4</sup> See, e.g., *Frequently Asked Questions to Supplement OCC Bulletin 2013-29*, OCC BB-2017-21 (June 7, 2017), available at <https://www.occ.treas.gov/news-issuances/bulletins/2017/bulletin-2017-21.html>; *Third-Party Relationships*, OCC

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<sup>1</sup> Government Accountability Office, *Additional Steps by Regulators Could Better Protect Consumers and Aid Regulatory*

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\*STEPHEN T. MIDDLEBROOK is of counsel at Womble Bond Dickinson (US) LLP. His e-mail address is [Steve.Middlebrook@wbd-us.com](mailto:Steve.Middlebrook@wbd-us.com).