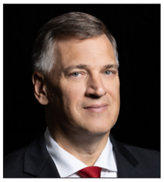
# Trends and Developments

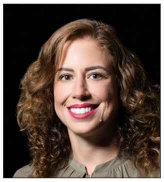
**Contributed by:**
Donald J. Mosher, Kara A. Kuchar, Melissa G.R. Goldstein, Jessica Romano and Adam J. Barazani
**Schulte Roth & Zabel LLP**

**Schulte Roth & Zabel LLP** leads the fintech space, offering unmatched expertise that extends across various facets of the legal landscape, including investment fund work, payments and lending, regulatory and compliance. It advises top fintech companies and innovative startups, making it the go-to firm for financial and strategic buyers in the payments sector. The team's experience in licensing, compliance, and regulatory enforcement, particularly in AML and OFAC matters, is unmatched in the industry. In cryptocurrency, Schulte works with retail and wholesale providers of cryptocurrency products and services, including merchant payment processing, digital wallets, cryptocurrency exchangers, market-makers and liquidity providers, on state money transmitter and federal money services business licensing and registration matters. Schulte is a trusted advisor to start-up unicorns, guiding them through setting up payment operations and securing necessary licences. With a deep-rooted understanding of the industry, the firm provides strategic counsel that helps clients innovate, expand, and comply with evolving regulatory frameworks.

## Authors



**Donald J. Mosher** is Head of Schulte Roth & Zabel's Bank Regulatory Group and Co-Head of the Blockchain Technology & Digital Assets Group. He focuses on the regulation, acquisition and sale of payments companies and money transmitters, licensing and registration of traditional and nontraditional money services businesses (including online transmitters, global B2B providers and cryptocurrency exchanges), and the laws and practices applicable to mobile, digital, virtual, electronic, paper- and card-based payment products and systems. Don has represented leading banks, payments companies, card associations, money transmitters and private equity firms in transactional and regulatory matters associated with payments, prepaid cards, digital currencies, and money transmission.



**Kara A. Kuchar** advises at Schulte Roth & Zabel on the regulation of financial services providers, including money services businesses, payment processors, stablecoin issuers, cryptocurrency exchanges and fintech companies specialising in payments, and in transactional, regulatory and enforcement matters. She represents and supports leading fintech companies and private equity firms in transactional, regulatory, and enforcement matters associated with payments products and services, including e-commerce marketplaces, money transmitters, cross-border B2B payment solution providers, rewards companies, prepaid card managers, payment processors, payroll processors, digital wallet providers, cryptocurrency exchanges and emerging payments companies. Kara advises on buy-now-pay-later offerings,

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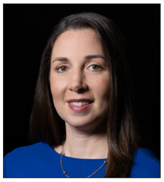
merchant cash advances, and commercial lending licensing matters, and manages money transmitter and virtual currency licensing projects for companies.



**Melissa G.R. Goldstein** is partner at Schulte Roth & Zabel and advises on anti-money laundering and sanctions regulatory compliance matters. She represents banks, broker-dealers, investment advisers, funds, insurance companies and money services businesses, including those involved in global e-commerce and virtual currency, on the anti-money laundering and sanctions regulations, rules and related issues governing their investment and business activities. Melissa has particular experience with issues arising out of the Bank Secrecy Act, as amended by the USA PATRIOT Act, the AML Act of 2020 and the Corporate Transparency Act. Before joining Schulte, she was an attorney-advisor with the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

**Jessica Romano** is special counsel at Schulte Roth & Zabel and advises money transmitters, payments companies and other financial institutions on a variety of regulatory issues, including compliance with federal and state banking and consumer finance laws and multistate licensing requirements, as well as transactional matters. Jessica supports private equity firms in transactional matters related to the acquisition and sale of payments companies and money transmitters. She also has experience advising investment advisers and private funds on regulatory matters.

**Adam J. Barazani** is special counsel at Schulte Roth & Zabel and advises on the regulation, acquisition and sale of financial services providers, including money transmitters, payment processors and fintech companies. Adam represents and advises leading financial services companies and private equity firms on regulatory and transactional matters in the payments space. He regularly provides guidance on compliance with federal and state law applicable to companies engaging – or considering to engage – in payments activities, including state money transmitter laws and multistate licensing requirements, as well as regulatory issues associated with payments products and services, including remittance transfers, prepaid access, digital currencies and internet- and mobile-based payment products and services.

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**Schulte Roth & Zabel LLP**

## Schulte Roth & Zabel LLP

919 Third Avenue
New York
NY 10022
USA
Tel: +1 212 756 2000
Fax: +1 212 593 5955
Email:
Web: www.srz.com

In the United States, the fintech sector continues to integrate innovative technology with traditional financial services, reshaping how consumers and businesses access, manage, and move money. Building on its position as a leader in technology innovation, the country is seeing fintech companies introduce increasingly sophisticated products, including embedded finance solutions, AI-powered fraud detection systems, and blockchain-based payment platforms.

Key financial products driving momentum in the fintech space include digital wallets, buy-now-pay-later (BNPL) solutions, earned wage access (EWA) products, and digital asset payment services. These innovations are not only transforming the customer experience but also attracting the attention of regulators at federal and state levels.

As 2025 unfolds, the Trump administration's deregulatory stance introduces potential shifts in federal regulatory priorities. While these efforts aim to reduce compliance burdens and foster innovation, they may create gaps in federal oversight, prompting state regulators to play a more prominent role. For fintech companies, this dynamic presents both opportunities and challenges, as they navigate the complexities of a multi-layered and sometimes fragmented regulatory framework while continuing to innovate.

### Uncertainty Looms Over CFPB and Its Prior Fintech Initiatives

The Consumer Financial Protection Bureau (CFPB) was notably active throughout 2024 and early 2025 under the Biden administration. Areas of focus for the prior administration included consumer data and privacy protections, supervising larger technology companies (coined *"Big Tech"*) that play a role in the payments eco-system, and junk fees. However, with the new administration and its expected deregulatory stance, coupled with the Republicans' overall interest in reining in the authority of the CFPB (or even eliminating the agency altogether), it is unclear which areas the CFPB will focus on going forward, if any. Since taking office in February 2025, the CFPB's acting director has ordered a sweeping halt to the agency's activities, suspending rulemaking, enforcement actions and stakeholder engagement, while also cancelling the CFPB's next funding request from the Federal Reserve, effectively freezing most of its operations.

The abrupt halt to CFPB work leaves many of the agency's actions impacting the fintech sector in question, including the following recent actions.

- *"Open Banking Rule"* – this rule, which was finalised in 2024, requires certain depository and non-depository entities, referred to as data providers, to make certain data relating to consumers' transactions and accounts available to consumers and authorised third parties. It is intended to promote competition by giving consumers control over their financial data. While other countries have already adopted formal open banking regulations, open banking in the US has been fourteen years in the making and has developed through private sector initiatives over this time. While the Open Banking Rule is generally supported by the fintech industry as facilitating competition in the marketplace, it is being challenged in federal court by the banking industry.
- *Consumer data and privacy protections* – through a number of actions, the CFPB expressed its concern with the misuse, sharing, and protection of sensitive consumer financial data. It issued a report in December 2024 highlighting a gap in privacy protections afforded to consumers at the state level as new state privacy laws carve out financial institutions or financial data already subject to the Fair Credit Reporting Act (FCRA) or Gramm-Leach-Bliley Act (GLBA). Following this report, the CFPB targeted both the FCRA and GLBA. In December 2024, the CFPB issued a proposed rule under the FCRA to ensure that its protections apply to all data brokers that transmit consumers' sensitive personal and financial information. In January 2025, the CFPB issued a request for information regarding the collection, use, sharing, and protection of consumer financial data, such as data obtained from processing payments, to help gather proposals for amending GLBA's implementing regulation.
- *A focus on Big Tech and payments accounts* – during Director Chopra's tenure, the CFPB increased its focus on Big Tech in the payments space, targeting companies like Google, Apple, and PayPal. Rather than rely solely upon the CFPB's authority to supervise entities that pose risks to consumers, the CFPB issued a final rule establishing general supervisory authority over non-banks providing funds transfer or payment wallet functionalities through digital applications where such providers facilitate an annual covered transaction volume of at least 50 million transactions. However, on 5 March 2025, the Senate passed a joint resolution disapproving this rule, which suggests it may not survive. Aligned with its focus on the payments space, the CFPB also issued a proposed interpretive rule in January 2025 designed to apply consumer protections generally applicable to traditional checking accounts and prepaid accounts to certain video game accounts, virtual currency wallets, and credit card rewards points accounts.

With the CFPB's enforcement activity coming to a halt, state attorneys general and banking regulators are expected to take a more active role in consumer protection. In a January 2025 report issued just prior to Director Chopra's departure, the CFPB encouraged states to strengthen their consumer protection laws by banning *"abusive"* practices, expanding enforcement authority, and ensuring private rights of action, while also highlighting junk fees and consumer privacy as key areas for increased oversight. As federal enforcement activity slows, fintech companies should anticipate some state regulators taking up the CFPB's mantle.

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### Evolving Regulatory Landscape for BNPL, EWA, and Merchant Cash Advances

The rapid growth of financial products such as BNPL, EWA, and merchant cash advances (MCAs) continues to redefine the fintech space, but regulators are increasingly stepping in to address concerns about consumer protection, transparency, and compliance. BNPL services, offering consumers the ability to split purchases into instalment payments, have faced mounting criticism over insufficient disclosures and their potential to encourage over-indebtedness. Late fees, interest accruals, and a lack of clear repayment terms prompted calls to extend consumer protections for credit cards users to users of BNPL products, and the CFPB took action in 2024 to do so. With a mounting sentiment to shutter the CFPB under Trump 2.0, the CFPB's steps to provide greater consumer protections for BNPL products are at risk of elimination.

In 2024, the Federal Trade Commission (FTC) also targeted misleading advertising and unfair business practices involving short-term lending products. FloatMe settled with the FTC for USD3 million following allegations that it misled consumers with promises of *"free money"* while engaging in discriminatory cash advance practices. And, more recently, the FTC charged Dave, a fintech focused on short-term cash advances, for allegedly deceiving consumers about cash advance amounts, charging undisclosed fees, and imposing hidden *"tips"*. With many expecting a pro-business FTC under Trump 2.0, the enforcement focus on cash advance providers may wane.

EWA products, which allow employees early access to wages, face a similarly complex regulatory landscape. While some states treat EWA offerings as payroll advances, others classify them as credit products subject to lending laws. This state-level divergence has created compliance challenges for EWA providers, particularly as legislative activity around EWA continues to grow. Several states have already enacted laws imposing disclosure and licensing requirements on EWA providers, with Connecticut taking a stricter approach by classifying EWA as small-dollar credit and enforcing a usury cap, which has prompted some providers to exit the state. Meanwhile, several other states, including New York, have pending legislation that could further shape the regulatory landscape. New York's latest bill, for instance, proposes a cost cap to be determined by the state regulator but notably exempts EWA from the state's general usury limits. This highlights the ongoing divide between states that impose traditional lending restrictions on EWA and those that carve it out from usury laws, reflecting broader policy debates over whether EWA should be regulated as credit or an employer-based benefit. At the federal level, regulatory uncertainty increased earlier this year when the CFPB rescinded its 2020 advisory opinion that clarified certain EWA programmes would not be considered credit. Whether such rescission will have any meaningful impact on EWA programmes at the federal level under the Trump administration remains unclear.

MCAs, meanwhile, are seeing increased scrutiny as regulators and courts question their classification as purchases of future receivables rather than loans. This distinction has historically allowed MCA providers to operate outside of a licensing and regulatory framework, though new state-level disclosure requirements for commercial financing aim to improve transparency for small businesses. Further, the recent USD1.065 billion settlement (which included USD534 million in debt relief for small businesses) by Yellowstone Capital with the New York State Attorney General (NYAG) highlights the growing

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enforcement priority in this space. In that case, the NYAG alleged that Yellowstone Capital was engaged in predatory practices, including misleading terms and excessive charges disguised as fees. Yellowstone Capital also entered into a similar settlement in New Jersey two years prior, albeit for a much smaller amount. These actions demonstrate a shift toward stricter oversight of MCA practices at the state level, underscoring the need for providers to prioritise transparency and fair dealing.

### Countermeasures Against Fraud, AML, and Sanctions Risk

The growing sophistication of financial fraud, money laundering and terrorist financing has driven both regulatory agencies and fintech companies to enhance risk mitigation strategies. Leveraging technology solutions will continue to be necessary in 2025 and beyond for fintech companies to meet the transaction-monitoring challenges presented by rising transaction volume and speed, the proliferation of intermediated account relationships, and the increased sophistication of threat actors. Accordingly, we expect to see the continued adoption of advanced technologies, including AI-powered tools, to enhance companies' anti-money laundering (AML) compliance programmes and bolster efforts to combat identity theft, account takeovers, and unauthorised transactions. Blockchain analytics-based solutions are also gaining traction for AML and sanctions compliance involving digital asset transactions. Meanwhile, collaboration between banks and fintechs has become essential in addressing fraud, AML and sanctions risks.

To ensure compliance with existing and evolving AML regulations and guidance, companies will need to complement their embrace of technological solutions with robust model validating and testing. These controls should be aimed at confirming the technologies are operating appropriately broadly, ie, not suppressing transaction-monitoring alerts that warrant investigation, and appropriately narrowly, ie, winnowing out the *"noise"* so reviewers can focus on relevant alerts. Companies should also be prepared to describe the parameters of their validation and testing operations to examiners to satisfy regulatory scrutiny.

Additionally, sanctions compliance will remain an area of focus for both fintech companies and regulators. Governments are increasingly deploying sanctions as a geopolitical tool and, in addition to list-based sanctions, imposing industry-, sector-, and investment-based prohibitions. As a result, sanctions compliance is getting more complex, highlighting the importance of having knowledgeable staff and robust compliance resources, including automated controls, to protect against inadvertent breaches.

### State Money Transmission Licensing Trends

Following a strong 2024 legislative year, the state banking regulators and state legislatures have made significant progress in adopting the Money Transmission Modernization Act (MTMA), which aims to streamline the application and supervision process for money transmitters, promoting a standardised regulatory environment across states. This harmonisation supports growth and innovation in fintech including, for example, by facilitating capital fundraising efforts, providing clarity and uniformity as to exempt activities, and streamlining the de novo licence application process and compliance obligations post-licensure.

Over the past year or so, ten states have amended their laws to closely model the MTMA. These states are Illinois, Kansas, Maine, Massachusetts, Missouri, New Hampshire, South Carolina,

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South Dakota, Vermont, and Wisconsin. As of January 2025, approximately half of the states have amended their laws to adopt some or all of the MTMA, and some trends and outliers have emerged. For example, almost all of these states have adopted the MTMA's tangible net worth requirements and list of licensing exemptions, including the agent-of-the-payee exemption commonly relied upon by merchant payment processors. Notably, however, the application of state money transmission licensing requirements to payroll processors remains in flux as there is wide divergence among the states that have adopted the MTMA on whether to expressly include or exempt such activity.

Following the presidential election, there also appears to be a nascent trend among some state legislators to add a remittance tax on money transfers and require money transmitters to verify the immigration status of customers sending cross-border money transfers. For example, a Florida bill would expressly prohibit an unauthorised alien from sending a cross-border transfer. And, in late 2024, the US Virgin Islands already adopted a law imposing a 3% fee on remittances to foreign countries. While such proposals have grown from political sentiment to combat illegal immigrants, the industry is concerned about its ability to comply with identification requirements relating to a customer's immigration status and the impact such legislation could have on potentially steering remittance transfers underground.

### Regulatory Risks and Opportunities in the Digital Assets Industry

At the federal level, the evolving regulatory landscape for digital assets is marked by a shift toward rulemaking rather than enforcement-driven oversight and the following actions suggest a more industry-friendly stance under Trump 2.0. The newly established Crypto Task Force by the Securities and Exchange Commission (SEC) aims to develop a clearer regulatory framework for digital assets, focusing on registration, disclosure requirements, and interagency coordination. The SEC's repeal of Staff Accounting Bulletin No 121 and the Office of the Comptroller of the Currency's (OCC) Interpretive Letter 1183 also removes major barriers for banks offering crypto custody or crypto-related services, potentially expanding institutional participation. The FDIC also signalled a desire to provide an avenue for depository institutions to engage in crypto-related activities while complying with safety and soundness principles and is actively reviewing and releasing prior communications, including *"pause"* letters sent to institutions, under the prior administration. Further, Trump's executive order on digital assets promotes dollar-backed stablecoins, prohibits a central bank digital currency, and establishes a working group to evaluate regulatory gaps. Last, the Senate Banking Committee has passed stablecoin legislation that would establish a comprehensive regulatory framework for the issuance and regulation of payment stablecoins in the US, which the administration believes is likely to become law.

State-level digital asset regulation remains highly fragmented. While more than half of the states have adopted some version of the MTMA, its application to digital assets varies significantly. Some states, like Texas and Vermont, have implemented additional requirements for stablecoin issuers and digital asset custodians. Others, such as California and New York, have opted for standalone licensing frameworks—California's Digital Financial Assets Law, set to roll out in 2026, will impose licensing, disclosure, and capital requirements, while New York's BitLicense remains one of the most stringent regulatory regimes in the country.

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As regulators refine their approach to digital assets, fintechs operating in this space must closely monitor evolving policies and enforcement trends. While federal actions suggest a move toward clearer oversight, state-level inconsistencies and ongoing enforcement uncertainties require adaptable compliance strategies.

### Exploring Different Financial Institution Charters to Meet Fintech Needs

The concept of a federal payments charter has gained renewed attention as policymakers grapple with the challenges of regulating fintech companies operating across multiple states. Originally introduced during the first Trump administration, the idea aimed to provide a unified framework for non-bank payment entities, streamlining compliance and reducing the need for multi-state licensing. While the OCC has hinted at revisiting the federal payments charter, no official steps have been taken to reopen applications. Proponents argue that such a charter could fill regulatory gaps in payments oversight, but critics, including state regulators, contend that it could encroach on state authority and create inconsistencies in consumer protection standards.

At the state level, novel charter structures have emerged as alternatives for fintech companies seeking banking-like privileges without full-service bank regulation. One example is Connecticut's innovation bank charter, which is touted as *"ideal for entities performing financial-related activities such as wholesale banking and merchant banking"*. An innovation bank can engage in deposit-taking activities, but cannot accept retail deposits from individuals who are not accredited investors, and is not required to obtain FDIC insurance. Notably, Numisma Bank received this charter last year, and became the first Connecticut innovation bank to obtain a Federal Reserve master account. Another limited-purpose state charter that has gained renewed attention is Georgia's merchant acquirer limited purpose bank charter, which was originally created in 2012 to allow entities engaged in merchant acquiring or settlement activities to directly access payment card networks without relying upon a sponsor bank. In addition, Wyoming's Special Purpose Depository Institution charter and Nebraska's Financial Innovation Act aim to attract digital asset companies by providing structures for integrating blockchain and digital asset custody into financial services.

A key consideration for fintech companies exploring limited-purpose bank charters is direct access to the Federal Reserve through a master account, which allows institutions to settle transactions directly through the central bank rather than relying on intermediary banks. Historically, access to these master accounts has been limited to traditional depository institutions, but recent developments, particularly Numisma Bank obtaining a master account, suggest a possible opening for novel charters. While the Federal Reserve has issued guidelines for evaluating master account applications—emphasising factors such as financial stability and regulatory oversight—the process remains opaque, and fintechs pursuing alternative charters must weigh the potential benefits of direct Fed access against the uncertainties surrounding regulatory approvals.

### Bank-Fintech Partnerships Under Scrutiny After Fintech's Failure

In light of the collapse of Synapse Financial Technologies, Inc. (Synapse) last year, federal and state regulators are more closely scrutinising banks' relationships with fintech companies. Synapse operated as *"banking-as-a-service"* provider, and was the middleware provider connecting its customers and their end-users to Synapse's partner banks. Synapse maintained the ledgering for pooled, *"for the benefit of"* (FBO) bank accounts maintained by Synapse's partner banks for end-users of Synapse's customers. When Synapse filed for bankruptcy in April 2024, many end-users were unable to access their funds because the partner banks did not have access to Synapse's ledgers. After reconstructing transaction data and account balances, there is an alleged shortfall of funds estimated to range from USD65 to USD85 million.

While Synapse's failure highlighted some of the key risks inherent in FBO account models and bank-fintech partnerships, the responses of the federal banking agencies and industry point towards the future of the industry. After Synapse's bankruptcy, in July 2024, the federal banking agencies issued a joint statement highlighting risks and emphasising existing guidance related to arrangements between banks and third parties delivering bank-deposit products and services to end-users, and a broad request for information on arrangements between banks and fintechs. Certain federal banking agencies also issued consent orders against two of Synapse's partner banks (one before and one after Synapse's bankruptcy), which were focused in part on deficiencies related to the banks' third-party risk management programmes. These actions indicate the federal banking agencies' focus on ensuring banks properly manage the risks related to bank-fintech partnerships.

The FDIC also issued a proposed recordkeeping rule in September 2024. The proposed rule aims to strengthen recordkeeping for *"custodial deposit accounts with transactional features"*, which are generally defined to include the type of FBO accounts at issue in Synapse's bankruptcy and would require banks to have *"direct, continuous, and unrestricted access"* to the records of beneficial owners maintained by a third party. The proposed rule is not without industry pushback, however, where certain industry commentators noted that the proposed rule is too broad and may increase compliance costs and oversight responsibilities of banks without reducing the primary cause of the risks inherent in Synapse's model. Since finalising the rule will fall to the FDIC as run under Trump's administration, time will tell if and how the final rule will be implemented. Travis Hill, Acting Chairman of the FDIC, stated in January 2025 that one of the FDIC's priorities for the coming weeks and months is to *"adopt a more open-minded approach to innovation and technology adoption, including... a more transparent approach to fintech partnerships"*.

Similarly, certain state money transmission regulators have increased their focus on unlicensed fintech companies who utilise FBO accounts for customer funds. To the extent these fintech companies still control the movement of money notwithstanding the use of an FBO account model or sponsorship bank, they may be viewed as constructively receiving money for transmission, and, thus, require a money transmission licence. This increased scrutiny over bank-fintech partnerships is expected to continue at the state level, even if federal scrutiny eases with the new administration.

## Conclusion

Fintech is evolving rapidly, bringing both opportunities and challenges as regulations shift. The Trump administration's deregulatory stance has introduced uncertainty, particularly regarding the CFPB's role in overseeing new financial products, while state regulators are expected to take on a larger role. Concurrently, advances in AIdriven fraud prevention, blockchain, and embedded finance are enhancing efficiency and security, but recent failures and heightened scrutiny of bank-fintech partnerships highlight the need for stronger risk management and clearer regulations. The digital asset sector is also at a turning point, with federal agencies shifting toward rule-based governance for a more structured approach. However, state-level inconsistencies—impacting digital asset businesses and money transmitters—continue to pose challenges. Efforts to modernise money transmitter laws could bring more consistent regulations nationwide, while new financial institution charters present alternatives to state licensing. Ultimately, fintech firms must strike a balance between innovation and compliance, leveraging regulatory changes as opportunities for growth, partnerships, and smarter business strategies.