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FBO ACCOUNTS: MAXIMIZING BENEFITS WHILE MINIMIZING RISKS IN FINTECH PARTNERSHIPS

Innovation in the banking and fintech industry has been supported in many cases through "FBO" or "for the benefit of" accounts that are set up by banks and their fintech partners to move funds for customers. These accounts are popular with fintechs because of the potential to help them minimize money transmission licensing risk. Despite the popularity of the FBO account model, there are numerous legal and regulatory risks that banks and their fintech partners need to take into consideration. These risks and their management are discussed in this article.

By Andrew E. Bigart and Max Bonici *

Over the past decade, the fintech industry and its bank partners have been at the forefront of developing innovative financial services for consumers and businesses.[1] This innovation is reflected through the many buzzwords used to describe fintech services, such as BaaS, BNPL, and P2P, among many others. But there is perhaps one that stands out above all others: FBO account. The "FBO" or "for the benefit of" account has become the engine that drives fintech services, from payments to lending and other activities that involve the movement of funds on behalf of customers.

At the most basic level, an FBO account is a custodial deposit account established by a bank partner of a non-bank fintech for purposes of receiving, managing, and transmitting funds "for the benefit" of the fintech's customers. The FBO account has become a critical tool that fintechs have leveraged to minimize the risk of triggering federal and state money transmission registration and licensing requirements when providing financial services (especially in the absence of a feasible federal fintech charter/license).

Despite the ubiquity of FBO accounts, there are numerous legal and regulatory risks that banks and their fintech partners need to take into consideration. In particular, the failure of three U.S. regional banks in the spring of 2023 set off a trend of heightened regulatory, supervisory, and enforcement activity among the federal banking agencies.[2] This scrutiny has extended to bank–fintech partnerships, including the use of FBO accounts.

[1] In this article, we generally refer to any insured depository institution as a "bank."

[2] The term "federal banking agencies" refers to the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), and the Office of the Comptroller of the Currency ("OCC").

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