Insights

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Wolters Kluwer

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About Wolters Kluwer Governance, Risk & Compliance
Governance, Risk & Compliance is a division of Wolters Kluwer, which provides legal and banking professionals with solutions to help ensure compliance with ever-changing regulatory and legal obligations, manage risk, increase efficiency, and produce better business outcomes. GRC offers a portfolio of technology-enabled expert services and solutions focused on legal entity compliance, legal operations management, banking product compliance, and banking regulatory compliance.

Wolters Kluwer (WKL) is a global leader in professional information, software solutions, and services for the healthcare; tax and accounting; governance, risk and compliance; and legal and regulatory sectors. We help our customers make critical decisions every day by providing expert solutions that combine deep domain knowledge with specialized technology and services. Wolters Kluwer reported 2021 annual revenues of €4.8 billion. The group serves customers in over 180 countries, maintains operations in over 40 countries, and employs approximately 19,800 people worldwide. The company is headquartered in Alphen aan den Rijn, the Netherlands.

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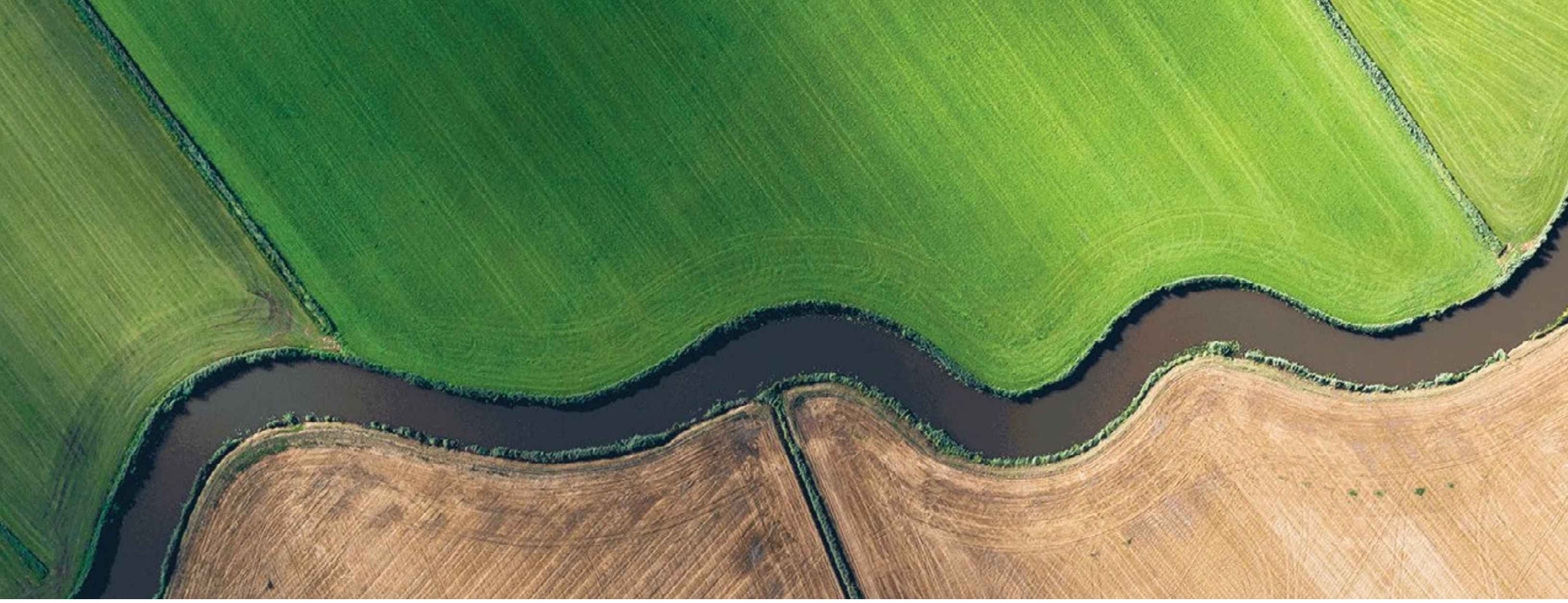

Adapt. Transform. Thrive.

Our industry is emerging from an intense period of disruption. Despite obstacles such as those presented by the pandemic, economic turmoil and intense regulatory change, like you, we delivered on our steadfast commitments to serve our customers through ingenuity, pluck, agility, and dedication. In short, we lived the mantra, “Adapt. Transform. Thrive.” Now is the time to collectively acknowledge these efforts and successes. On behalf of Wolters Kluwer, I want to take this moment to say thank you.

As we turn the page to a new chapter, we want to help your institution capitalize on the momentum generated over the past few years. We are keenly aware of the transformations some of our customers made because we were invited to be part of those journeys by providing products and applications that enable financial services professionals to solve problems and make things happen for their customers. And for banks on the digital transformation journey, our team of experts, some of whom participated in the first digital loan created on our platform over 20 years ago, can guide your institution through the fundamentals of storing, securing and confirming the certainty of your digital lending assets.

Right now, your future is our focus. We will measure our success by how prepared our clients are to comply with new regulations, adapt to new and grander ways to serve clients, and achieve operational efficiencies through the use of purpose-built technologies. Preparing for the future means taking time to plan, reinvent processes, and optimize the allocation of scarce resources.

This booklet contains a selection of recent articles and whitepapers written by Wolters Kluwer regulatory compliance experts. We hope you can find a few minutes to read and reflect on these pieces, which cover a variety of topics of significant interest to compliance and risk management professionals, ranging from the digital lending transformation underway, to the significant proposed changes to the Community Reinvestment Act regulations, to the rising role of RegTech in managing federal and state regulatory demands. You can be confident that Wolters Kluwer will be there to support you as you prepare for whatever might be next. We value our relationship as a trusted business partner, and we remain committed to helping you manage risk and compliance – and thrive in the days and years ahead.

Steve Meirink
Executive Vice President and General Manager
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10 C’s for 2022: Top challenges for banks

By **Tim Burniston**

As the worst effects of the COVID pandemic subside and we adjust to modified and new business processes, there is little relief when it comes to easing both real and anticipated regulatory change — and the concomitant rigors of compliance within the financial services industry.

The pressure for banks and other financial service providers to demonstrate effective and sustainable risk management remains high as regulators demand greater levels of accountability and impose stricter enforcement measures. Meanwhile, the effects of the pandemic, with its evolving unpredictability, continues to contribute to the pace of change in the banking industry, with other significant global events further adding to that unpredictability. There are already a range of initiatives underway and several more anticipated that will present major risk challenges for financial institutions.

With so many moving parts, where should one focus their efforts? Remember Sesame Street, where every episode centered around a letter and a number? It might help to compare the current banking regulatory landscape to a Sesame Street episode — minus the catchy theme song.

So, this regulatory outlook is brought to you by the letter “C” and the number 10

1. Climate

Climate risk management is receiving significant attention in the regulatory community. While we are still in the early stages of fully understanding how climate change imposes risks to banks and other financial service companies, it will remain a front and center topic for the Biden Administration, Congress, and regulators now and moving forward.

In March, the SEC issued a proposed rulemaking that would enhance and standardize climate-related disclosures. There is also engagement on climate change issues across the U.S. government and regulatory community. The federal prudential bank regulators are considering how, for example, the financial effects of climate change should be factored into banking supervision. We are likely to see more guidance on how climate change exposures should be addressed in risk management practices.

We can also expect climate change activity at the Financial Stability Oversight Council, at the global level from the Basel Committee’s Task Force on Climate-Related Financial Risks, and at the state level. Additionally, the impacts of climate change on low- and moderate-income communities have been raised in the context of the national discussion to modernize the regulations that implement the Community Reinvestment Act.

2. Community Reinvestment Act (CRA)

On May 5, 2022, the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency issued a uniform interagency proposal to modernize the regulations that implement the CRA. One of the key issues is how to adapt the CRA regulations to a digital world where banks increasingly serve their customers online rather than at physical branch locations. Modernizing the CRA regulations offers new opportunities to address community needs and embrace change, but it also presents challenges, including different evaluation methodologies, revised performance expectations, and changes in data collection.

3. Compliance and Consumer Protection

Regulators are increasingly devoting significant examination time and resources to fair lending issues such as redlining, pricing, use of artificial intelligence in credit determinations, and appraisal bias. The DOJ recently announced its "Combating Redlining Initiative," calling it one of the most aggressive and coordinated efforts to combat discrimination in lending. While the use of artificial intelligence to make credit decisions offers opportunities to promote inclusion, it carries real and potential fair lending risks. Those risks have captured the attention of regulators.

The CFPB's rule implementing Section 1071 of the Dodd-Frank Act is expected to have a tremendous impact once finalized. This rule would impose new data collection and reporting requirements on lenders for credit applications made by women or minority-owned small businesses. Covered institutions will be required to compile, maintain, and submit extensive data to the CFPB and analyze that data to determine ECOA compliance. Respondents to the Wolters Kluwer 2021 Regulatory & Risk Management Indicator survey listed this rule as one of their most pressing regulatory challenges for 2022, making it one to watch.

We also anticipate greater clarity soon on Bank Secrecy Act (BSA) and anti-money laundering (AML) compliance. Several initiatives emanated from the 2021 National Defense Authorization Act, including rules requiring certain companies to provide FinCEN with information about their beneficial owners, a new whistleblower program, and increased penalties for BSA/AML violations.

The OCC is also weighing in on BSA/AML compliance. In their supervisory priorities for 2022, the OCC states that examiners are placing "… emphasis on evaluating the effectiveness of BSA/AML risk management systems relative to the complexity of business models, products and services offered, and customers and geographies served; evaluating technology and modeling solutions to perform or enhance BSA/AML oversight functions; and determining the adequacy of suspicious activity monitoring and reporting systems and processes in providing meaningful information to law enforcement."

The CFPB is sharpening its supervisory scrutiny on other consumer protection initiatives, including overdraft fee policies and "junk" fees in the banking industry. The CFPB director has raised concerns about the effect these fees have on consumers' ability to shop for credit. And one last area banks should be mindful of is the continuing review of potential compliance issues arising from the CARES Act and the Paycheck Protection Program. This includes measures put in place during the pandemic, such as mortgage forbearance or payment deferral arrangements and the administration of the PPP loan application and forgiveness processes.

4. Cybersecurity

In Wolters Kluwer's latest Regulatory & Risk Management Indicator Survey, cybersecurity ranked as the risk garnering the most concern and attention looking forward. And the threat of ransomware attacks led the list of factors in organizations' enterprise risk planning. 63 percent of respondents gave it "significant consideration," and 22 percent marked it for "some consideration" in their planning.

Computer incident notification rules from regulators become effective on April 1, 2022, with a compliance date of May 1, 2022. The rule requires a bank to notify its regulator (FDIC, OCC, FRB) as soon as possible and no later than 36 hours after the bank determines that a computer-security incident that rises to the level of a notification incident has occurred.

In response to an increase in cyberattacks and data breaches, the Federal Trade Commission (FTC) recently amended the federal Standards for Safeguarding Customer Information (Safeguards Rule) under the Gramm-Leach-Bliley Act (GLBA). The updates put pressure on financial institutions to develop, implement, and maintain a comprehensive security system to keep their customers' information safe. Financial institutions will have until January 10, 2023, to review their operations and ensure compliance with the amended Safeguards Rule.

We can also expect to see other announcements from bank regulators and an examination emphasis on operational risk, resilience, incident response, data recovery, and business resumption.

5. Cryptocurrency

The Securities and Exchange Commission's Chairman, Gary Gensler, recently testified that the cryptocurrency asset class was rife with fraud, scams, and abuse and compared its proliferation to a "Wild West" environment. It is hard to imagine we won't see regulatory and other developments here that provide more investor protections.

The Federal Reserve Board, OCC, and FDIC recently announced a series of interagency "policy sprints" focused on crypto assets. As supervised institutions seek to engage in crypto-asset-related activities, the agencies recognize the importance of providing coordinated and timely clarity, where appropriate, to promote safety and soundness, consumer protection, and compliance with applicable laws and regulations.

6. Change management

Although on the other side of the spectrum from Sesame Street, Mad Men's Don Draper offers some wise words, "Change is neither good nor bad. It simply is." The velocity, frequency, and some might say ferocity of regulatory change will necessitate banks implement a robust regulatory change management program. Advancements, such as digital lending transformation and AI, are bringing about changes in how products and services are delivered, opening new markets, and advancing inclusion. Conversely, risks need to be identified and managed. Regulators, including the CFPB, are looking at those risks and determining how best to manage internal and customer-facing operational changes due to disruptive events like the pandemic.

7. Competitive changes

Innovation is a necessary component of an organization's ability to effectively compete, grow, and survive. We've seen the banking industry embrace this need to innovate. However, innovation needs to happen in a compliance environment integrated within a risk management framework.

Financial technology will continue to invigorate the banking world. There has been an increasing presence and influence of FinTech and RegTech on product design and delivery. We expect to see bank partnerships with FinTech providers continue to proliferate as traditional banks become more comfortable with digital lending and AI. We are likely also to see more transactions involving FinTech companies acquiring and merging with banks.

These changes highlight the importance of effective compliance management systems and third-party risk management. In fact, third-party risk management will be a focal point for regulators, and interagency guidance on this topic is expected sometime during 2022.

8. Consolidation

Industry experts forecast an increase in bank merger and acquisition activity, especially in the smaller bank segment. However, President Biden's Executive Order on Competitiveness issued in July 2021 encourages more robust scrutiny of mergers. As a result, regulators will review the Bank Merger Act. In March 2022, we saw the FDIC issue a request for information (RFI) soliciting comments regarding the application of the laws, practices, rules, regulations, guidance, and statements of policy that apply to merger transactions involving one or more insured depository institutions, including the merger between an insured depository institution and a noninsured institution. That review could bring changes that will either bolster existing requirements and standards or identify new ones. Evaluation factors under the Bank Merger Act standards that could receive additional scrutiny include "convenience and needs," which ties in CRA and fair lending, among others, and management factors that encompass compliance and risk management.

9. Continuing effects of the pandemic

While we are certainly not in the same place in our nation's response to the pandemic as we were in March 2020, it is not over. Continued vigilance in managing the fallout from the pandemic is still in the regulators' bullseye. Operational and credit risks continue to be concerning to regulators and the industry. There are also economic pressures, most notably the rise in the inflation rate, anticipated interest rate increases by the Federal Reserve Board, and, most recently, the effects of the invasion of Ukraine by Russia.

10. Cannabis Banking

According to BankDirector.com, the cannabis industry is growing exponentially, and nationwide sales are estimated to exceed $30 billion in 2022. Will we see federal marijuana legislation pass this year? It isn't clear, but something may happen. There are two proposals currently at play — the Secure and Fair Enforcement Banking Act (SAFE Banking Act) and the Cannabis Administration and Opportunity Act (CAO Act). While the House of Representatives has passed the SAFE Act six times, the bill has not gotten similar traction in the Senate, at least not yet. However, until legislation passes, the cannabis industry must rely on agency policy pronouncements and clarifications as issues arise.

The 10 C's

Based on what we've seen from the regulators already in 2022 and what is to come, we can expect substantive activity in key areas of risk and compliance. While this regulatory outlook highlights some of the most likely developments, it is clear that the banking industry is rapidly changing. And if we've learned anything during the pandemic, it is to expect the unexpected.

Overall, to manage the significant amount of regulatory change on the horizon, financial institutions need to be vigilant about having a robust regulatory change management program and fully functioning Compliance Management Systems with updated policies and procedures. As the ripple effects of the pandemic, the economy, and other industry factors continue to burden financial institutions, developing a disciplined, automated approach to regulatory change will provide the consistency and transparency that regulators expect.

Timothy R. Burniston *is the Senior Advisor for Regulatory Strategy at Wolters Kluwer Compliance Solutions. In this role, he advises the executive leadership team and clients on emerging issues, legislative and regulatory developments, and regulatory strategy.*

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Wolters Kluwer's Expert Insights

What are the building blocks of digital lending?

HousingWire recently sat down with Steve Meirink, Executive Vice President and General Manager, Compliance Solutions, Wolters Kluwer's Governance, Risk and Compliance Division, to discuss the impact of digital technology on mortgage and the future of digital lending in an era of accelerated innovation and digital transformation.

As published in HousingWire.com, February 16, 2022 | By **Steve Meirink**

If you don't move forward on digital lending, more efficient competitors will take business away from you

What are the key factors and trends driving the adoption of digital lending? How has the COVID-19 pandemic contributed to this?

Steve Meirink: Digital lending is now a must-have for organizations that need to differentiate in the marketplace by moving faster with greater agility while at the same time reducing costs.

In addition, consumers expect better digital experiences – like what you get with Amazon or Uber. Companies that provide this kind of seamless user experience will move ahead and those that don't will fall behind. We saw this with the COVID-19 pandemic where the demand for contactless transactions took off – such as the 'tap to pay' feature for your smart credit card. In digital lending, this has led to the growing popularity of eClosings and remote online notarization (RON).

What are some of the core building blocks for digital lending?

Steve Meirink: I joined this industry as a Retail Mortgage Loan Officer growing to a Broker Owner in my local community and try to apply a simple concept we share with customers and prospects which is the idea of digital lending made simple. It starts with a document engine that provides the core inputs for a digital loan transaction – fully automated with warranted loan agreements and contracts. At Wolters Kluwer, our document engine is Expere, which is fully integrated with loan origination systems (LOS) and other core lending systems.

Also important is an eClosing platform to accelerate and simplify complex loan agreements with workflow management to deliver a simple and intuitive closing experience for lenders, borrowers, and settlement agents. This is our Closing Center for digital mortgages.

An eVault or an authoritative copy is also needed to consolidate digital loans in one system and ensure digital asset certainty with full ownership and control of assets. This is our OmniVault.

Organizations also need digital asset certainty based on an immutable history and digital chain of custody for all digital financial assets. The idea is that only one digital original exists and is legally transferable and enforceable. When you see Digital Original® in the financial services space, you can have confidence that Wolters Kluwer is in the background enabling that to happen.

Finally, analytics and reporting tools are needed to analyze risk and ensure compliance through information sharing and accurate reporting. This is our Wiz® technology, which delivers data-driven insights and improves decision-making.

For those considering a digital lending platform today, what are the key benefits they can expect? And for those who wait, what are the risks?

Steve Meirink: A digital lending platform lowers the classic "barriers to entry." Companies can adopt new technology faster while increasing efficiency, reducing cost, and growing margin and profitability. And most importantly: they can deliver better customer experiences.

The risks of not moving forward? If you don't, more efficient competitors will "eat your lunch" and take business away. Keep in mind that decisions made today will impact your business for many years to come. It's important to leverage the expertise and experience of trusted advisors who have been working in this field since the dawn of digital lending almost 20 years ago. Our team of experts enabled, along with other industry partners, the first digital lending transaction in many of the industries that we serve today.

Looking forward, what does digital lending look like in the next few years? What are some significant trends and shifts we will see?

Steve Meirink: We speak to customers and prospects about next-generation digital loan compliance management, which today means a fully digital platform with robust loan compliance. Increasingly, businesses will focus on what can be achieved by shifting from manual to automated processes in terms of greater economies of scale and cost efficiencies.

This brings with it a dynamic, enhanced, end-to-end user experience – and all the benefits of digital technology for quick response and action.

A fully digital lending platform solution offers not only powerful tools aligned with key business processes but also analytics to ensure broader compliance and a warranted asset/portfolio matched with end-to-end, digital-asset certainty. Find more information here.

Steve Meirink *is the Executive Vice President and General Manager of Wolters Kluwer's Governance, Risk & Compliance (GRC) division's Compliance Solutions business unit. He leads the financial services portfolio of businesses with full responsibility for P&L, GTM, Technology, Service, Operations, & Strategy.*
Wolters Kluwer Compliance Solutions is a recognized leader in helping financial institutions, brokerage firms, and insurers make confident and compliant decisions to grow their business.

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Wolters Kluwer’s Expert Insights

Next-generation digital lending

An executive discussion on digital lending solutions and transformation with Steve Bisbee, Senior Advisor for Applied Technology at Wolters Kluwer Compliance Solutions

As published in WoltersKluwer.com, April 27, 2022 | By **Steve Bisbee**

Learn how digital lending and the laws supporting it have changed the finance industry landscape for lenders and consumers alike

Digital lending is transforming traditional practices in the consumer finance industry and driving innovation in the financial technology (FinTech) sector. How did we get here? How are companies using digital technology to serve customers better? And what are the possibilities as digital lending technology and solutions mature?

Steve Bisbee, Senior Advisor for Applied Technology at Wolters Kluwer Compliance Solutions, provides his expert perspectives on digital lending. Steve is the founder of eOriginal, Inc., a leading solutions platform for creating, managing, and monetizing trusted digital loans. Wrapping digital business and legal processes in security technologies, eOriginal, Inc. minimizes the inefficiencies of paper-based transactions and was used to enable the first fully-digital mortgage, equipment lease, and international trade transactions. In 2020, eOriginal, Inc. was acquired by Wolters Kluwer to better support digital financial solutions worldwide.

Q: Has digital technology fundamentally changed lending practices in the consumer finance industry?

Steve: The short answer is: yes. Until recently, the principal functions of the lending process hadn’t really changed for years. There were tools to speed things along, but financial assets remained paper documents, signed and held by originating companies or those purchasing or investing in the loans for payment streams.

With the advent and growth of the Internet, there was a gradual realization that a platform for digital lending was possible. But first, the laws governing the treatment of these financial assets as negotiable instruments or securities had to be revised. The goal was to offer the same processes and protections for digital assets as those in a paper medium. Work began in the late 1990s with revisions and additions to the sections of the Uniform Commercial Code (UCC) applicable to different types of secured transactions. This work included an enabling model law available for states to adopt, the Uniform Electronic Transactions Act (UETA). The Electronic Signatures in Global and National Commerce Act (ESIGN) was also enacted in 2000. The basic principle for all this enabling legislation and its progeny was simple: if you can do it on paper, you can do it digitally.

These laws and statutes defined standards for creating and signing digital agreements and records – and then transferring the rights to third parties. Important was the establishment of Safe Harbor provisions that require any digital asset that transfers those rights to be unique, identifiable, verifiable, unalterable without detection, distinguishable from all other assets, and that the secured party holding the beneficial interests in the digital asset needs to be identified. On the technology side, this called for a secure electronic signing process creating the loan agreement. It also called for an immutable record that certifies the creation of the asset and provides similarly unalterable digital chains of custody and evidence – a Digital Original® – and its management.

Initially, there was skepticism about getting this done. But there was also enormous potential for cost savings, workflow efficiencies, improved customer experiences, and lender process and compliance controls. This was particularly true for closing loans, aggregating them, and moving them to secondary markets – which enables loan originators to re-capitalize faster and accelerate lending cycles from consumer engagement, through closing and into capital markets. It also opened the market for innovators to reimagine lending.

But initially, the uptake was gradual. The "Big Bang" event for digital lending came with the COVID-19 pandemic. Suddenly, it was no longer feasible to transact in person. Fortunately, the legal and technical infrastructure existed for the wide adoption of remote, contactless transactions. Consumers loved it, and now the digital option has become the preferred method of borrowing. For the majority of consumers, there will be no turning back.

Q: As digital lending has evolved, how have both the technology and business practices evolved? Where is this trending for the future?

Steve: A lot of the digital lending evolution has to do with building digital business processes to comply with the applicable laws, statutes, and regulations.

The first generation of digital lending focused on loan origination. Traditionally, this required face-to-face meetings to determine creditworthiness. Today, with so much of the relevant information available digitally, origination is increasingly automated, though confirming identity is always critical. Increasingly, you can do the entire process on your computer or even your phone. This has dramatically improved access to credit. Even if you're among the unbanked, you can now establish credit and gain access to the money you need.

The second generation of digital lending has focused on execution and the customer experience – with technologies like remote online notary (RON) and eSignature for verification and self-service workflows to push processes along. For example, you can now schedule post-credit events including appraisals and fully digital closings.

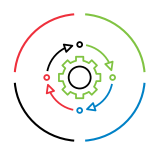
All of this is tracked for compliance and all documentation is managed remotely and shared between borrower and lender. Now we're in the third generation of digital lending – the effort to link the various aspects of the process together on a single platform for a compliant, seamless process. In traditional consumer lending, the process is sequential, with a handoff from one participant to the next – from origination to asset monetization in the secondary markets, with many steps in between.

Today, with platforms that have greater awareness of the end-to-end process, you can move out of sequence with the understanding that compliance is monitored throughout the process and the appropriate data and documents are all kept and managed in one place. The result is a smoother, faster process with fewer bottlenecks. For example, we currently have finance companies on the Wolters Kluwer eOriginal® platform who manage a "flow securitization" process on a dramatically faster timeline. This involves preparing securities offerings, engaging with all required participants, getting rated by a recognized agency, and finalizing the close – all done in a matter of weeks rather than months. Other financial institutions are able to execute the secondary market collateralization funding processes on a next-day basis. The capital efficiencies are dramatically improved.

The generations of digital lending

First generation:
- Focus on loan origination
- Use of available data online to determine creditworthiness
- Improved access to credit for consumers

Second generation:
- Focus on execution and customer experience
- Technologies for RON and eSignature
- Self-service workflows with tracking for full compliance



Third generation:
- Focus on platforms that support compliant, seamless end-to-end loan processes
- Ability to move out of sequence with centralized data
- Smoother, faster processes – with no need to reinvent the wheel

Q: As organizations have adopted digital lending, what are the key benefits they have gained? What is the future impact of digital lending as it becomes increasingly "mainstream"?

Steve: One of the biggest benefits has been certainty – we refer to it as Digital Asset Certainty. With traditional loans, up to 20% of documents have to be sent back through the mail or by courier due to incomplete data or missing signatures. Digital lending obviates this entirely because the process will not move forward if incomplete. Also, the loan creation data is validated and loaded programmatically into the loan document itself. For lenders, investors, regulators, and auditors this is a benefit as you don't have to chase down the data source for verification. Everything you need is in the digital loan obligation document, such as an eNote, and you know you're always dealing with true, trusted data and documents.

For consumers, everything has changed. The process is faster and easier. There's less hassle and fewer interactions. There's less hard sell as well. The consumer is in the driver's seat. They determine who they want to do business with, when, and where. Now people are buying houses and other types of assets in other states without even looking at them. Everything is virtual – from the property tour through to closing and funding. This has accelerated since the beginning of the COVID-19 pandemic – and without the processes in place to support it, it never would have been possible.

Q: How are solution providers responding with new FinTech solutions to support and accelerate the next generation of digital lending?

Steve: What we're seeing is that FinTech companies don't want to select different vendors and piece together processes from scratch. Increasingly they want third-generation, compliant, trusted digital lending platforms like what Wolters Kluwer provides.

Such a platform needs to be cloud-based and preferably with an advanced digital certificate/public key infrastructure (PKI) to track transactions, ensure security, support verification, and enable the secure sharing of data, including protected personal data. Increasingly, you also need advanced analytics driven by machine learning and artificial intelligence to improve processes and yield insights. This is where the market is going.

Q: Finally, how can we simplify digital lending to accelerate adoption and speed implementation?

Steve: The challenge is to make the complexity of lending completely equitable and invisible. Years ago, most people knew basically how their cars worked. Today, they want to know how to start, stop, and drive. Successful products and services require functional simplicity, intuitive usability, and trusted performance. The same is true for digital lending.

Data will play a critical role in helping organizations meet these criteria. Right now, most digital processes are basically replicating the paper world. Instead of paper, we have PDFs or other digital replicas. What happens when we fully transform – when it's all about data and not documents? This is when the true value of analytics will create the fourth generation of real-time digital lending without the maintenance of formal document structures.

Ultimately, lending is about risk management. The more trusted, verifiable, and usable information and data you have, the less risk you will incur. By enabling organizations to access and analyze relevant data, digital lending and its capital markets will move towards ubiquity and true Digital Asset Certainty.

Steve Bisbee *is Senior Advisor, Applied Technologies for Wolters Kluwer. A real estate lawyer by training, Steve is the founder of eOriginal, Inc., a leading digital lending platform acquired by Wolters Kluwer in 2020. A pioneer in both the technology and regulatory considerations in digital lending, he is widely regarded as one of the most authoritative voices in the field.*

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Whitepaper

A radically new approach to simplifying regulatory compliance

The use of RegTech is helping banks manage federal and state regulatory demands

As published in ABA Bank Compliance magazine, Jan/Feb 2020 | By **SK Karanam**

Enhance your compliance management capabilities by realizing the potential of an AI-assisted regulatory process

Financial institutions in the US are grappling with an overwhelming number of regulations at the state and federal level that are constantly changing—including regulations that sound very similar in nature, but can differ substantively in their technical ramifications. For an organization operating across multi-state jurisdictions, the number of regulatory compliance requirements and obligations that need to be managed can ratchet up quickly in today's environment, into the hundreds of thousands.

In this environment, it can be an uphill battle to serve the bank's customers efficiently while transforming their own business models. This comes as a result of the push for electronic banking, in addition to focusing on increasing the bank's shareholder value. Understanding the potential impact of relevant state-level and federal laws, in relation to business strategies, operating models, and compliance processes requires significant capacity and legal expertise. The regulatory burden and expense associated with it can be significant.

Of course, this is not a new challenge. Banks have had to manage the complexities of and interplay between state and federal law for many years. In recent years, however, the banking industry has faced increased regulatory scrutiny. A number of states have stepped up certain regulatory activities in response to the federal government taking a step back in some areas. This development has put much more emphasis on state law compliance.

Today, banks need to be able to demonstrate that they know which laws affect their business and that they have taken appropriate steps to identify and mitigate these risks. They also need to prove—to auditors and regulatory authorities—that they are in compliance with all applicable rules and regulations.

Finally, financial institutions are continuing to drive efficiencies and economies. Thus, many modern financial organizations are looking at how they can manage state and federal law compliance much more efficiently than they have in the past.

The rising role of Regtech

Technology has long played a role in regulatory compliance, providing financial institutions with the tools to navigate regulatory information and manage regulatory risk and compliance.

In response to increasing compliance burdens, and advances in machine learning and other fields of Artificial Intelligence (AI), purpose-built regulatory technology (RegTech) solutions have emerged. These platforms are geared towards solving sector-specific challenges such as identifying regulatory requirements across different states and managing the pace of regulatory change efficiently.

Interest in RegTech is growing across the banking industry, as more organizations are asking whether RegTech can:

- Help in analyzing how regulations compare with each other and identify on which points they are consistent
- Enable compliance teams to apply those obligations in a coherent way within the institution
- Decrease burden on the compliance department to have all the systems, processes and controls in place in support of regulatory requirements
- Ensure increased control for managing regulatory risk.

To find valuable answers to these questions, it's important to view RegTech in the right context: Regtech is an enabler, not a strategy.

Firstly, it's important to understand that RegTech does not alter the guiding principles of a compliance organization. Core strategies for managing regulatory exposure and pressures do not need to change. No matter the degree to which RegTech tools are incorporated into an institution's processes, banks can and must continue to focus on their customers and align their regulatory compliance strategies with their key business goals.

Ultimately, the purpose of RegTech solutions is to support the overall strategy rather than re-direct it, by enabling financial institutions to manage their regulatory compliance obligations in the most efficient and practical way.

RegTech is a gateway to modernize regulatory compliance programs

Compliance departments in banks have historically operated under budget, and resource constraints are viewed as a cost function within a bank. Some business leaders erroneously believe that compliance departments are operating in a deregulated environment and therefore they should be able to cut back on compliance departments. In reality, compliance departments are dealing with increased requirements from state regulatory bodies, and newer topics such as consumer privacy and cybersecurity are demanding their attention.

Compliance professionals should embrace new technologies in order to move beyond antiquated approaches that can put banks at risk. Cutting-edge technologies such as robotic process automation, AI, and machine learning can help modernize and improve virtually any regulatory compliance program. This not only drives better insights and business outcomes but can also foster a sustainable and accountable compliance program.

Human expertise is indispensable

Advanced technologies need not and will not eclipse the role or function of a legal expert, compliance officer or other human financial services professional.
In fact, human experts can and will continue to be an integral part of an institution's compliance program to provide the needed adjudication and validation of technology-aided regulatory compliance content.

Banks are understandably reluctant to move beyond traditional methods of legal research and compliance program management. However, writing regulatory obligations manually can be resource-intensive, prohibitively expensive and not sustainable.

With a RegTech solution in place, banks can still use their own expertise to guide clients to understand their legal requirements—with smart technology providing additional support.

The power of RegTech

RegTech platforms augmented with expert-trained AI models can offer a host of advantages for banks and their customers. Some key benefits are outlined below.

Analyzing unstructured data can be insightful

It's not that we haven't had technology solutions available in the past, such as enterprise software and regulatory content feeds, to support regulatory compliance management. However, these traditional systems left one critical gap that RegTech solutions have emerged to address—getting critical insights from the vast lake of unstructured regulatory and institutional data that financial institutions deal with today.

It's incredibly challenging to keep track of the different regulations issued by different state and federal regulators, especially when each regulator publishes information in different formats. This is an area where RegTech solutions can add unique value, because they are able to analyze these unstructured data sets and extract the critical legal requirements that apply to the organization.

Understanding regulatory requirements and applying these to business and risk management decision-making requires a substantial amount of resources, including the expertise of lawyers and compliance officers. This can be a time-consuming and expensive affair for many financial institutions. RegTech can help banks to drive efficiencies and control costs in this area.

The power of machine-readable regulations and obligations

A RegTech solution can:

- Take a vast amount of state law across multiple jurisdictions and organize it in a way that is relevant to the bank
- Structure regulatory content into machine-friendly formats within a workflow system
- Help develop and standardize regulatory obligations in one place and make them bank-specific
- Easily embed regulatory obligations within a bank's first line of defence.

Regtech can help aggregate similar-sounding regulatory requirements into one bank-specific regulatory obligation. For example, an auto lending institution doing business in all 50 jurisdictions needs to provide clear and concise guidance to its call center agents. This guidance is critical for agents to make informed and compliant decisions around details, such as whether late fees are applicable in a specific market.

Using machine learning and other AI capabilities, RegTech solutions can also identify patterns across state law and identify ways in which an institution can write a single obligation that meets multiple jurisdictions' requirements. This way, a bank can shrink hundreds of compliance requirements down to a more manageable number of regulatory obligations.

Augmented Intelligence

As a concept, AI has been met with some fear and trepidation in the market—leaving compliance officers and other experts wondering whether their jobs will soon be lost to intelligent technology. And on the other side of the spectrum, there are those who believe that AI-enabled technologies are a panacea for all compliance pain points.

All parties need to understand that regulatory compliance problems are not entirely technical problems; and no matter how sophisticated the AI capabilities of a RegTech platform are, human expertise remains indispensable.

Financial institutions should, therefore, view machine learning and other types of AI in the context of augmented intelligence—where advanced technology solutions are combined with human knowledge and professional judgment to provide smart regulatory insights that are validated by experts.

Rather than replacing human expertise, trailblazing technologies such as AI and robotic process automation allow human experts to focus on the more interesting and complex aspects of their roles, rather than the labor-intensive data management tasks that were not particularly satisfying in the first place. For instance, a bank's lawyers are still required to conduct legal research, yet they can now organize content through AI-based tagging and apply a taxonomy (for example relating to a topic, product, or jurisdiction) that swiftly makes this data more accessible and relevant to customers and other stakeholders. Additionally, machine learning and machine-aided compliance tools can go into that structured content and organize it further in logical groupings where there are commonalities. This further categorization refinement of complex regulations can help a bank by searching and report on topic, product or jurisdiction.

Bringing humans into the loop in a strategic and intelligent way is the future of automation and AI, and market-leading RegTech platforms are now making this possible.

Choosing the right RegTech solution

Here are some key elements to consider before planning, choosing, and implementing a regulatory technology solution:

1. Does your bank have a big data problem?

AI-enabled RegTech solutions are most suited to organizations that must make sense of large volumes of unstructured regulatory and/or business content. Because machine learning, natural language processing, and other AI technologies rely on a steady stream of data to be effective, these technologies may not add as much value in banks that do not deal with vast amounts of data.

2. Are you familiar with new technologies within RegTech?

To determine if a particular RegTech solution can solve your bank's regulatory compliance needs, it is important to understand the differences between machine learning, natural language processing, robotic process automation, and related technology capabilities. This will enable compliance officers to ask strategic questions to vendors during the due diligence process to help them choose the right RegTech solution. At the same time, ensure that your vendor knows enough about your business needs and level of in-house expertise, to develop a fit-for-purpose solution.

3. Does the solution complement human expert and machine learning abilities?

Technologies like AI and software robotics should be introduced in a supporting role, to digest and analyze data intelligently, deliver information faster, and identify regulatory impacts more proactively. Ideally, you want a vendor that can effectively combine AI, automation, and expert capabilities that play to each resource's strength and also integrates seamlessly with mission-critical enterprise software.

Some RegTech solutions rely on its customer to be the human expert in the machine-aided process. Work with vendors that have both the technology and the experts to deliver a value-added service with our solutions that streamline the customers' process of having the requirements already extracted and proposed groupings.

4. Does the software have workflow capabilities?

Rather than trying to stay on top of disparate data feeds and point solutions, you could opt for a technology platform that enables you to manage all data and regulatory compliance processes from a central location. This way, you can capture the flow of new regulations in a single database with all obligations, then assign tasks and feed relevant data into processes across your institution. A RegTech capability that provides both content and workflow management capabilities can dramatically increase transparency and control.

5. Is your solution supporting a repeatable and sustainable process?

To future-proof your compliance management program, you need the tools to actively monitor state and federal regulations and factor in how emerging regulations could impact current approaches.

It's also ideal to choose a platform that offers some form of extensibility, which allows you to move information out from your systems to whatever workflow systems you will be using. To achieve this, you could choose a smart content feed that is platform-agnostic and can be consumed in any technology through an export and import process.

Closing thoughts

When it is planned and implemented effectively as part of a broader compliance program management toolkit, the RegTech approach can serve as a key resource for a bank's compliance team, while enabling the institution to reduce operational costs and enhance its overall risk management capabilities.

RegTech which combines the strengths of human expertise, AI, and robotics can play a valuable role in the future of financial services regulation.

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Federal preemption: Managing the complexity of state and federal regulatory obligations

Financial institutions are subject to a multitude of laws and regulations that vary by jurisdiction. Understanding which state and federal regulations apply and how to operate in compliance with these requirements can be a costly and often difficult compliance management process.

The U.S. Constitution's Supremacy Clause provides that the Constitution, federal laws made pursuant to it, and treaties made under its authority constitute the "supreme law of the land." This language is the foundation of federal preemption, which allows federal law to supersede state law when conflicting terms exist. Under the National Bank Act, the Office of the Comptroller of the Currency (OCC) serves as the primary regulator for all national banks and federal savings associations, ensuring they operate in a safe and sound manner and in compliance with applicable laws and regulations.

Federal preemption permits national banks and federal savings associations, many of which operate across state lines, to operate under a uniform set of rules to support nationwide banking. State law will prevail in the absence of federal law, or when state law provides more protection than what is available under existing federal law. But determining whether federal law can override state law in each case is often a key point of contention among regulators, financial institutions, and other stakeholders.

The evolving federal preemption landscape

The Dodd-Frank Act changed the federal preemption landscape in several ways. Before the Dodd-Frank Act went into effect in 2010, the OCC relied on broad preemption determinations, which often caused a significant debate between federal and state regulators as to what law prevailed. Some have even gone so far as to assert that the federal preemption of state anti-predatory lending laws played a role in the 2008 financial crisis by hampering the states' ability to legislate against disreputable lending practices. [1]

Over the last decade, the Dodd-Frank Act has muddied the waters of federal preemption by establishing that state consumer financial laws can only be preempted if they prevent or significantly interfere with the powers of national banks or federal savings associations. As a result, the OCC and courts must now make preemption decisions on a case-by-case basis. The Dodd-Frank Act has also led to increased regulatory scrutiny of national banks and thrifts and a growing number of enforcement actions by state agencies. Many banks are concerned that with the OCC's loss of broad preemption authority, they will be subject to a myriad of state regulations that increase the costs and risks of doing business.

[1] https://www.americanbar.org/groups/business_law/publications/committee_newsletters/banking/2019/201904/fa_1/

Manage compliance for multiple jurisdictions

National banks with a presence in multiple states are subject to thousands of state and federal regulatory obligations, which develop continuously and vary by jurisdiction. Historically, it has been an enormous challenge for financial institutions to keep pace with such a massive volume, breadth, and scope of regulatory change while understanding the ongoing impact. Beyond operating in compliance with state and federal requirements, financial institutions must also provide proof of compliance across the board to internal stakeholders and regulatory authorities.

For financial institutions, the ability to identify what federal and state regulations apply to their institution is the biggest challenge. Often, financial institutions have to manually search for, interpret, and apply a vast amount of regulatory data. Given that regulatory requirements, complexity, approaches, and terminology can vary widely by jurisdiction, it requires a massive resource commitment to maintain your compliance obligations on a national scale. Additionally, it can involve many content sources often delivered and managed in a spreadsheet format that is not easily searchable or manageable.

An AI-based solution like OneSumX ProViso® that uses machine learning, natural language processing, and human augmented intelligence from legal and regulatory experts, can help financial institutions develop, maintain, and prove compliance with their legal obligations to U.S. federal and state regulators.

AI-based tagging allows financial institutions to:

- Easily find the regulatory updates that apply to the business
- Find commonality in laws that span across multiple jurisdictions
- Access comparative state-to-state and federal-to-state analysis written by compliance experts
- Integrate applicable regulations into day-to-day processes using workflow tools
- Prove that policies and processes align with all relevant regulatory requirements.

Looking ahead, it doesn’t appear that the pace of regulatory change will slow down anytime soon. Finding a solution that allows you to manage the overwhelming complexity and volume of state and federal regulatory obligations while minimizing manual effort and risk will prevent you from missing a critical regulatory update that could harm your business or your customers.

Whitepaper

Technology, financial services, and the road ahead

The use of RegTech is helping banks manage federal and state regulatory demands

As published in ABA Bank Compliance magazine, Sept/Oct 2021 | By **Thomas W. Grundy**

Maximizing the capabilities of RegTech to keep pace with accelerating industry shifts

For many in the financial services industry, the transitional journey to digital services started long ago. Online banking and bill payments were enough to keep many financial institutions competitive—until COVID-19 hit. No matter where you were on your digital journey, the pandemic accelerated the need for advanced technologies much more quickly than many financial institutions anticipated.

There is a silver lining to this "forced" modernization. Mainly, financial institutions are coming to terms with the absolute value of technology. In a time of such disconnect, technology helped banks and credit unions stay connected to consumers and move forward in a remote environment. Digital migration jumped 200 percent during the early stages of the pandemic, and Baby Boomers adopted digital channels and mobile banking in record numbers. To top it off, the success of the Paycheck Protection Program established technology, and more specifically, digital lending, as the new standard for processing and funding small business loans.

But as technology continues to rapidly evolve, and your demographics set a new pace of change, it's time to kick your digital transformation into high gear. In other words, keep your focus on the road ahead, so you don't get left behind.

Accelerating your digital transformation through emerging technologies, such as Banking-as-a-Service, can be an opportunity to expand your reach and capture new revenue growth—all at a lower cost.

Technology trends to watch

Population projections support the continued investment in the digital delivery of financial services. As more of our population is "born digital," you'll require the most advanced technology to continue to provide consumers with mobile, anytime access to financial advice, customer service, and real-time payments. As financial technology remains front and center following the pandemic, here are the key trends to watch:

- **Artificial intelligence/machine learning**
  Artificial intelligence and machine learning are rapidly replacing human input for basic financial decision-making and creating "virtual private banking" for all consumers. Banks can leverage vast stores of data to analyze consumer transactions over time and make tailored product or service recommendations. However, there's been some discussion about the governance and risk management challenges that result from using AI, including a lack of explanation as to how AI uses inputs to produce outputs, dynamic updating, and the perpetuation or amplification of bias.

- **Autonomous finance**
  Autonomous finance uses AI to make financial decisions on your behalf without the need for direct human input. Imagine an Alexa-type voice assistant alerting you that "your bills have been paid" or "funds have been transferred for investment based on market analysis." The data and technology work "autonomously" on behalf of the institution, the consumer, whatever the case may be.

- **Challenger and longevity banks**
  This is a new generation of financial institutions built strictly on technology with no physical facility. In December 2020, Exton Consulting reported 256 challenger banks worldwide, with many reporting steady account growth over the past 12 months.

- **Real-time payments**
  Real-time payments are a key competitive advantage—if you can achieve them. It's also fraught with risk as bad actors attempt to evade or hide their activities from authorities using this means of payment and movement of funds. However, with an economy increasingly built on gig workers and cash flow-conscious consumers, real-time payments are a competitive, consumer-focused priority for many financial service providers.

- **Banking as a Service**
  With an infrastructure built on application programming interfaces, Banking as a Service (BaaS) enables third parties to develop their own financial products by leveraging an established financial institution's license, regulatory compliance, and technology back end. BaaS provides the gateway for financial data to stream back and forth between users and banks.

  Today, it's imperative that financial technology push the limits of imagination in order to meet the expectations of consumers born in a digital world. The tremendous volume of FinTech startups worldwide seems to support this theory. According to Statista Research, as of February 2021, there were 10,605 FinTechs in North and South America, 9,311 in Europe, the Middle East, and Africa, and 6,129 in Asia Pacific (www.statista.com/statistics/893954/number-fintech-startups-by-region/). The astounding growth in FinTech startups is driving highly competitive, consumer-focused specialization in all aspects of financial services. The by-product of this explosive growth is heightened expertise, capabilities, and domain knowledge that will support the continued digitization of banking.

Mapping a point of entry
There are several motivating factors driving the decision to increase a financial institution's digital presence. As financial institutions learned during the pandemic, digitization was a vital lifeline during a difficult period. However, it was apparent throughout the darkest days of the pandemic that for long-term success, it is critical to enhance the consumer experience, improve the delivery of products and services, and ensure consumer retention. Technology also helps expand the reach of financial institutions, whether to markets yet unserved or those that are underserved. And with the continued growth of FinTech, challenger, and longevity banks, an increased digital presence has moved beyond a competitive advantage and is now a competitive necessity. Moreover, compliance performance and management stand to benefit, in that the application of technology to product and service delivery systemically drives compliance from a workflow, timing, and disclosure standpoint.

Determining the best technology strategy often comes down to your appetite for making the necessary up-front financial investment and ongoing resource commitments. Whether you decide to build, buy, or partner impacts how quickly you can grow your digital offerings.

BaaS and the consumer experience
BaaS may be the answer for financial institutions seeking to expand the digital delivery of products and services. The BaaS model bridges the existing banking infrastructure and systems through an application programming interface that enables the brand partner to deliver financial products and services, such as loans, payments, or deposit accounts.

Brands then embed banking services into their offering, enhancing the customer experience. Financial institutions enable their partner brands to provide financial services by renting their license, often through partnerships with an "as-a-service" provider. This partnership arrangement ensures that the brands em-bed fully compliant financial services into their customer experience.

The benefit is that BaaS reduces the barriers to entry and allows brands, technology service providers, and chartered/licensed financial institutions to focus on what they each do best. Through this amalgamation of specialization, the consumer experience evolves into a seamless, low-friction process of consumption and finance where and when the consumer need is greatest.

Building and managing a FinTech partnership
When financial institutions and FinTechs combine their strengths to achieve a common goal, it can result in a powerful partnership. While each has the potential to realize success on their own, together they can scale and innovate, achieve a deeper level of engagement with consumers, enhance risk mitigation, improve efficiencies, and create more accessible products.

Despite the benefits, there is always risk. As more financial institutions and FinTechs gravitate toward some form of relationship, layers of analyses must be performed to ensure that risks are identified, assessed, and mitigated, and that the relationship is professionally managed. Working with a well-defined business model will help drive an early understanding of the potential risks.

Bringing two very different working environments together requires more than an average third-party vendor management onboarding effort. It should be likened to creating a new product or service line of business for the financial institution. As for the FinTech, it is a total immersion into federal regulatory oversight. Each of the regulatory agencies have published guidance on considerations for identifying and assessing risks associated with third parties. Again, much of this guidance has developed over time and is generalized to address the many types of relationships financial institutions may enter across a spectrum of risk. From the perspective of FinTechs, the FDIC, in particular, has published guidance to help them understand the challenges and risks involved in partnering with regulated financial institutions.

To know whether a proposed partnership makes sense from the standpoint of risk, first conduct an internal assessment to understand whether your financial institution is ready to manage a partnership with a FinTech. Make an honest assessment and ask yourself if there are qualified FinTech-savvy compliance subject matter experts and technical resources ready and in a position to own responsibility for managing this type of partnership? Don't assume that the existing vendor management program at your financial institution is the turnkey solution in this instance.

To attain the strategic objectives of this partnership effectively, financial institutions must have an appropriate management structure in place. Some key considerations include naming the management team internally, establishing accountability and oversight for each line of defense through regular reporting, defined metrics, and performance criteria, and identifying critical touchpoints within the framework components of the Compliance Management System (CMS) that will support the partnership.

Due diligence considerations
Given the risk and complexities of establishing a partnership between a financial institution and a FinTech, reviewing all available information about a prospective partner is advisable. Focusing on the entity's financial condition, specific relevant experience, knowledge of applicable laws and regulations, maturity level of their compliance program, reputation, and the scope and effectiveness of operations and controls are just a few areas that should be part of the pre-contracting review. From a compliance perspective, it is reasonable to expect compliance program gaps and opportunities for enhancement in the CMS framework as you consider building a prospective partnership with a financial technology firm.

Once a partner is identified and you're ready to move forward with the contract, make sure to build in legal protection, where possible. The contract should specify what circumstances constitute default, identify remedies, and allow a reasonable opportunity to cure a default. Similarly, termination rights should be identified in the contract, especially for material third-party arrangements and relationships involving rapidly changing technology or circumstances. The more methodical you are in drafting the contract, the better off you will be. The best advice is to involve Compliance to ensure the requirements of the agreement are followed throughout the relationship and to consult your legal counsel, as appropriate.

An oversight program will generally include monitoring a third party's quality of service, risk management practices, financial condition, and applicable controls and reports. Periodically report any results of oversight activities for material third-party arrangements to your board of directors or designated committee. Identify, document, and promptly address any control weaknesses to ensure transparency.

The road ahead
The demand for digital experiences is only intensifying. Accelerating your digital transformation through emerging technologies, such as Banking-as-a-Service, can be an opportunity to expand your reach and capture new revenue growth—all at a lower cost. And as the disruption of traditional banking grows stronger, embracing BaaS might help financial institutions survive and thrive in this digital age.

Tom Grundy *is the Senior Director, U.S. Advisory Services, for Wolters Kluwer and leads a team of subject matter professionals advising financial services industry clients. He is a former federal regulator with the Office of the Comptroller of the Currency and Federal Reserve Board, has served as a compliance professional for national-level banking and mortgage providers, and is a pioneer in FinTech.*

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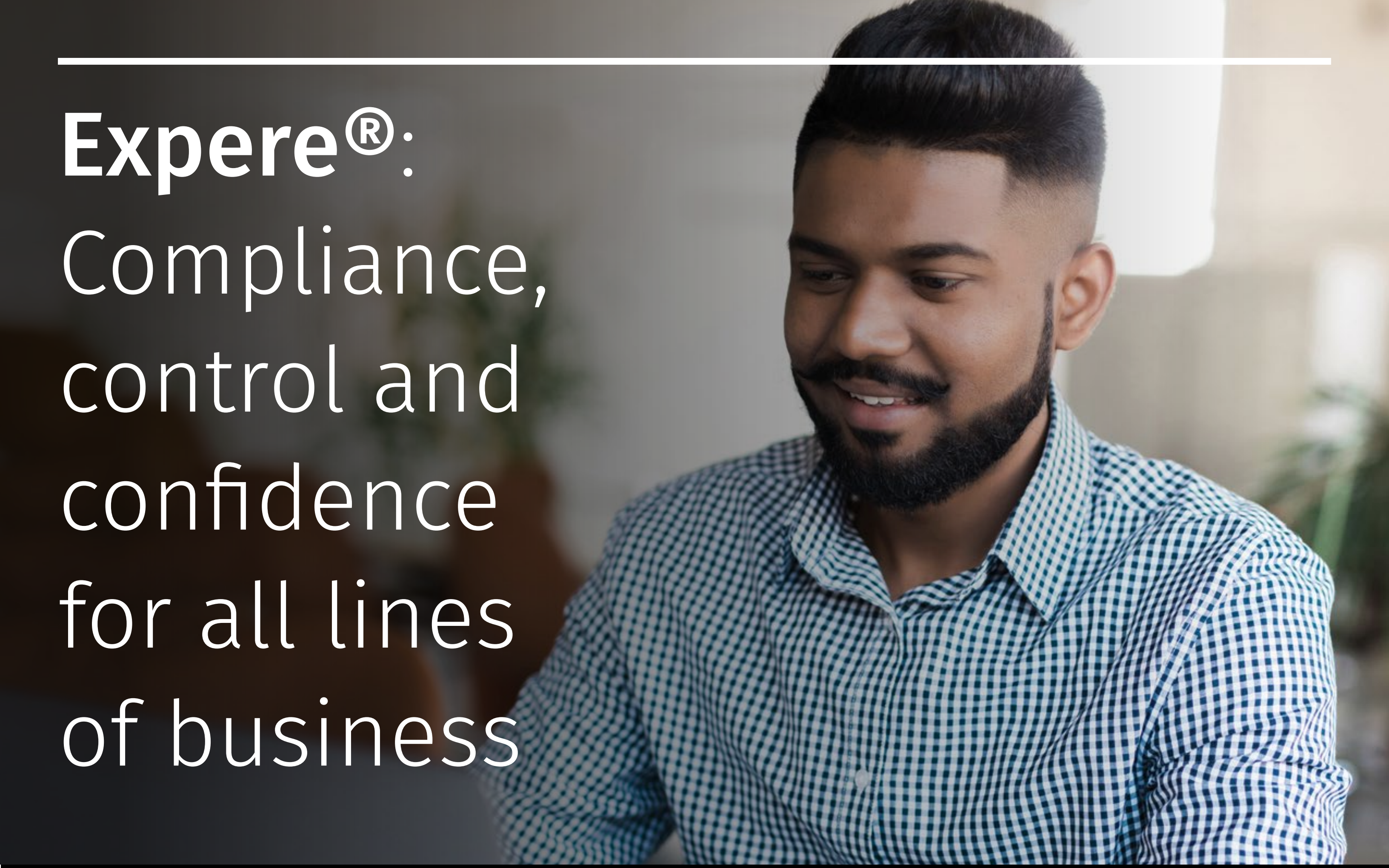

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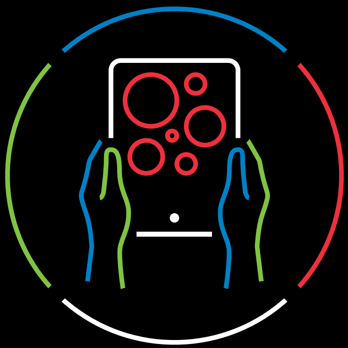

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Wolters Kluwer's Expert Insights

Demystifying Bitcoin and digital assets

An executive conversation with Thomas Grundy, Director of Advisory Services, Wolters Kluwer Compliance Solutions

As published in Independent Banker, May 1, 2022 | By **Thomas W. Grundy**

What effects do cryptocurrencies have on financial institutions?

We recently sat down with Tom Grundy for a conversation on demystifying Bitcoin and digital assets. A former regulator and a compliance professional, Tom has over 35 years of experience as a regulator with the Office of the Comptroller of the Currency and Federal Reserve Board, a financial industry compliance professional for banking, mortgage, and FinTech financial service providers, and as an advisory consultant to a wide range of clients. He shared insights on where Bitcoin could be headed and the compliance challenges facing financial institutions.

Is Bitcoin becoming a normalized currency on par with fiat currencies?

Tom: On par with fiat? I wouldn't say that – but increasingly, cryptocurrencies in general are beginning to show viability as alternative currencies. It's a bit like electric cars. If you had asked me a few years ago if they'd become widely viable, I'd have said no. But even in rural areas, electric cars and charging stations are popping up. Technology is transforming life as we know it.

The same is true for crypto. As technology and transactional infrastructure emerges, so will use cases for cryptocurrencies in everyday life. Already, some banks and credit unions are providing cryptocurrency access to customers alongside traditional product offerings. Now you can buy and sell Bitcoin though traditional banks and credit unions in partnership with trading platforms and transfer its value into cash. So, I'm not predicting the future, but it appears that Bitcoin is moving into the mainstream.

Cryptocurrencies are evolving and regulatory rules explicitly addressing this asset class are lacking. But this is beginning to change.

As cryptocurrencies and digital assets including Bitcoin are evolving, are they covered by existing regulations? What is the latest guidance for financial institutions?

Tom: Right, cryptocurrencies are evolving and regulatory rules explicitly addressing this asset class are lacking. But this is beginning to change. Regulatory guidance is emerging, including several important developments recently. For instance, a joint statement from the FRB, FDIC, and the OCC was released in 2021 that summarizes the work of an interagency "policy sprint" and building a roadmap for cryptocurrencies.

However, the most significant recent event to put crypto on the map is an Executive Order issued by the White House on March 9, 2022 that directs a range of federal agencies to study digital assets and prepare policy responses. This order covers a lot of ground around protecting consumers, maintaining financial stability, ensuring privacy, and even exploring the benefits and risks of developing a Central Bank Digital Currency.

For Wolters Kluwer, much of our focus is on risk and access – both of which are addressed by the Executive Order.

Our goal is to help financial institutions navigate this emerging world and move ahead with confidence.

I would just add that the Executive Order, while a big move, is in many respects a beginning. The goal is to get the agencies to start thinking about how to regulate digital assets. Additional guidance is expected later in 2022. Banks should monitor regulatory developments to react in a timely manner to new rules that may be introduced.

For banks and credit unions considering offering cryptocurrency services, guidance from federal regulators regarding prior notification underscores the importance of conducting a related risk assessment. Such a risk assessment provides a documented inventory of risk-mitigating controls clearly mapped to associated risk factors. Regulators will expect supervised institutions to identify and actively manage risks associated with offering crypto-related services. For more information on the Wolters Kluwer Bitcoin Risk Assessment, explore our solutions and services to assist your Bitcoin journey.

Tom Grundy *is the Senior Director, U.S. Advisory Services, for Wolters Kluwer and leads a team of subject matter professionals advising financial services industry clients. He is a former federal regulator with the Office of the Comptroller of the Currency and Federal Reserve Board, has served as a compliance professional for national-level banking and mortgage providers, and is a pioneer in FinTech.*

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