



A Fresh Look at FinTech

December 9, 2020



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Speakers



Tonya Esposito
Partner
Washington, DC



Tracee E. Davis
Partner
New York

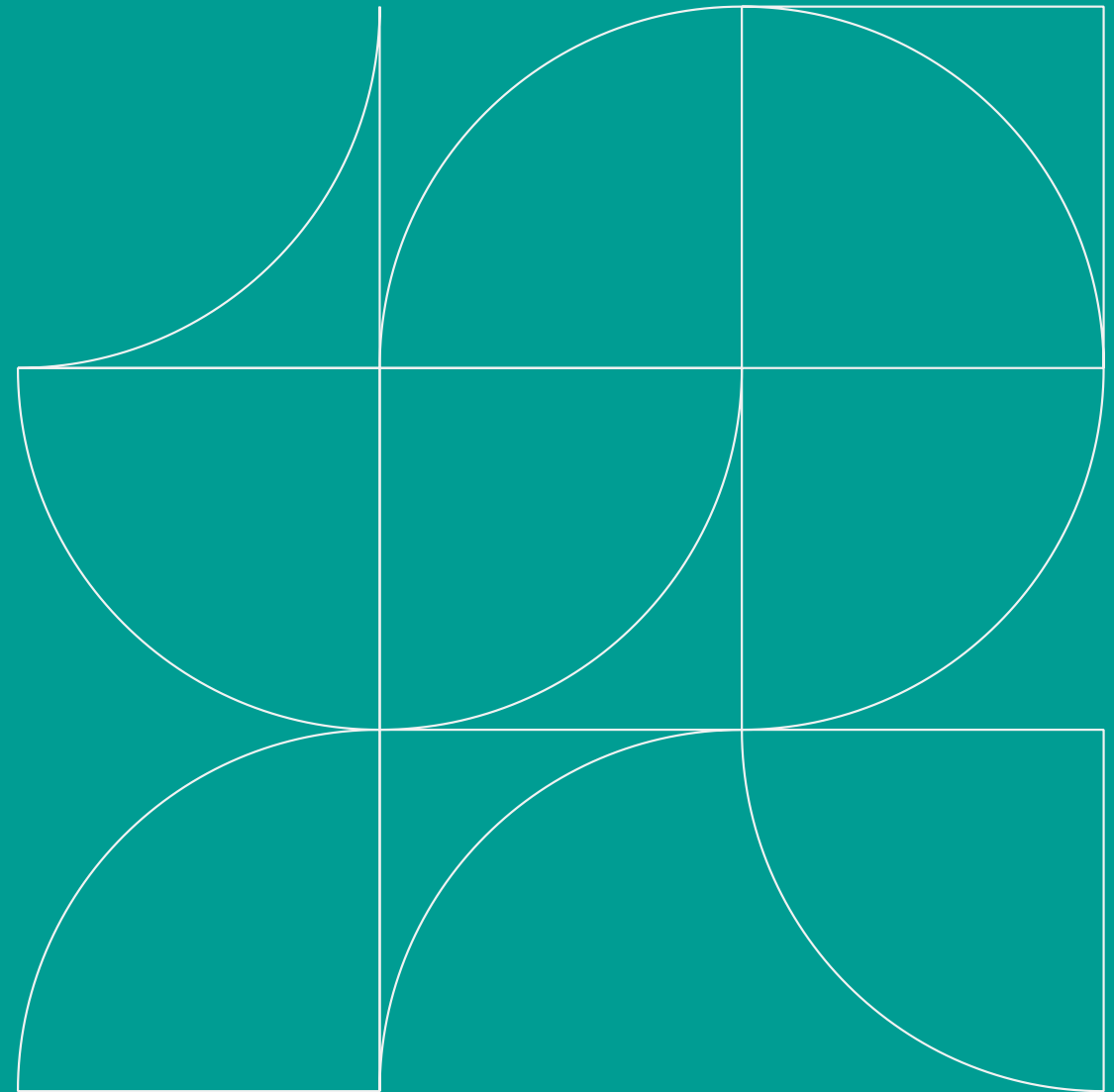


Renée Appel
Associate
Washington, DC

Today's Agenda

- 01** FinTech Overview
- 02** Regulatory Landscape
- 03** Operational Risk and Enforcement Trends
- 04** Effects of COVID-19
- 05** Takeaways
- 06** Questions

FinTech Overview



Defining FinTech

How do you define financial services and digital technology, or “FinTech”?

“Computer programs and other technology used to support or enable banking and financial services”

-Oxford Dictionary

“Financial technology, also known as FinTech, is a line of business based on using software to provide financial services. Financial technology companies are generally startups founded with the purpose of disrupting incumbent financial systems and corporation that rely less on software.”

-Wikipedia

Defining FinTech

Some Examples of Prominent FinTech Applications Include:

- Online banking
- Alternative Finance
- Mobile Payments
- Branchless/digital-only banking
- Autonomous Finance (Robo-Advisors)
- Cryptocurrency

Defining FinTech:

Banks vs. FinTech Companies – A Blurry Distinction

- FinTech Companies are not banks
 - But traditional banks use FinTech and offer FinTech services

- Many FinTech Companies focus on one service in an attempt to disrupt banks

- Traditional banks are often full-service and seek broad appeal and market-share
 - Increasingly leveraging FinTech to avoid disruption

- Regulatory distinction? OCC accepts special-purpose charters

FinTech's Impact

- The customer/consumer and needs
- Banks vs non-banks
- Shift from B2C to B2B
- Innovation
- Safety and security
- Compliance
- Regulatory framework

Sample Collaborations

- Bank invested in Germany-based FinTech company to integrate supply chain financing technologies and solutions for customer offerings.
- Bank partnered with a digital lender to help offer online loans to small businesses
- Partnership formed to improve point-of-sale lending technology to give consumers multiple purchasing options seamlessly.
- Digital-only bank partnered with the largest FinTech company (by valuation) to deliver a new auto-save feature.

Global Developments

- Data Protection Legislation
 - GDPR in the EU

- Virtual Currency Regulation
 - Increasing scrutiny from European and Asian governments

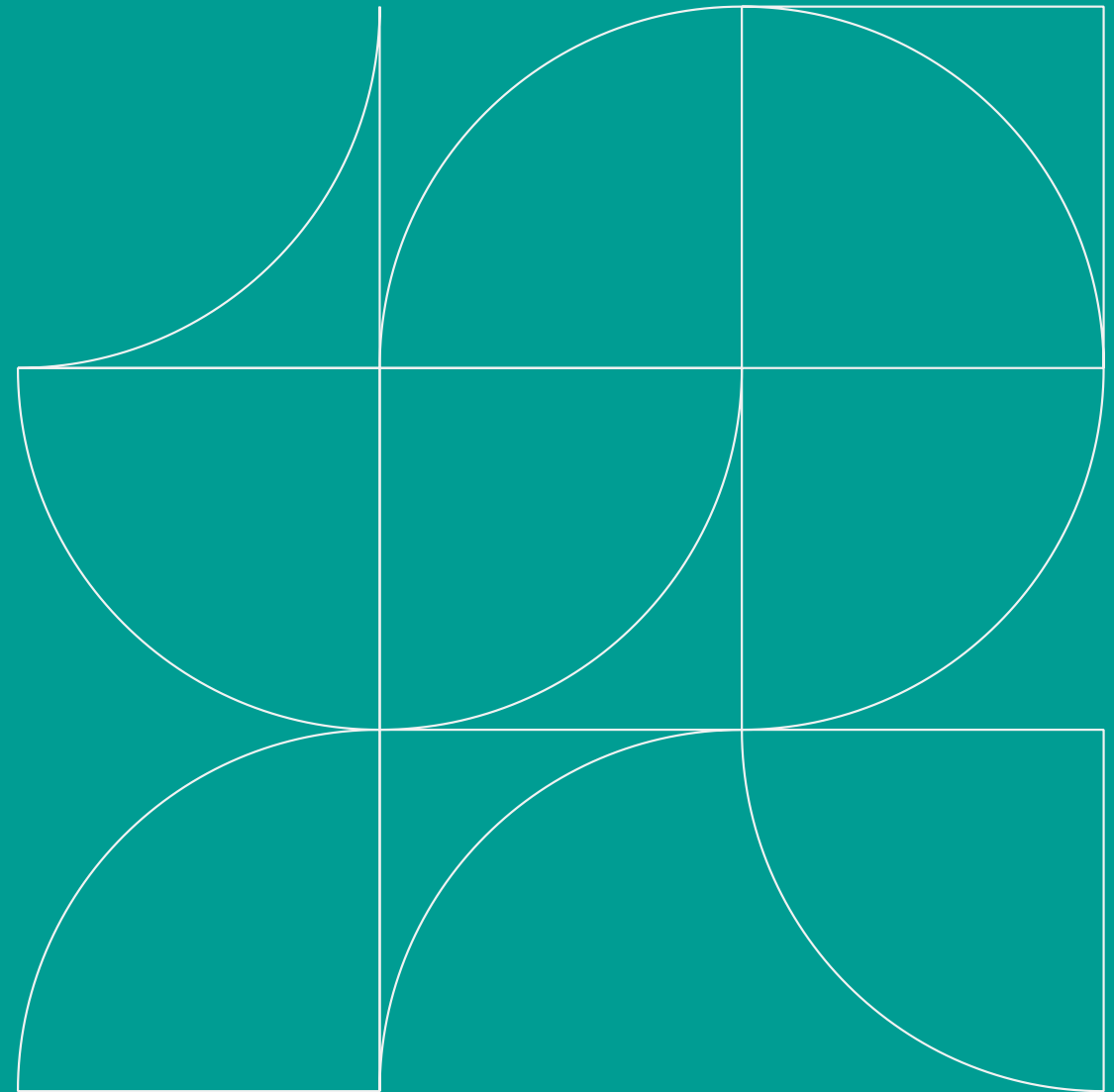
- Artificial Intelligence, Machine Learning, and Algorithms

90%

Over 90% of banks expect growth in the usage of mobile applications, much higher than any other financial sector.

PwC, Consumer Banking Braces for Disruption

Regulatory Landscape



Regulators

Federal Regulators of Most FinTech Products and Services include:

- Consumer Financial Protection Bureau
- Federal Reserve
- Federal Deposit Insurance Corporation
- Federal Housing Administration
- Office of Federal Housing Enterprise Oversight
- Federal Financial Institutions Examination Counsel
- Financial Crimes Enforcement Network
- Securities and Exchange Commission
- Commodity Futures Trading Commission

Regulators

Additional State Regulators:

- State banking departments
- Consumer protection agencies
- Secretaries of State
- State securities commissions

Regulators

Quasi or Non-Governmental Entities that Perform Some De Facto Regulatory Functions:

- Financial Industry Regulatory Authority
- National Automated Clearing House Association
- Federal National Mortgage Association
- Federal Home Loan Mortgage Corporation
- Credit Card Networks (Visa, MC, Amex, Discover)

Federal Laws: Financial Services

Extensive List of Federal Financial Services Laws Triggered Depending on Type of FinTech Product or Service:

- Electronic Funds Transfer Act and Reg E
- Equal Credit Opportunity Act and Reg B
- Fair Credit Reporting Act and Reg V
- Expedited Funds Availability Act and Reg CC
- Truth in Lending Act and Regs DD and Z
- Gramm Leach Bliley Act and Reg P
- Securities Act of 1933
- Securities Act of 1934

Federal Laws: Other

Other Applicable Laws Not Specific to Financial Services:

- Electronic Signatures in Global and National Commerce Act
- Uniform Electronic Transactions Act
- American with Disabilities Act
- Telephone Consumer Protection Act
- Federal Arbitration Act
- Various laws relating to patent, trademarks, and copyrights

Regulatory Movement

Who should regulate FinTech?

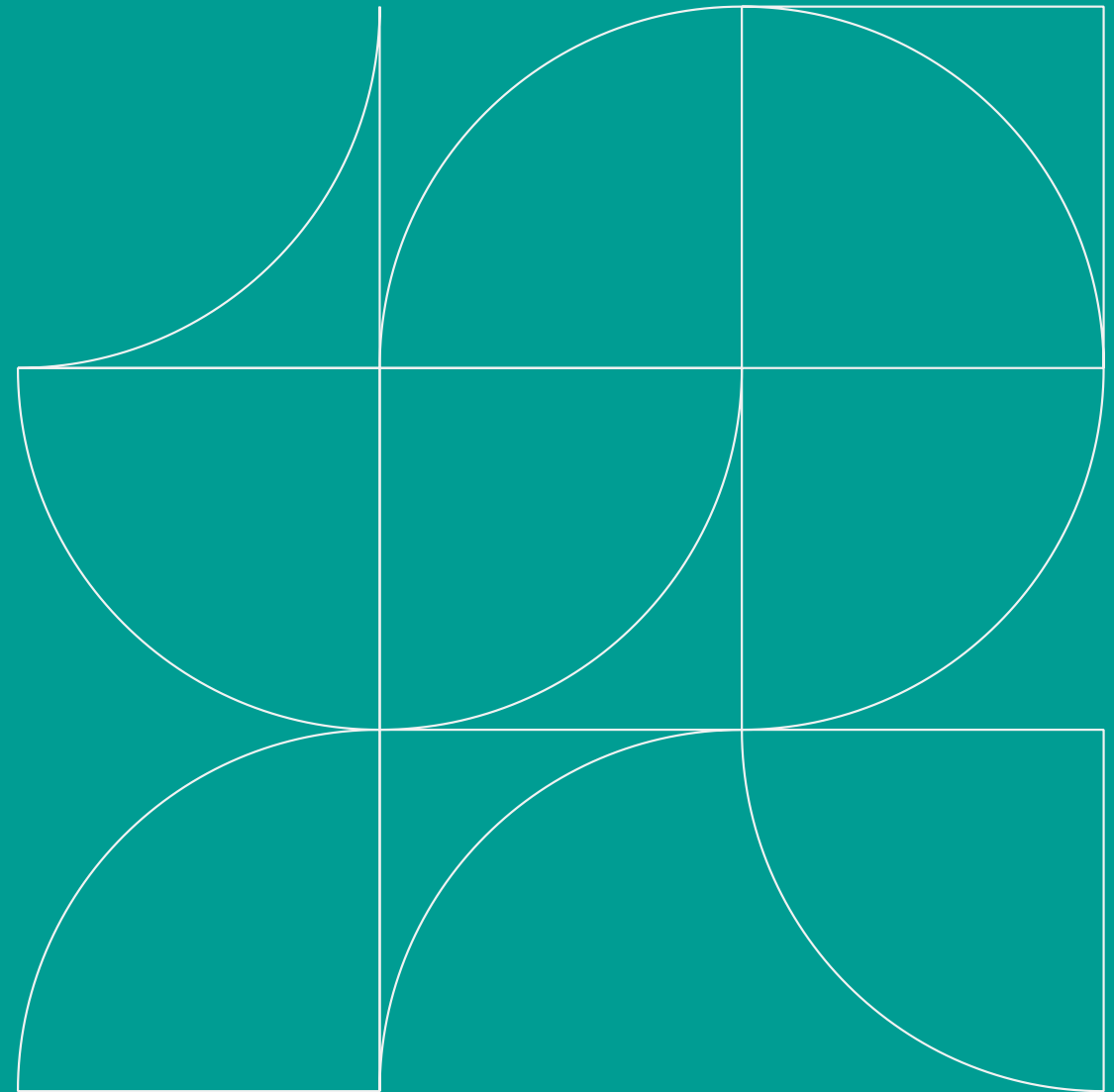
- State or Federal Government?
 - *Linda Lacewell v. OCC*
- FinTech Companies are not banks.

Regulatory Movement

- Increasing regulatory awareness of FinTech across agencies
- FDIC – proposed rule to allow deposits to enter banking system through tech channels (e.g. mobile) without subject to normal brokered deposit rules
- OCC – proposed “Innovation Pilot Program” to test FinTech in a “sandbox”
- SEC – new guidance and rules on Initial Coin Offerings, crowdfunding, and robo-advisors

Congressional Research Service, [*Fintech: Overview of Financial Regulators and Recent Policy Approaches*](#) (Apr. 28, 2020)

Operational Risk and Litigation and Enforcement Trends



Operational Risk and Litigation and Enforcement Trends

- Patchwork Regulatory and “Principles-Based” approach to continue
 - Cybersecurity
 - Data privacy
 - Disclosure and consent Litigation
- Likely Areas of Exposure:
 - Securities and Trading
 - Use of Consumer Information and Consent
 - Credit and Lending
 - Anti-Money Laundering
 - Deposits
 - Virtual Currency
 - Intellectual Property

Mobile Payments

- Mobile payment services increasingly popular
- FinCEN registration and state regulatory licensing framework for non-bank institutions
- Mobile payment companies use AI and algorithms
 - Detect fraud
 - Chatbots/customer service
 - Voice commerce
- Risk of litigation and regulatory exposure:
 - AI failure
 - Hacks and breaches

Example: Branchless Banking

- AI and Algorithms – can help make lending choices
- Susceptible to bias and discrimination
 - Risk of litigation and regulatory exposure

Branchless Banking: Enforcement Actions

- FTC is paying careful attention to issues of bias and discrimination with AI
 - Especially in loans and housing.
- Has warned that AI must comply with Equal Credit Opportunity Act, Americans with Disabilities Act, Fair Housing Act, and more.

See FTC, *Big Data: A Tool for Inclusion or Exclusion* (2016)

Example: Robo- Investment Advising

- Risk tolerance set by consumer – let AI make investing decisions
- SEC has taken action against false advertising/misleading claims
- Other potential exposure
 - Errors/faulty advice
 - Regulatory framework written with human advisors in mind

Data Privacy

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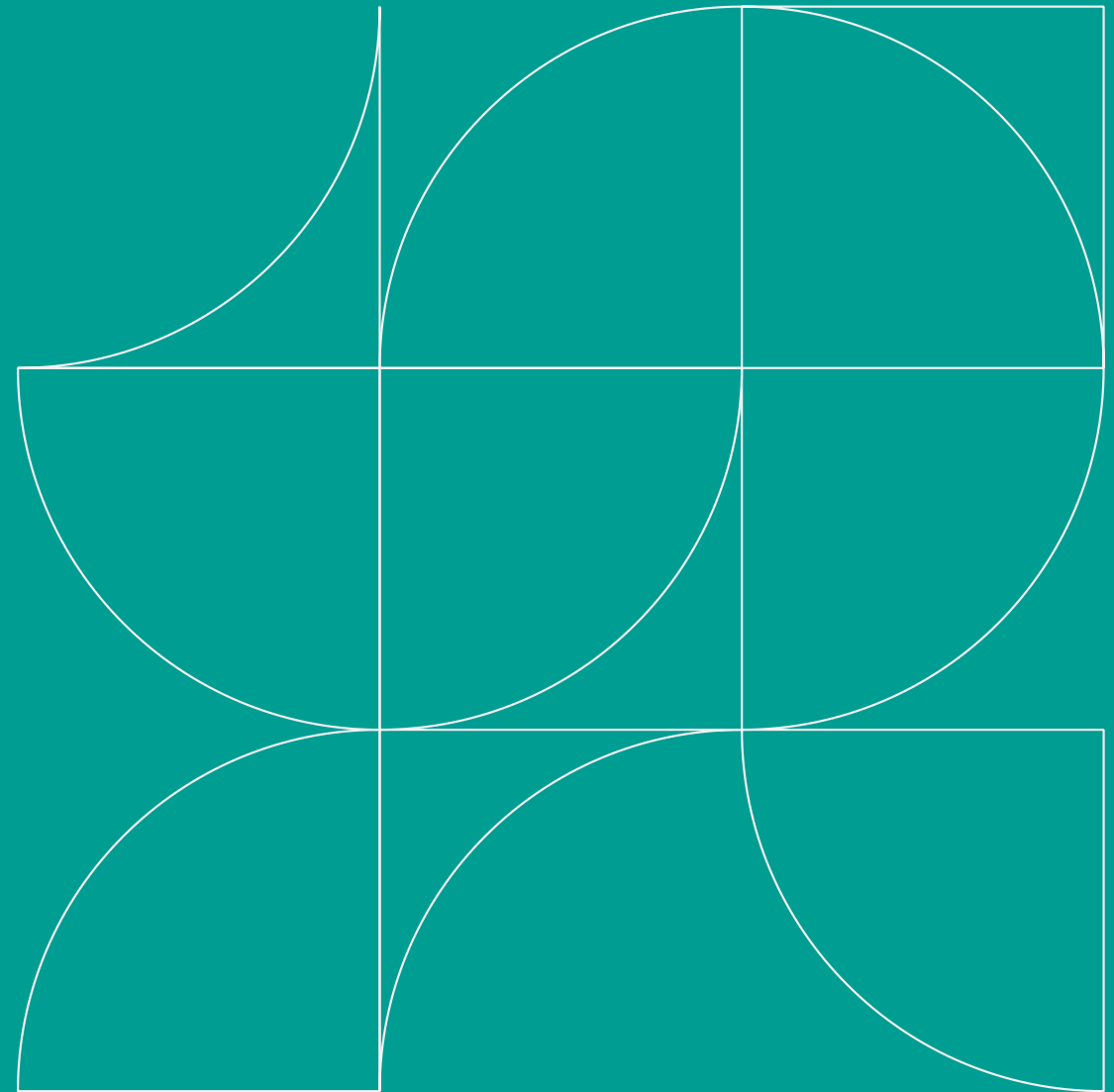
Cybersecurity and Data Breach

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Anticipated Effects of COVID-19



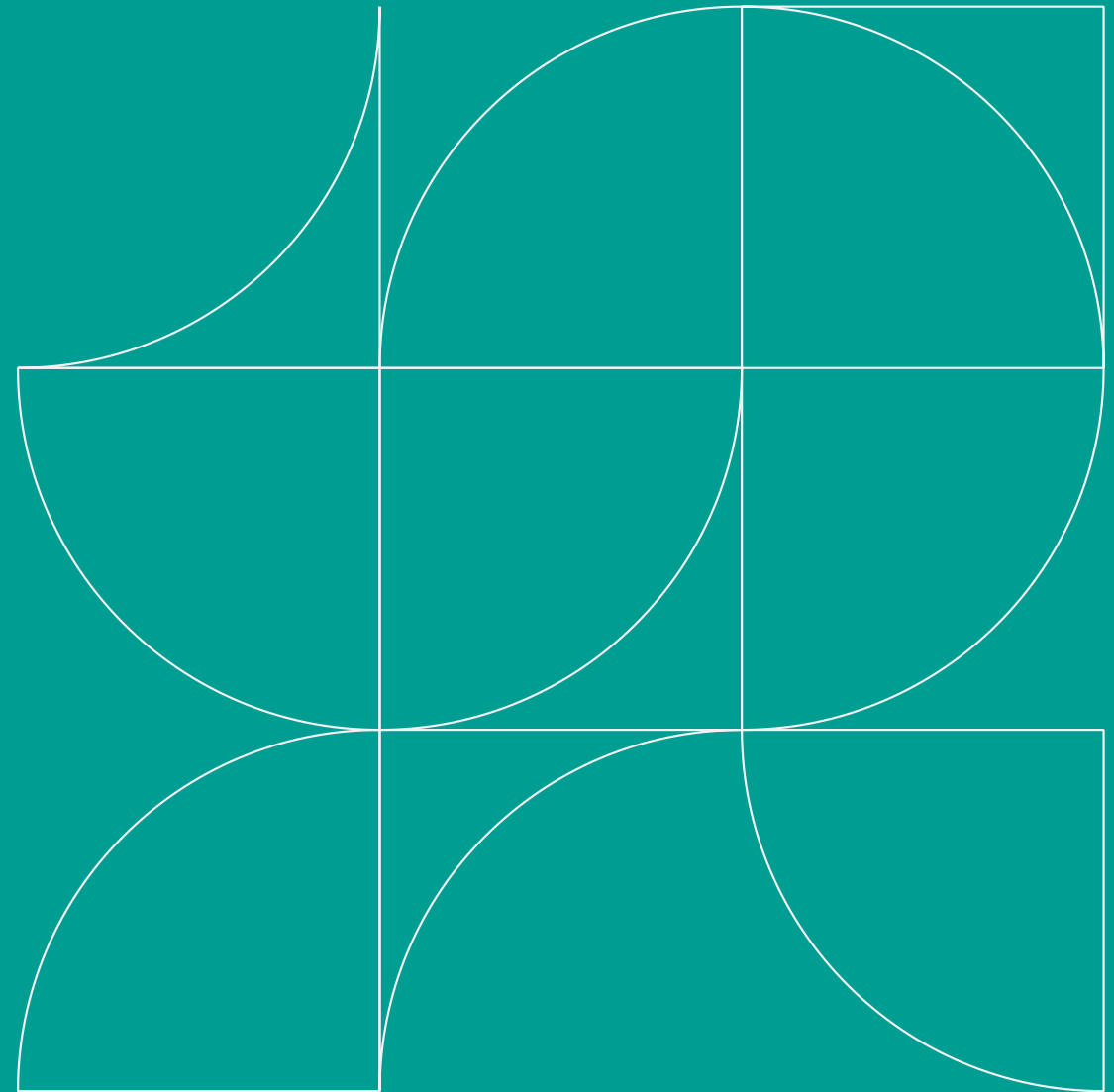
Effects of COVID-19

- Increased willingness – by consumers *and* companies – to use FinTech
 - Embrace of technology, remote working, mobile platforms
 - Combined with rollout of 5G improving speed and access of services
 - Consumers and institutions increasingly seeing FinTech as normal and standard

- Harder for Start-ups to get financed
 - Bigger institutions have an advantage

- Increased scrutiny by governmental authorities
 - Especially if companies are seen as profiteering from the pandemic
 - E.g. online FinTech lenders taking advantage of consumers' credit crunch

Takeaways



Takeaways

Navigating the Regulatory Landscape

- Unclear and changing regulatory schemes
- Importance of robust compliance
- Focus on infrastructure, process and practice through multidisciplinary approach
- Cost-benefit analyses

Have questions?

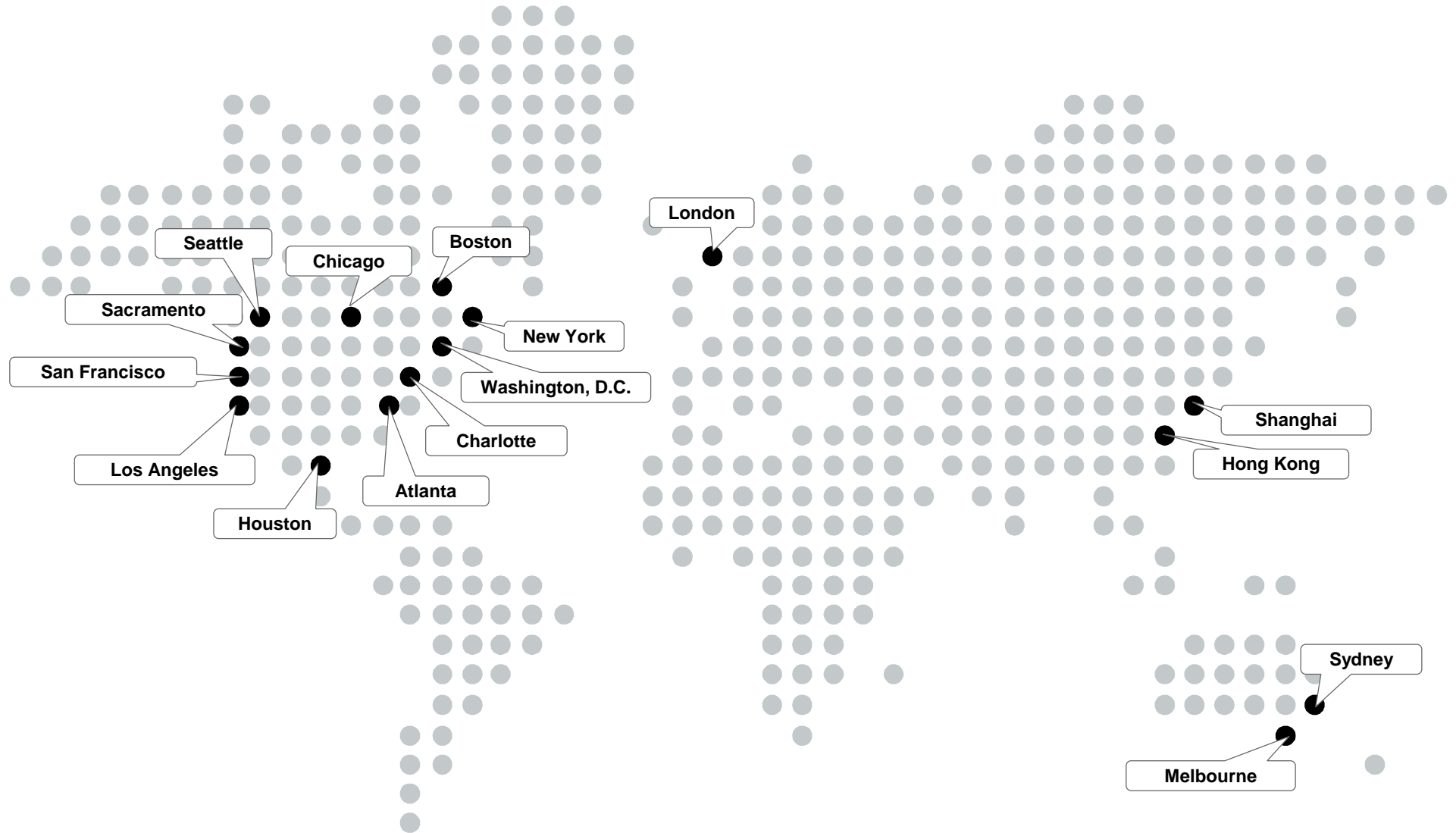
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- **Seyfarth's Financial Services Practice Group**
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 - Full-service approach to help clients navigate the complexities of the industry

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 - Bringing together legal industry partners to provide tools, resources, and programs to support continuing personal and professional development of diverse legal talent

Global Reach



Thank You

For more information please contact:

Tonya M. Esposito

email: Tesposito@seyfath.com

phone: 202-828-5375