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ASSAULTS ON FINTECHS AND BANK PARTNERSHIPS CONTINUE

State and federal regulators continue to press on compliance and oversight issues affecting both fintechs and their bank partners. See, e.g., our ALERTS of [Sept. 22](#), [Nov. 10](#) and [Dec. 27, 2022](#), and [Apr. 28](#), [June 12](#) and [Aug. 8, 2023](#).

Chime

The latest state action involves a consent order between the so-called “challenger bank” Chime Financial, Inc. (which partners with the Bancorp Bank of Sioux Falls, South Dakota, and Stride Bank of Enid, Oklahoma) and the California Department of Financial Protection and Innovation (“CA-DFPI”). Chime will pay a \$2.5 million penalty and improve its service standards for addressing consumer complaints. While the CA-DFPI admitted that “the number of mistakes during the Investigation Period was relatively small in comparison to the overall number of consumer complaints received,” the CA-DFPI asserted that “the mistakes were important to the affected consumers.” See Consent to Order at Part I.H.iii.

Under the consent order, Chime will:

- (1) Desist and refrain from violating the California Consumer Financial Protection Act through its complaint handling processes;
- (2) Pay a penalty of \$2.5 million;
- (3) Enhance existing customer service procedures or processes;
- (4) Establish, implement, enhance and maintain testing policies, procedures, and standards reasonably designed to, at a minimum, ensure compliance with the law; and
- (5) Report to the CA-DFPI annually for two years on these standards.

The changes are intended to:

- (1) Ensure customer services support 24 hours a day, 7 days a week;
- (2) Ensure sufficient customer service support staffing;
- (3) Ensure sufficient customer service support training; and
- (4) Require Chime to investigate and implement policies and procedures to maintain the accurate, prompt and proper handling of consumer complaints.

This consent order highlights the importance of bank-level servicing standards and the appropriate oversight of third party relationships, including so-called “first party” servicing.

Lineage Bank

Lineage Bank of Franklin, Tennessee, is the latest bank offering banking-as-a-service (BaaS) to enter into a consent order with regard to its failure to manage its fintech partners adequately. See Consent Order FDIC-23-0041b (Jan. 29, 2024); See our ALERTS of [Sept. 22](#) and [Nov. 10, 2022](#). Previous actions against Blue Ridge Bank, Cross River Bank, First Fed Bank and others involving the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) charged the banks with engaging in various “unsafe and unsound” practices related to the banks’ oversight of their fintech partners relating to third party risk, Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) risk, suspicious activity reporting, information technology control, risk governance, unfair and deceptive acts and practices and violation of various consumer protection statutes.

The Lineage Bank consent order builds on previous orders, imposing a wide array of requirements on the bank, including (i) increased board of directors’ level participation and oversight, (ii) an independent evaluation of each member of management’s qualifications, experience, authority, accountability and resources, (iii) enhanced internal audit functions and risk controls, (iv) specific limitations on growth, (v) an updated, comprehensive strategic plan including all major lines of business and associated risks addressing short-term and long-term goals, staffing needs, existing and proposed products, geographic markets and services, (vi) a contingency plan to administer the orderly termination of significant fintech partners (both direct and indirect), (vii) an enhanced third party risk management program, (viii) an improved formal onboarding process for new fintech partners, including provisions for due diligence procedures and (ix) various internal governance plans, a dividend restriction and notification to shareholders regarding the order.

The Lineage Bank consent order follows the issuance of the combined federal bank regulatory agencies’ *Interagency Guidance on Third-Party Relationships: Risk Management*, 88 Fed. Reg. 37920 (June 9, 2023), and underscores the seriousness of the federal bank regulators’ view that banks ultimately are responsible for the

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operation and oversight of the programs that bear their names.

Green Dot

Bank and fintech Green Dot too has just announced a proposed consent order from the Board of Governors of the Federal Reserve System (FRB) relating to AML, regulations and other risk management concerns. Green Dot said that it has set aside \$20 million related to the order, which, including civil money penalties, could cost as much as \$50 million according to a resent 8-K filing. The consent order, which has not been finalized, is reported to involve activities and practices that date back to 2017.

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These and other developments like state anti-invasion bills, state “opt out” provisions under the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) and litigation in California over predominant economic interest “true lender” allegations underscore the importance of careful program structuring, effective relationships and attention to detail. See, e.g., our ALERTS of [July 20, 2021](#), [Apr. 26 and 28](#) and [Sept. 28, 2023](#) and *Opportunity Financial, LLC v. Hewlett*, No. 22STCV08163, Order Denying Motion for a Preliminary Injunction (Cal. Supr. Ct., filed Oct. 30, 2023).

Having helped clients develop effective, successful bank partnership and fintech partnership programs since 1985, we have both the experience and expertise to help clients navigate the turbulent waters of state, federal and local regulation. Let us help you! ☐

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