

Treasury Calls on the Federal Reserve to Reassess the BHC Act Control Framework to Facilitate Innovation

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The Federal Reserve's current approach to determining whether a banking organization has control over another company for purposes of the Bank Holding Company Act can discourage fintech investments by banking organizations. This impact was discussed in the Treasury Department's report on nonbank financial institutions, fintech and innovation. The report highlights two reasons why the Federal Reserve's current approach is concerning to fintech firms. First, fintech firms would like to avoid being treated as affiliates of a BHC, given the practical consequences to their business of that status. Second, "'control' can be difficult to determine because it relies upon Federal Reserve discretion under a process that is not sufficiently transparent." In noting that "[a] BHC may seek to expand its business relationship with a successful fintech in which it has invested, yet doing so could then trigger 'control,'" the report highlights the well-known overbreadth and opaqueness of the Federal Reserve's interpretation of the part of the control definition relating to "controlling influence."

"To support the ability of firms to flexibly adapt to new technology and market developments," the Treasury report "recommends that the Federal Reserve consider how to reassess the definition of BHC control to provide firms a simpler and more transparent standard to facilitate innovation-related investments." As the report itself notes, that recommendation is consistent with statements by Federal Reserve officials. Specifically, Federal Reserve Vice Chairman for Supervision Randal K. Quarles [publicly announced](#) in January 2018 that he viewed the BHC Act control framework as "ripe for re-examination." (For our thoughts on that announcement, please see our [prior blog post](#).) Treasury's call for the Federal Reserve to reconsider the BHC Act control framework through the lens of facilitating innovation is one that we hope (and, dare we say, expect) will come to fruition.