



FINTECH REGULATORY SANDBOX PROPOSAL

May 14, 2018

SIFMA Fintech Regulatory Sandbox Proposal Supplemental Submission to U.S. Department of Treasury¹

Issue to be Addressed

- Currently in the United States, firms of all kinds—whether they are regulated financial institutions or technology companies, established firms or new entrants—face significant regulatory risks and constraints when seeking to engage in contained, in-market experiments involving innovative financial services and technologies.
- These risks and constraints weigh on U.S. financial services innovation, even where market participants are well positioned to address potential concerns about consumer and market protection. U.S. regulatory fragmentation, as documented by GAO,² makes navigating this environment more complex and difficult.
- The regulatory environment acts as a brake on financial innovation practices that have made the United States the home of the world’s leading technology companies.
- At the same time, newcomers outside the United States—particularly in Asia and Europe—are quickly moving forward in financial innovation. Other jurisdictions, including the UK, Singapore, and Mexico, are encouraging financial technology innovation by offering regulatory “sandboxes” which facilitate limited experiments supervised by regulators, to the benefit of consumers and innovation. The United States is falling behind from a competitive standpoint.

¹ This submission supplements the report submitted by SIFMA to the U.S. Department of Treasury on April 6, 2018 titled *Promoting Innovation in Financial Services*. That report includes additional recommendations relating to the FSOC’s role in financial innovation, among other topics. In that Report, we recommended that an FSOC Fintech Subcommittee should “foster the creation of a single U.S. regulatory ‘sandbox’ — a space where a company may experiment by making its latest innovations available to a limited number of participants while providing regulators with appropriate visibility into the experiment. A sandbox should have clear rules, subject to notice and comment, that all participants must follow, and all relevant regulators should participate and coordinate to promote regulatory certainty, efficiency, and shared learning.” [Here](#) at page 11. This document is meant to provide additional detail on this recommendation.

² United States Government Accountability Office, Report to Congressional Requesters: Additional Steps by Regulators Could Better Protect Consumers and Aid Regulatory Oversight (Mar. 2018) at 40, available at <https://www.gao.gov/assets/700/690803.pdf>.

<p>Purpose of the Fintech Sandbox</p>	<ul style="list-style-type: none"> • Creation of a single fintech regulatory sandbox would promote vigorous and competitive U.S. financial markets.³ For these purposes, a regulatory “sandbox” is an environment that, through selective application of otherwise potentially restrictive regulations, would promote financial technology, product, and services innovation while protecting core customer, financial system, and regulatory interests. • The fintech regulatory sandbox would be designed to facilitate small-scale market testing of innovative financial technology, products, tools or services (or component elements thereof), subject to time limits and constraints to protect customers and markets.
<p>Established by FSOC; Membership by Broad Coalition of Federal and State Regulators</p>	<ul style="list-style-type: none"> • The Financial Stability Oversight Council (FSOC), through a Fintech Subcommittee, would establish and oversee the fintech regulatory sandbox and would be responsible for coordinating among its applicable constituent regulators as well as interfacing with international regulators to coordinate interactions with their sandbox regimes (e.g., the UK). • To provide the necessary certainty to eligible participants, the FSOC (and/or the FSOC Fintech Subcommittee), in addition to coordinating among its core members, should seek to consult with key federal and state financial regulators, including state attorneys general, state banking regulators, and state securities regulators.

³ The establishment and operation of a Fintech regulatory sandbox as described in this submission is well within FSOC’s authority and, indeed, is well aligned with the FSOC’s mandate to facilitate coordination among FSOC members and other Federal and State agencies, to recommend general supervisory priorities and principles reflecting the outcome of discussions among member agencies, to provide a forum for the discussion and analysis of emerging market developments and financial regulatory issues and the resolution of jurisdictional disputes among members. See section 112 of the Dodd Frank Act, setting out the FSOC’s authority and responsibilities. The fintech regulatory sandbox would also be consistent with the principle of activities-based regulation, as described in more detail in SIFMA’s submission to Treasury referenced in footnote 1 above.

Relief Available

- As part of an application to participate in the fintech regulatory sandbox, eligible participants would specify the likely regulatory relief needed to offer their innovated financial product or services to a test market.
- FSOC (and/or the FSOC Fintech Committee) would coordinate with relevant U.S. federal and state regulators to design and implement regulatory relief as necessary to facilitate the proposed activity, based upon the relevant regulators' authority.
- Depending upon the products and/or services to be tested, key areas for regulatory relief could include: registration requirements; activity limitations; capital, liquidity or other applicable financial soundness requirements; safety and soundness and other prudential regulatory considerations; third-party vendor risk management requirements; track record requirements; or other regulatory relief as agreed to as part of an application.
- The relief should be subject to reasonable conditions designed to address core consumer protection and technology safeguards, for example: (1) meeting the application and entry criteria set forth below; (2) time limitations for the experiment; and (3) clear disclosures to participating consumers regarding the parameters of the regulatory relief, responsibilities of the participating firms, and consumer safeguards in place.
- In coordinating among participating regulators, FSOC should seek to ensure that the relief is designed to provide sufficient certainty so that it can be relied upon by the recipient to operate without undue regulatory or litigation risk.

<p>Eligible Participants</p>	<ul style="list-style-type: none"> • Financial institution, technology firms, and others—whether currently subject to federal prudential or market regulation or not—that seek to provide innovative financial technologies, products, tools, or services that may be subject to regulation. The fintech regulatory sandbox should be available both to established firms and new entrants, individually or in partnerships. • All eligible participants (whether individually or as partnerships) would need to apply for admission to the fintech regulatory sandbox and receive approval accompanied by regulatory relief specific to its circumstances.
<p>Application and Entry Criteria</p>	<ul style="list-style-type: none"> • An application for entry into the fintech regulatory sandbox should demonstrate the applicant’s need for access to the sandbox, the innovative nature of the technology to be tested, and the ability of the applicant (whether individually or as a partnership) to conduct the test while addressing consumer and market protection considerations. • The application should: <ul style="list-style-type: none"> ○ Describe the benefits and innovative value of the innovative technology, product, tool, or service to U.S. consumers and the financial system; ○ Demonstrate that the technology, product, tool, or service is ready to be tested on a limited basis to actual users; ○ Describe how the applicant plans to conduct a meaningful test of its technology, product, tool, or service while protecting customers and the safety and soundness of the industry; ○ Clearly define test scenarios and expected outcomes, including limits to initial customer base and geography of product or service launch; ○ Describe regulatory relief needed based upon the parameters of the proposed test;

	<ul style="list-style-type: none"> ○ Demonstrate that the applicant has adequate financial and other resources to carry out the proposed test for the period requested and launch and support the product or service if testing is successful; ○ Assess potential risks (including systemic risks) and describe measures in place to mitigate those risks; and ○ Set forth the requested duration of the proposed test in the fintech regulatory sandbox and the applicant's proposed off-ramp from the fintech regulatory sandbox. <ul style="list-style-type: none"> ● Given the sensitive business and other information to be included in the application, regulators should keep the application and related correspondence strictly confidential.
<p>Ongoing Firm and Regulator Obligations; Exit from the Fintech Regulatory Sandbox</p>	<ul style="list-style-type: none"> ● A participating firm or partnership would provide updates to the FSOC (or the Fintech Subcommittee) regarding its progress against the plan set out in its application as well as evaluations against the originally approved time period and off-ramp strategy. ● If requested by a participating firm or partnership, the FSOC (or the Fintech Subcommittee) would determine whether an extension of the previously approved time period and accompanying regulatory relief is warranted. ● Exit scenarios could include: (1) termination of the experiment (abandonment); (2) a qualified approval (conditional progress to production if specific changes are made); or (3) regulatory approval for moving to full-scale production of the product, service, technology or tool.