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An Ode to Joy- Congressional Research Service's report on FinTech Innovation and Policy

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On April 28, 2020, the Congressional Research Service (CRS) published an in depth report related to Fintech, titled Fintech: Overview of Innovative Financial Technology and Selected Policy Issues. This report focuses on providing an overview of all types of FinTech, including blockchain and initial coin offerings (ICOs) and provides some discussions of potential legal and policy ramifications.[1]

The Congressional Research Service, sometimes known as Congress's think tank, is a nonpartisan research institute that provides policy and legal analysis of both the House and Senate as well as to each of their committees. The report discusses the potential benefits and challenges associated with FinTech innovation, including underlying technological developments, technological innovations in finance, and potential regulatory approaches.

One of many interesting observations in the report concerns personal information and regulation. Fintech lenders currently use large amounts of data--much of it unreported, about prospective consumer borrowers in conjunction with algorithmic underwriting when deciding to make a loan. Although there are clear advantages to having such data, when these FinTech lenders work with banks such partnerships implicate privacy and regulatory restrictions on consumer data which may not be otherwise accessible to banks, since banks operate under strong consumer privacy rules.

In discussing ICOs, the report highlights what it sees as a main difference between an ICO and an IPO—that generally, in an ICO, issuers are able to transfer a digital asset without an intermediary or geographic information. A nuance that often gets lost in the discussion of digital assets—data in the form of personal identification—also circles around control and potential anti-money laundering/OFAC concerns. These issues have, and will continue to be a point of friction between U.S. lawmakers and regulators and cryptocurrency users and supporters.

Moving on to policy. In discussing the way FinTech has changed capital formation, the report notes that policymakers are actively considering whether the current regulatory framework should be altered to address the risks and benefits of innovations. We heartily agree that regulatory reform is called for to address the unique issues created by FinTech innovation.

Between 2013 and 2017, the amount of money lent by FinTech platforms has increased a whopping 608%. As more transactions are initiated and delivered through digital or virtual channels, the data issues and control of transfers of digital assets will become more prominent.

[1] The second report, “Fintech: Overview of Financial Regulators and Recent Policy Approaches, will be the subject of a separate article.

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