

May 22, 2017

CFTC Launches LabCFTC FinTech Initiative

Creates New Channel for Interaction with FinTech Companies

SUMMARY

On May 17, 2017, the Commodity Futures Trading Commission (“CFTC”) announced the creation of LabCFTC, a new initiative aimed at facilitating the CFTC’s engagement with companies in the financial technology (“FinTech”) sector and identifying emerging technologies that can enable the CFTC to carry out its mission more effectively.¹ LabCFTC consists of two core components: (1) the creation of a dedicated email address (LABCFTC@cftc.gov), which the CFTC has named GuidePoint, that will allow FinTech companies to engage directly with the CFTC and its staff, learn about the CFTC’s regulatory framework and obtain feedback and information on the development of innovative products and services, and (2) the launch of a new initiative (CFTC 2.0) to foster and increase the CFTC’s familiarity with FinTech and its understanding of new technology that may have application within the CFTC’s own operations.² The CFTC expects that FinTech companies will use GuidePoint to pose questions ranging from specific registration or compliance requirements to more general questions about the CFTC’s regulatory framework, but notes that feedback delivered through GuidePoint is non-binding on the CFTC.

BACKGROUND

On September 21, 2016, CFTC Acting Chairman J. Christopher Giancarlo (who was at that time a Commissioner) spoke before the American Enterprise Institute about the “ongoing transformation of the world’s trading markets from analog to digital” and how market regulation by the CFTC had “not kept pace with this transformation.”³ In that speech, Giancarlo described the five components of his view of a forward-looking agenda for U.S. market regulators, emphasizing that regulators should: (1) Embrace Innovation, (2) Stand Up for Intellectual Property, (3) Repurpose Rules for the Digital Age, (4) Unburden

the U.S. Economy and (5) Champion American Markets.⁴ On May 17, 2017, the CFTC announced the launch of LabCFTC as one step towards advancing this agenda.⁵

The launch of LabCFTC follows the creation of similar initiatives launched by a number of other financial regulatory agencies that are designed to facilitate engagement with the FinTech industry and promote collaboration on issues related to FinTech policy development and implementation. In particular, LabCFTC's components share key similarities with the Office of the Comptroller of the Currency's recently launched Office of Innovation.⁶

LABCFTC COMPONENTS

LabCFTC has two components: (1) GuidePoint, which is a dedicated email address (LABCFTC@cftc.gov) established to provide FinTech companies with a new channel to engage with the CFTC and its staff on inquiries in support of responsible innovation, and (2) CFTC 2.0, which is a newly created initiative intended to enhance the CFTC's exposure to new technologies that improve the CFTC's ability to carry out its responsibilities more effectively and efficiently.⁷

GuidePoint: GuidePoint will serve as a dedicated point of contact for the FinTech community to engage with the CFTC. It is a direct channel that allows FinTech companies and CFTC market participants to obtain feedback on inquiries that relate to responsible FinTech innovation in CFTC-regulated markets. In addition, the CFTC anticipates using the GuidePoint channel to inform agency staff of relevant issues in FinTech and pass along suggestions to encourage responsible FinTech development. By interacting with FinTech companies, the CFTC anticipates that it will be able to learn about areas where new regulatory initiatives may be needed to keep up with advances in technology.

GuidePoint's stated mission is to assist FinTech companies in understanding and operating within the CFTC's regulatory framework. Accordingly, GuidePoint staff will provide feedback to specific questions posed by FinTech companies and direct them to relevant information and resources. The GuidePoint channel can also be used by FinTech companies to raise regulatory issues or concerns with the CFTC's staff. It is important to note that GuidePoint does not create any independent decision-making or delegated authority powers and cannot be used to obtain legal advice or regulatory relief – the CFTC intends that it will be used for informational purposes only. As a result, feedback received through GuidePoint will not affect a FinTech company's need to comply with existing regulatory requirements.⁸

FinTech companies eligible to make inquiries through the GuidePoint channel include potential and current CFTC registrants, as well as other businesses that may affect CFTC-regulated markets or market participants. GuidePoint staff will look for "a clear nexus" to CFTC-regulated markets and participants to determine when an inquiring entity is eligible to make use of the GuidePoint channel.⁹

Through GuidePoint, the CFTC expects to field inquiries on FinTech products and services including algorithmic trading, blockchain and distributed ledger, cloud computing, data management and analysis, identity, machine learning/artificial intelligence, money and asset transfer, network cartography and

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analysis and programmable hardware. The CFTC expects that FinTech companies will use GuidePoint to pose questions ranging from specific registration or compliance requirements to more general questions about the CFTC's regulatory framework, especially questions involving new FinTech products and services or business models.

The CFTC notes that there may be instances when the implementation of a new technology merits the "consideration of tailored, proportionate relief" from the agency or its staff. If an inquiry rises to this level, or if an inquiring eligible entity otherwise requests a legal interpretation or regulatory relief, then GuidePoint will refer the FinTech company to the relevant CFTC staff (outside of GuidePoint) who are authorized to entertain the issuance of exemptive, no-action or interpretative letters. The review and decision process for these referral requests will be made according to the CFTC's established policies and procedures set forth in CFTC regulation 140.99. Accordingly, GuidePoint should not be thought of as an alternative review process, but rather as an inquiry facilitator.¹⁰

There is no fee associated with using GuidePoint and the CFTC will endeavor to respond to inquiries submitted through GuidePoint in a timely manner, although it does not guarantee that it will be able to respond to every inquiry received. In addition, feedback delivered through GuidePoint is non-binding on the CFTC and the CFTC is not required to follow or accept legal conclusions derived from information provided through GuidePoint.¹¹

CFTC 2.0: CFTC 2.0 is a new initiative that is intended to increase the CFTC's familiarity with FinTech and enhance the agency's understanding of new technology that may have application within the CFTC's own operations through collaboration with the FinTech industry and CFTC market participants.

The CFTC expects that one avenue through which this interaction will occur is the development of case studies to understand situations in which the CFTC could provide better oversight and support to market participants and act as a catalyst for the further development and implementation of promising FinTech initiatives. Through the development and review of these case studies, the CFTC aims to reshape the way that it conducts market oversight to enhance market and risk surveillance so that it can better judge market integrity.¹² In order to facilitate the development of these case studies, the CFTC has invited FinTech companies to share ideas and new technologies with CFTC staff through GuidePoint.

In addition, the CFTC plans to create a secure testing environment, which will be a walled-off workspace that the CFTC can use to experiment with new applications and technologies. Through this process of experimentation, CFTC aims to provide its staff with new opportunities to explore promising ideas and cultivate greater in-house FinTech capability and knowledge.

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ENDNOTES

- 1 CFTC, CFTC Launches LabCFTC as Major FinTech Initiative (May 17, 2017), *available at* <http://www.cftc.gov/PressRoom/PressReleases/pr7558-17#PrRoWMBL>.
- 2 *Id.*
- 3 Address of J. Christopher Giancarlo to the American Enterprise Institute, “21st Century Markets Need 21st Century Regulation”, (Sept. 21, 2016) *available at* <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-17>.
- 4 *Id.*
- 5 Remarks by J. Christopher Giancarlo, Acting Chairman of the CFTC, Before the New York FinTech Innovation Lab (May 17, 2017), *available at* <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-23>.
- 6 OCC, *Recommendations and Decisions for Implementing a Responsible Innovation Framework* (Oct. 26, 2016), *available at* <https://www.occ.treas.gov/topics/responsible-innovation/comments/recommendations-decisions-for-implementing-a-responsible-innovation-framework.pdf>.
- 7 CFTC, For Innovators (May 17, 2017), *available at* <http://www.cftc.gov/LabCFTC/ForInnovators/index.htm>.
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 *Id.*
- 12 CFTC, CFTC 2.0 (May 17, 2017), *available at* http://www.cftc.gov/LabCFTC/CFTC2_0/index.htm.

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