DREHER TOMKIES LLP

ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

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MID-SIZED AND COMMUNITY BANK GROUP ISSUES STANDARDIZED BANK PARTNERSHIPS PLAYBOOK

Members of Alloy Labs Alliance, a consortium of midsized and community banks, released its "playbook" for "Banking as a Service" ("BaaS") relationships between depositary institutions and non-bank financial technology firms. Drafted in partnership with leading technology providers, the Alloy Labs Playbook seeks to establish industry standards and a common vocabulary of buzzwords and common terms. The BaaS business model focuses primarily on banking services other than lending and has been around for over a decade. However, the BaaS industry is still evolving rapidly.

Alloy Labs has released two documents: (i) the Roles and Responsibilities Playbook ("Playbook") to standardize roles and responsibilities for depositary institutions and non-bank partners around compliance and defined responsibilities and (ii) a guide to the BaaS model and commonly (and often incorrectly) used terms in the industry vocabulary ("Guide"). Both are publicly available for download.

The Playbook lays out 6 key roles and responsibilities that serve as a framework for banks, startups and middleware providers to build their relationships. The Guide includes definitions for 12 common terms, including "program manager" and "marketplace lender" to bring clarity to the multiple variations of a BaaS business model.

In recent months, banks and fintech partners have felt the harsh glare of regulatory scrutiny on their relationships. In September, acting Comptroller of the Currency Michael Hsu called bank-fintech partnerships a systemic risk. That same month, the Office of the Comptroller of the Currency penalized Blue Ridge Bank for compliance issues with fintech partners. *See* our ALERT dated September 22. Bank regulator positions affect non-bank partners because banks have to act as an extension of their regulators to police fintech partners compliance with bank regulations, as well as continuously monitor what those partners are doing.

Any bank-fintech partnership must be cognizant of the contents of the intended business plan. BaaS for deposits and other non-lending banking services is one thing (a decade of active development); bank partnerships for lending (over 35 years of "true creditor" concerns) is another. While both are sometimes referred to as "BaaS" or "bank partnerships" broadly, deposits and checking programs carry vastly different legal and compliance risks as distinct from lending programs. Nonetheless, the effort recognizes (i) systemic risk of "contagion" (among programs within banks and between banks) and (ii) the importance of a "good" bank partner in ensuring compliance and active participation in oversight. The effort also suggests divisions of responsibility and common terminology that may be adopted more broadly.

The Alloy Labs Alliance boasts a membership that includes BaaS heavyweights such as Cross River Bank (which powers Affirm, Coinbase and Stripe), Lincoln Savings Bank (which powers Qapital, Acorns and M1), and Choice Financial Group (which powers Current, Douugh and Lili). The group plans to continue publishing its findings as the banks work through important policies and procedures to establish best practices for the industry, although they clearly recognize that each relationship is unique and that there are no one-size-fits-all answers.

Our firm has been at the cutting edge of bank partnerships of many kinds for decades, including the earliest interstate lending partnerships between banks and retailers. We will continue to monitor developments in the bank partnership space and are happy to provide both practical and legal insights into these kinds of programs. ❑

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