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CALIFORNIA AND ILLINOIS WARN FINTECHS: BE CAREFUL USING “BANK”

On March 29th, the California Department of Financial Protection and Innovation (“DFPI”) settled a 2020 inquiry regarding a financial technology company’s (“Fintech”) use of the term “bank” or “banking” in the course of its business. The Fintech works with bank partners to provide consumer-oriented banking products.

California law prohibits any person from transacting business in a way or manner as to lead the public to believe that its business is that of a bank without actual authority to engage in such business. The Fintech was not licensed to operate as a bank in any jurisdiction and was not exempt from bank licensure.

The DFPI claimed that the Fintech violated California law by using the following URL address: www.<Fintech's name>bank.com and by using of the term “bank” or “banking” on the Fintech’s website, mobile app and in advertisements. The settlement terms gives some indication of the uses of the terms “bank” or “banking” that the DFPI viewed as prohibitive. As part of the settlement, the Fintech agreed to:

- Place a clear and conspicuous disclosure that the Fintech is not a bank and banking services are provided by bank partners whenever “banking” terminology is used on the Fintech’s website, in mobile apps and in advertisements.
- Clarify customer testimonials that may be perceived as representing the Fintech as a bank.
- Revise existing language on the website that says “<Fintech’s name> bank account,” “how to open a bank account with <Fintech’ name>” or similar language to state that customers may open a bank account “through” the Fintech.
- Indicate in paid Google search results that banking services are provided by bank partners.
- Add a FAQ on the Fintech’s website that bank accounts are held by bank partners and identify such bank partners by name.
- Provide clear and prominent disclaimers to consumers during the account set up process that the Fintech is not a bank and banking services are provided by bank partners.
- Enhance descriptions of the Fintech’s role as a service provider to the bank partners and explain that banking products and services are provided by bank partners.

The DFPI also ordered the Fintech to stop using the URL address www.<Fintech's name>bank.com. No monetary penalties were assessed in connection with the California settlement.

On March 25th, the Fintech settled a similar inquiry with the Illinois Department of Financial and Professional Regulation related to the Fintech’s URL address and use of the terms “bank” or “banking.” The Illinois settlement requires the Fintech to take similar steps to distance itself from use of the term “banking” or a derivative thereof on the Fintech’s website, mobile app and advertisements. The Fintech agreed to pay a civil penalty of \$200,000 to settle.

As more businesses partner to provide financial services, the California and Illinois settlements are reminders to be clear to consumers on the source of financial products or services and, if disclosed, the status of the parties providing the products or services. “Who’s on first” problems can lead to unintended violations of consumer protection laws. □

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