CLEARY GOTTLIEB

Blockchain and FinTech Opportunities

Thursday, July 13, 2017 | Four Seasons Hotel Silicon Valley at East Palo Alto

KEY TAKEAWAYS

On July 13, 2017, Cleary Gottlieb sponsored and hosted an afternoon conference in Palo Alto on "Blockchain and FinTech Opportunities" among FinTech firms, global financial institutions, venture capital funds and consulting firms.

Below are the key takeaways from the day's discussion.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors:

NEW YORK

Michael H. Krimminger
+1 202 974 1720
mkrimminger@cgsh.com

Pamela L. Marcogliese
+1 212 225 2556
pmarcogliese@cgsh.com

One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
clearygottlieb.com

Keynote Conversation

Al Ko, Senior Vice President at Intuit and General Manager of Mint, gave the keynote presentation and participated in a Q&A facilitated by **Louise Parent**, counsel at Cleary and former General Counsel of American Express.

In his presentation, Mr. Ko discussed Intuit's strategy of developing products that solve customers' personal finance challenges in user-friendly ways. For example, Mr. Ko recently oversaw enhancements to Mint, Intuit's personal finance tool, that allow customers to monitor their bills, credit cards and bank accounts, and to make automatic payments—all from one user-friendly interface. Going forward, he anticipates that conversational user interfaces, artificial intelligence and Blockchain all will be used to further improve users' experiences.

In the Q&A, Mr. Ko spoke about Intuit's relationship with traditional financial institutions, explaining that he considers them to be partners and believes their interests align in the long term, notwithstanding Mint's potential disruption of banks' revenue streams by avoiding money management expenses, late payment fees and other costs. Among other topics, Mr. Ko also discussed Blockchain's potential to improve and simplify cybersecurity, noting that Intuit currently invests enormous resources to ensure the security of its programs.

Session 1: Disruption vs. Integration in FinTech

The first session, moderated by Cleary partner **Pamela Marcogliese**, featured contributions from:

— **Raj Aji**, General Counsel and Chief Compliance Officer, Bill.com

— **Alexander Bean**, Assistant General Counsel, Prosper Marketplace

— **Adam Shajnfeld**, Senior Corporate Counsel and Product Counsel, Intuit

— **Bruce Wallace**, Chief Digital Officer, SVB Financial Group

The session began with a discussion of the cultural experience at FinTech companies. The panelists noted that FinTech start-ups—when compared to traditional financial institutions—have less bureaucracy, a different appetite for risk and a focus on a singular “mission” to make financial services more transparent and easier for consumers to use.

The panel discussed the cultural challenges that sometimes occur when larger financial institutions acquire and attempt to integrate FinTech companies. The panelists also explored the impact of these cultural differences on compliance choices: they do not experience regulations in the same way as traditional financial institutions because their products often do not fit neatly into the existing regulatory regime, and because they generally do not have longstanding relationships with regulators given their relatively short history.

Next, the panel considered the particular regulatory issues facing FinTech companies. One concern raised was the sheer number of state-level regulations that potentially apply to FinTech in the absence of a single federal preemptive regulatory regime—making it difficult for some smaller FinTech companies to operate in multiple markets. Another concern is that the current regulatory landscape was not designed to address all of the novel regulatory issues raised by some of the new FinTech technologies and processes. Some panelists opined that regulators and lawmakers want to encourage responsible FinTech companies and are receptive to conversations about appropriate regulations, but that Silicon Valley needs to make even more of an effort to reach out to state and federal regulators about these issues.

Finally, panelists spoke about the upcoming trends they see in FinTech, including:

— Artificial intelligence, machine learning and increased human-computer interaction

— A greater shift to personal finance on mobile devices

— More “invisible,” frictionless payments

More generally, through AI and other innovations, panelists expect FinTech would assist financial institutions to better understand what their customers are trying to achieve and what their resources are, and then help devise tools that assist them in more easily reaching those goals. Some panelists suggested that this could create a shift for financial services and FinTech companies, which could more easily profit from “good behavior” (e.g., responsible borrowing) instead of “bad behavior” (e.g., bounced checks or late payments).

Session 2: Blockchain – What’s Real and What’s Not

The second session, moderated by Cleary partner **Michael Krimminger**, featured contributions from:

— **Konrad Alt**, Chief Operating Officer, Merlon Intelligence

— **Ingrid Busson-Hall**, Senior Director, PayPal Holdings, Inc.

— **Angus Champion de Crespigny**, Ernst & Young LLP, Americas Financial Services, Blockchain and Distributed Infrastructure Strategy Leader

The session focused on possible near-term uses of Blockchain, as well as impediments to further development of this technology and its anticipated uses.

Panelists emphasized that there are many theoretical applications for Blockchain, but those applications will only be developed into successful products if they provide users with major cost savings or other benefits compared to current products and practices.

For example, panelists noted that "know your customer" and identity-verification procedures are currently time-consuming, labor-intensive and expensive, so there is great potential in developing products that use Blockchain to quickly and securely identify parties' identities. Some panelists also opined that machine-to-machine payments and recordkeeping applications through Blockchain had significant potential. On the other hand, panelists suggested that using Blockchain for real-time settlement and clearing—which some Blockchain advocates have promoted—is technically possible but faces some short-term challenges given the number of parties involved in the current settlement cycle.

The panel also considered the regulatory landscape for Blockchain technology. Panelists discussed how Hong Kong, Singapore and other jurisdictions are using tax incentives and regulations to create "sandboxes" for development of Blockchain products, and how central banks in some countries are considering issuing cryptocurrency. However, in the United States, the federal government has not yet focused on either encouraging or regulating Blockchain products—potentially because of competing enforcement priorities or the small volume of products to date, among many other possible factors. At the state level, panelists noted that Blockchain has been encouraged by some states (such as Delaware, which has passed legislation allowing companies to use Blockchain for corporate law recordkeeping purposes), but is heavily regulated by others (such as New York, which has a BitLicense program that some have found to be restrictive).

Some panelists suggested that the multiplicity of state regulations—and the absence of a single standard—has slowed the development of Blockchain-based products in the United States. From that perspective, federal efforts to regulate FinTech companies, while not without their challenges, may be welcome. On the other hand, panelists observed that even a single federal agency could impose cripplingly burdensome regulations, so the federal government's current lack of regulation of Blockchain issues may work to the advantage of FinTech companies. Until Blockchain-based businesses are a significant sector of the U.S. economy, regulators can allow experimentation with Blockchain, let businesses make mistakes and eventually implement more intelligent regulations based on those experiences.