

# FinTech – An Uphill Battle

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Together we'll go far



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# The Financial Technology Landscape

## Payments



## Online Lending



## Personal Finance



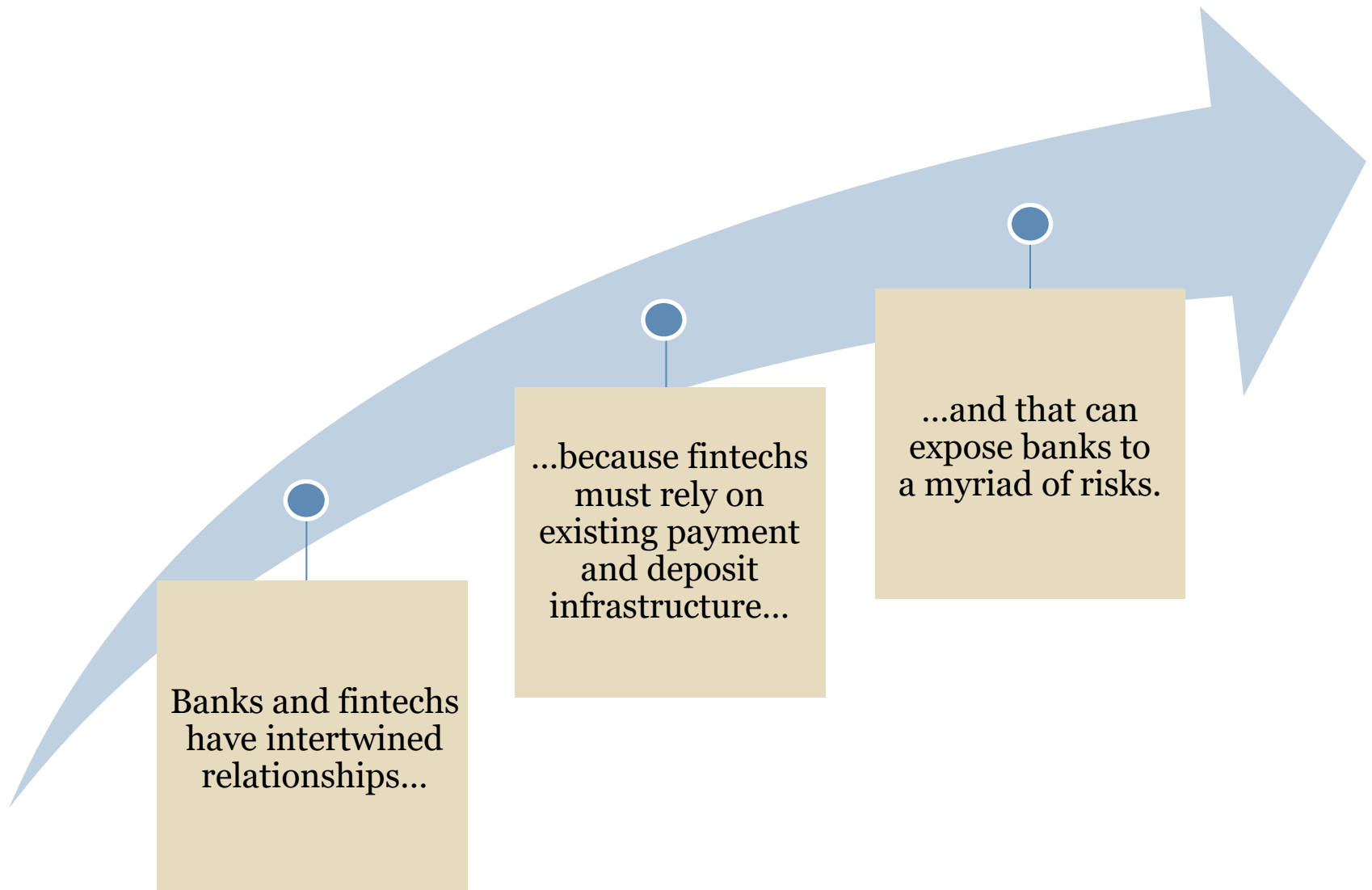
## Insurance & Benefits



## Software (Data, RegTech, Services, etc.)



\*Logos are for illustrating the market and verticals only



# Banks & FinTechs

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- An Intertwined Relationship



- All traditional payments settle and clear through a bank at one or more points along the journey.
- Banks provide important infrastructure for fintech platforms
- Payment types and interfaces may be evolving but....
- If you can't establish a banking relationship, your company cannot function effectively

# Considerations & Perspectives

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- Financial Risk
- Reputation
- Cyber Security
- Compliance & Regulation



## Financial Risks

- Collateral and/or cash reserves
  - Certain financial products create operating risk and banks may require reserves to offset this risk
  - This means that expensive investor capital will be sitting on the sidelines
- Your bank may have limitations in lending to your company
  - Pre-revenue and pre-profit lending can be a challenge



## Reputational Risks

- Regulators may make examples out of offenders, and may fine the banks that supported them
- Banks don't want their names in the headlines if one of their customers does something wrong



## Cyber Security

- Banking systems are secure, but is the technology you're developing on top of it secure?
  - Dwolla was fined \$100,000 by the CFPB for security practices and they didn't even have a breach!
- Lax security could cause a loss of customer funds, triggering all of the aforementioned risks at once
  - Stolen funds result in chargebacks, increasing risk of financial loss
  - If customer funds are stolen and unable to be returned, regulators will seek to address any consumer harm



Expect to set aside more reserves to meet state and federal regulatory requirements

- This means more expensive capital may be on sidelines depending on your business type

A highly regulated industry with a variety of laws and regulations

- Hire good counsel and external consultants to develop policies, procedures and training programs
- Invest in qualified (expensive) internal compliance staff
- Banks are increasingly looking to the qualifications of the compliance teams and will forego relationships if inadequate (don't cut corners)

Non-exhaustive (but exhausting!) list of legislation and regulatory bodies impacting financial services:

## Federal Legislation and Regulations

- Depository Institution Deregulation and Monetary Control Act (DIDA)
- Unfair Deceptive Acts or Practices (UDAAP)
- Regulation A
- National Bank Act (NBA)
- Truth in Lending Act (TILA)
- Regulation Z
- Equal Credit Opportunity Act (ECOA)
- Regulation B
- Fair Credit Reporting Act (FCRA)
- Fair Debt Collection Practices Act (FDCPA)
- Gramm-Leach-Bliley Act (GLBA)
- Servicemembers Civil Relief Act (SCRA)
- Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)
- Electronic Funds Transfer Act (EFTA)
- Regulation E
- Expedited Funds Availability Act (EFAA)
- Regulation CC
- Electronic Signatures in Global and National Commerce Act (ESIGN)
- Uniform Electronic Transactions Act (UETA)
- Bank Secrecy Act (BSA)
- USA PATRIOT Act
- Federal Trade Commission Act
- Bankruptcy Code
- Telephone Consumer Protection Act (TCPA)
- US Foreign Corrupt Practices Act (FCPA)
- Federal and State Usury Laws
- Employee Retirement Income Security Act (ERISA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Community Reinvestment Act (CRA)
- Regulation BB
- Securities Exchange Act of 1934 (1934 Act)
- Investment Advisors Act of 1940 (1940 Act)
- Uniform Commercial Code (UCC)

- Check Clearing for the 21st Century Act (Check 21)
- Credit CARD Act of 2009
- Fair and Accurate Transactions Act (FACT)
- Regulation CC
- Federal Reserve Bank Regulation II
- Sarbanes-Oxley Act (SOX)
- Federal Reserve Act
- Regulation D
- Regulation E
- Regulation J
- Regulation Y
- Money Laundering Control Act (MLCA)

## Regulatory & Rulemaking Bodies

- Consumer Financial Protection Bureau (CFPB)
- National Automated Clearing House Association (NACHA)
- Office of Foreign Asset Control (OFAC)
- Federal Financial Institutions Examination Council (FFIEC)
- Securities Exchange Commission (SEC)
- Financial Industry Regulatory Authority (FINRA)
- Federal Reserve Board (FRB)
- Financial Stability Oversight Council (FSOC)
- Multi-Region Data Processing Servicer Program (MDPS)
- Office of the Comptroller of the Currency (OCC)
- Federal Deposit Insurance Corporation (FDIC)
- National Credit Union Administration (NCUA)
- Card Networks (Visa, MasterCard, AMEX, Discover)
- Payment Card Industry Data Security Standard (PCI DDS)
- Public Company Accounting Oversight Board (PCAOB)

## State Laws and Regulators

- The various states and territories have their own regulators and state law requirements

## If your startup is doing any of the following, expect an uphill battle

- Money Transmission
  - Expensive and lengthy licensing process, AML and other requirements
  - Over 20% of Western Union's employees are in compliance roles
    - In 2015, they spent \$210MM on marketing, and \$200MM on compliance and related programs
    - They were still hit with a fine of \$586MM for failure to stop fraud
- Cryptocurrency
  - Often requires MSB registration; many banks will not support cryptocurrency companies
  - Money laundering, crime and headline risk (remember the Silk Road?)
- Payment Processing
  - May not be required to obtain money transmission licenses but concerns over facilitating money-laundering and other illegal activity
  - PacNet is a Canadian payment processor and 12 people who worked for it are now on the OFAC list
    - PacNet is now blacklisted as a Transnational Criminal Organization (joining a list that includes the Yakuza and MS-13)
- Pay Day Lending
  - Highly regulated industry; significant enforcement actions
  - LendUp was fined \$6.3MM for overcharging customers
    - Company claimed it was due to lack of sufficient compliance controls in its early days - reiterating the need to hire qualified professionals early on
- Gaming/Lottery Components
  - Historically not part of fintech, but gaming & lottery components are being punted around as a feature for fintech apps
- Crowdfunding
  - Getting more scrutiny – not all crowdfunding platforms are created equal
  - Equity and debt are typically registered with SEC, but gifting and donation-based platforms have higher money-laundering risk because participants can set up sham campaigns



- ✓ [www.nacha.org](http://www.nacha.org)
  - Buy a copy of NACHA's Operating Rules & Guidelines
- ✓ [www.fincen.gov](http://www.fincen.gov)
  - Advisories/Bulletins/Fact Sheets has a lot of helpful information and is updated regularly
- ✓ [www.ffiec.gov](http://www.ffiec.gov)
  - Formal agency that promotes uniform principals and standards for examiners of financial institutions
  - Examiner manuals are publicly available and can provide insight into what regulatory bodies train examiners on:
    - Bank Secrecy Act/ Anti-Money Laundering Examination Manual
    - IT Booklets: Audit, Outsourcing Technology Services, Information Security, etc.
- ✓ [www.federalreserve.gov/paymentsystems](http://www.federalreserve.gov/paymentsystems)
  - The Federal Reserve has extensive studies, regulation, and education on payments on their site
- ✓ Check out the Visa and MasterCard websites as they publish extensive information on network rules
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  - Can be purchased on Amazon and is well worth the time to read