LOS ANGELES & SAN FRANCISCO
Daily Journal
www.dailyjournal.com

THURSDAY, APRIL 20, 2017

PERSPECTIVE

Trump administration's Fintech policy remains unclear

By Jeff Steiner
and Sean Sullivan

As we are nearing the end of the first 100 days of President Donald Trump's presidency, some initial insight can be gleaned with respect to the policy direction that the Trump administration may take with respect to the financial services industry over the next four years. However, the administration's policy positions and effect on financial technology (Fintech), including the use of distributed ledger technology such as the blockchain, remains a bit murky.

In February, Trump issued an executive order which lays out seven core principles that will guide the policy of his administration with respect to regulating the U.S. financial system. In addition to setting forth the core principles, the order directs the secretary of the Treasury to consult with the heads of the member agencies of the Financial Stability Oversight Counsel (FSOC) and to provide an initial report to the president by June 3 (120 days after the executive order was issued). The secretary's report is expected to broadly address "the extent to which existing laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other Government policies promote the Core Principles and what actions have been taken, and are currently being taken, to promote and support the Core Principles."

While many expect the secretary's report to address issues arising from the Dodd-Frank Act, there is less clarity with respect to whether Fintech will be addressed as part of the report. Although industry participants remain hopeful, we have not seen any indication that the president has put a priority on growing Fintech. If the secretary of the Treasury addresses Fintech in the report, it could provide some signals and guidance as to how financial regulators, such as the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Federal Reserve Board will be expected to proceed when addressing Fintech specifically and new technologies in financial services more broadly.

For example, we could see Fintech addressed in the report as part of the Trump administration's stated goal of "making regulation efficient, effective, and appropriately tailored," as prescriptive regulations have the potential to hamper financial innovation — implementing new technology into existing rulesets can sometimes be like trying to fit a round peg in a square hole. We could also see Fintech addressed in connection with discussions on American competitiveness with foreign firms and international harmonization. Further, the order specifically mentions "reporting and recordkeeping," an area where distributed ledger technology could potentially provide a more streamlined solution to the vast array of recordkeeping and reporting rules in the financial services industry.

Consideration should also be given to how Trump's promise to lighten regulatory burdens — as made evident in his executive order on reducing regulation and controlling regulatory costs, and in statements he has made — will affect Fintech policy. While reducing regulation and moving to more principles-based regulation may encourage the implementation of new technology, it seems likely that revisions to existing regulations or new regulations and related guidance will be critical in getting Fintech firms and users comfortable with implementing and using new technologies while complying with the law.

Trump has already made some key appointments that suggest the framework for policy regarding the financial services industry that his administration will develop over the next few years. For example, Steven Mnuchin was confirmed as the secretary of the Treasury, Gary Cohn was appointed to director of the National Economic Council, and Jay Clayton has been nominated as chair of the SEC along with J. Christopher Giancarlo as the chair of the Commodity Futures Trading Commission. Notably, Trump has yet to nominate individuals to serve in other key offices, including the Federal Reserve Board's vice chairman of supervision and the Comptroller of the Currency — both of which are likely to significantly influence policies and rules regarding Fintech going forward.

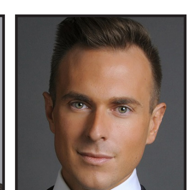
Some prominent players in the Fintech industry have asked Trump to appoint a Treasury undersecretary of technology that would be responsible for coordinating and harmonizing across financial regulators and to foster Fintech innovation and use. While such a position would be aimed at coordinating a U.S. strategy for Fintech, there has been no indication that such a position at the Treasury Department will be created.

Despite a lack of clarity with respect to the Trump administration's policies regarding Fintech, advocacy efforts by Fintech firms and users continue to promote the use and innovation of new technologies in the financial sector on Capitol Hill, as well as at the federal financial regulatory agencies. While the Trump administration's position and direction on Fintech could be made clearer after the secretary of the Treasury's report is completed, those seeking clarity around Fintech issues through legislative activity will likely continue to wait as a number of other legislative efforts take priority. Similarly, substantive action by federal regulatory agencies is unlikely while politically appointed vacancies remain.

Jeff Steiner, *counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher and a co-leader of the firm's Derivatives team, is a former special counsel at the U.S. Commodity Futures Trading Commission.*

Sean Sullivan, *a senior associate in the firm's San Francisco office, focuses on capital markets transactions, mergers and acquisitions and securities regulation.*


STEINER


SULLIVAN