

Financial Services

Providing Strategic Legal Guidance to the Global Financial Services Industry

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CSBS Announces “One Company, One Exam” Program for Examinations of Money Services Businesses

On September 15, 2020, the Conference of State Bank Supervisors (CSBS) announced a “one company, one exam” program for examinations of money services businesses. These businesses, spanning from money transmitters like PayPal to cryptocurrency firms, can now take advantage of a more streamlined regulatory process consistent across more than 40 states. The program’s goal is to make it easier for these businesses to operate across multiple states by easing regulatory burdens. According to a CSBS statement, the program builds on “years of multistate coordination,” and “this exam protocol will enable states to fine tune a risk-based approach to each company’s operations. When compliance issues arise, the states will be better positioned to follow up throughout the year.”¹

CSBS is an organization of financial regulators from all 50 states, Washington, D.C., Guam, Puerto Rico, American Samoa, and the U.S. Virgin Islands.² The state-initiative program, known as MSB Networked Supervision, allows nationwide payment firms to complete a single, comprehensive exam to satisfy all state regulatory requirements.³ The initiative will be available to 78 payment and cryptocurrency companies that in total move over \$1 trillion for their customers annually.

The comprehensive exam will be led by one state and involve an examiner team consisting of individuals from across the country.⁴ It will presumably incorporate the standards and practices that have been developed in connection with the existing protocol for performing multistate examinations. States will be able to share information from the exams, and each state will reserve the right to launch independent examinations if they want.⁵



INCREASING COOPERATION AMONG STATE REGULATORS

Over the past few years, state regulators have been working to address complaints that a regulatory system based on individual states is “redundant and overly burdensome.”⁶ The initiative arose out of the CSBS Fintech Industry Advisory Panel, convened more than two years ago to support state regulators’ efforts to engage with fintech companies.⁷ The Panel’s work initially led to a list of recommendations for state regulators to consider to streamline supervision of nonbank financial services companies involved in fintech, and a bundle of initiatives to create a networked system of nonbank licensing and supervision known as “CSBS Vision 2020.”⁸

CONTINUED ESCALATION OF FEDERAL AND STATE TENSIONS

The CSBS’s move highlights growing tensions between state and federal regulation of fintech companies. While state regulators have moved toward increased harmonization and a uniform approach to licensing, the Office of the Comptroller of the Currency (OCC) announced a charter program in July 2018 that would give nonbank fintech companies the opportunity to offer loans and other services nationwide without approval from individual state regulators.⁹ State regulators have characterized this effort as an attempt to undercut state authority, whereas the OCC considers its approach as a useful national option.

New York State’s Department of Financial Services, for example, challenged the OCC’s program in court, calling it a “lawless, ill-conceived, and destabilizing of financial markets that are properly and most effectively regulated by [states],” highlighting the risks to financial consumers at “great risk of exploitation by federally-chartered entities improperly insulated from New York law.”¹⁰ In May 2019, U.S. District Judge Victor Marrero denied dismissal of New York’s lawsuit on grounds that the “business of banking” requires the receiving of deposits, and in October, Judge Marrero entered a judgment “effectively barring the OCC from considering any fintech charter applications on a nationwide basis,” agreeing with New York’s argument that the program exceeds OCC’s powers.¹¹ The OCC appealed, and the suit is currently pending before the Second Circuit.¹²

WHAT’S NEXT FOR MONEY SERVICERS AND OTHER FINTECH COMPANIES?

What exactly does this mean for money transmitters and other nonbank fintech companies? First, it is now likely to be easier and cheaper to comply with state regulatory requirements, at least for the 78 national companies that can take advantage of the CSBS’s new regulatory scheme. The “one company, one exam” program intends to ease the regulatory burdens on these companies by removing the duplicitous burdens of individualized examinations and oversight.

Second, continued cooperation among state regulators may well lead to additional harmonization of the regulatory requirements across various states, given the focus of the CSBS’s commitments to consistency, transparency, and uniformity in its 2019 Accountability Report.¹³ It bears noting that a uniform examination process does not eliminate the burdens associated with varying state licensing requirements. However, it may lay the groundwork for a multi-state licensing regime, which the CSBS has long advocated.

Third, it will be important to watch for the Second Circuit’s decision on the OCC’s charter program, as upholding the lower court’s decision would potentially limit federal authorities’ attempts to provide a national alternative to state regulation for providers of non-deposit payment services.¹⁴ It is clear that neither state nor federal regulators want



to cede any ground, and the Second Circuit’s decision may determine how the current system of dual regulation adapts itself to the changes generated by fintech innovation.

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¹ State Regulators Roll Out One Company, One Exam for Nationwide Payment Firms, CSBS (Sept. 15, 2020), available at <https://www.csbs.org/regulators-announce-one-company-one-exam-for-payments-companies>

² Jon Hill, CSBS Unveils Streamlined Joint Exam for Payment Cos., Law 360 (Sept. 15, 2020), available at <https://www.law360.com/articles/1310216/csbs-unveils-streamlined-joint-exam-for-payments-cos->

³ State Regulators Roll Out One Company, One Exam for Nationwide Payment Firms, CSBS (Sept. 15, 2020), available at <https://www.csbs.org/regulators-announce-one-company-one-exam-for-payments-companies>

⁴ Jon Hill, CSBS Unveils Streamlined Joint Exam for Payment Cos., Law 360 (Sept. 15, 2020), available at <https://www.law360.com/articles/1310216/csbs-unveils-streamlined-joint-exam-for-payments-cos->

⁵ Pete Schroeder, U.S. Crypto, fintech firms to benefit from slimmed down regulatory process, Reuters (Sept. 15, 2002), available at <https://www.reuters.com/article/usa-regulators-crypto/us-crypto-fintech-firms-to-benefit-from-slimmed-down-regulatory-process-idUSKBN26624F>

⁶ Pete Schroeder, U.S. Crypto, fintech firms to benefit from slimmed down regulatory process, Reuters (Sept. 15, 2002), available at <https://www.reuters.com/article/usa-regulators-crypto/us-crypto-fintech-firms-to-benefit-from-slimmed-down-regulatory-process-idUSKBN26624F>

⁷ CSBS Fintech Industry Advisory Panel, CSBS (Feb. 14, 2019), available at <https://www.csbs.org/fintechpanel>

⁸ CSBS issues Accountability Report on fintech initiatives, CSBS (Jan. 7, 2020), available at <https://www.csbs.org/newsroom/csbs-issues-accountability-report-fintech-initiatives>

⁹ Jon Hill, CSBS Unveils Streamlined Joint Exam for Payment Cos., Law 360 (Sept. 15, 2020), available at <https://www.law360.com/articles/1310216/csbs-unveils-streamlined-joint-exam-for-payments-cos->

¹⁰ Jon Hill, NY Bank Regulator Sues OCC Again Over Fintech Charter, Law360 (Sept. 14, 2018), available at <https://www.law360.com/articles/1083151>

¹¹ Philip Rosenstein, OCC’s Potential Boon for Payment Industry Faces Headwinds, Law360 (Sept. 10, 2020), available at <https://www.law360.com/articles/1306229/occ-s-potential-boon-for-payment-industry-faces-headwinds>

¹² Philip Rosenstein, OCC Defends Its Fintech Charter Authority At 2d Cir., Law360, (Aug. 13, 2020), available at <https://www.law360.com/articles/1306229/occ-s-potential-boon-for-payment-industry-faces-headwinds>.

¹³ Fintech Industry Advisory Panel Accountability Report, CSBS (Dec. 2019), available at <https://www.csbs.org/system/files/2020-01/Fintech-Accountability-Report.pdf>

¹⁴ Philip Rosenstein, OCC’s Potential Boon for Payment Industry Faces Headwinds, Law360 (Sept. 10, 2020), available at <https://www.law360.com/articles/1306229/occ-s-potential-boon-for-payment-industry-faces-headwinds>