Banking and Finance Law Daily Wrap Up, FINANCIAL TECHNOLOGY—Treasury reports to president on nonbank financials, fintech, and innovation, (Jul. 31, 2018)

By Thomas G. Wolfe, J.D.

In keeping with President Donald Trump's February 2017 executive order setting forth core principles for regulating the U.S. financial system, the Treasury Department has released its fourth report, titled "A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation." According to the Treasury, the report identifies "improvements to the regulatory landscape" to enable U.S. firms to "more rapidly adopt competitive technologies, safeguard consumer data, and operate with greater regulatory efficiency." Notably, the July 2018 report makes over 80 recommendations, including setting a national data security and breach notification standard. Collectively, the Treasury recommendations are designed to: embrace the efficient and responsible use of consumer financial data and competitive technologies; streamline the regulatory environment to foster innovation and avoid fragmentation; modernize regulations for an array of financial products and activities; and facilitate experimentation to promote innovation—by setting up "regulatory sandboxes," for example.

In a July 31, 2018, release accompanying the report, Treasury Secretary Steven Mnuchin commented, "American innovation is a cornerstone of a healthy U.S. economy. Creating a regulatory environment that supports responsible innovation is crucial for economic growth and success, particularly in the financial sector."

In 2017, the Treasury issued three reports in response to the set of core principles enunciated by President Trump in his directive (Executive Order 13772). These prior reports covered the U.S. depository system, capital markets, as well as asset management, investments, and insurance. Noting the Treasury's latest installment in the series, Jay Clayton, Chairman of the Securities and Exchange

Commission, remarked that these reports "clearly and comprehensively frame many of the key issues in our financial markets. The reports have informed … and will continue to inform the regulation of our markets. The Treasury reports have made an extremely valuable contribution to the SEC's mission, and, importantly, to investors in our capital markets."

Nonbank financial firms. As observed by the Treasury, nonbank financial firms play a number of key roles in the financial system such as "facilitating back-end check processing; enabling card issuance, processing, and network activities; and providing customer-facing digital payments software." Further, these nonbank financial firms are involved in capital markets and provide financial advice and execution services to retail investors as well.

Report highlights. In compiling its report, the Treasury consulted with many stakeholders, including trade groups, financial services firms, investment strategists, federal and state regulators, consumer advocacy groups, and academics. The Treasury released a fact sheet in tandem with its 222-page report. Among other things the report recommends:

- increasing efforts to enable digital communications, data sharing, and the use of cloud computing and machine learning;
- modernizing rules for digital communications in general and for the Telephone Consumer Protection Act and the Fair Debt Collection Practices Act in particular;
- setting a national data security and breach notification standard, permitting consumers to withdraw prior data authorizations, and developing more secure data-sharing methods;
- encouraging state regulators to "harmonize rules" across the country, especially in connection with licensing, supervision, and money transmission, to create a clear and consistent environment for innovators and existing financial institutions;
- moving forward with the Office of the Comptroller of the Currency's special-purpose national bank charter to reduce "regulatory fragmentation and

supporting beneficial business models;"

- updating rules to accommodate technological advances, such as facilitating service partnerships between banks and nonbank financial firms;
- for marketplace lending, urging Congress to codify the "valid when made" doctrine and the role of the bank as the "true lender" of loans it makes to bolster productive partnerships between banks and newer, technology-based firms;
- for mortgage lending and servicing, promoting changes to "accommodate an end-to-end digital mortgage, including acceptance of digital promissory notes, recognition of modern digital notary standards, and automated property appraisals;"
- for student lending and servicing, establishing "minimum effective guidance" for loan servicers handling decisions with significant financial implications;
- for short-term, small-dollar loans, recognizing and supporting the authority of states to establish comprehensive requirements for these financial products, recommending that the Consumer Financial Protection Bureau rescind its Payday Rule; and encouraging small-dollar installment lending by banks;
- for debt collection, establishing "minimum federal standards" governing debt collection by third-party collectors;
- updating the "IRS income verification system" to protect taxpayer information and enable automated and secure data-sharing with lenders or designated third parties;
- testing "newer credit models and data sources" by both banks and nonbank financial firms to expand access to credit and improve risk assessments;
- coordinating regulatory actions by agencies to best protect consumer data held by credit reporting agencies;
- modernizing payment services by having the Federal Reserve continue working towards a faster retail payments system;

- promoting the ability of smaller financial institutions, like community banks and credit unions, to access the most-innovative technologies and payment services;
- harmonizing the current patchwork of regulatory authority over wealth management and financial planning, which makes these services more costly and "potentially presents unnecessary barriers to the development of digital financial planning services;"
- working with federal and state regulators to invite innovations from new and existing market participants—similar to a "regulatory sandbox;" and
- reforming procurement rules and encouraging "regulator engagement" to allow financial regulators to keep up with technological developments in the industries they regulate.

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