

2021년 한국금융학회·한국금융정보학회 공동심포지엄 (2021.5.26)

금융환경의 변화와 금산분리 규제

- 금산분리 규제의 과거와 현재 -

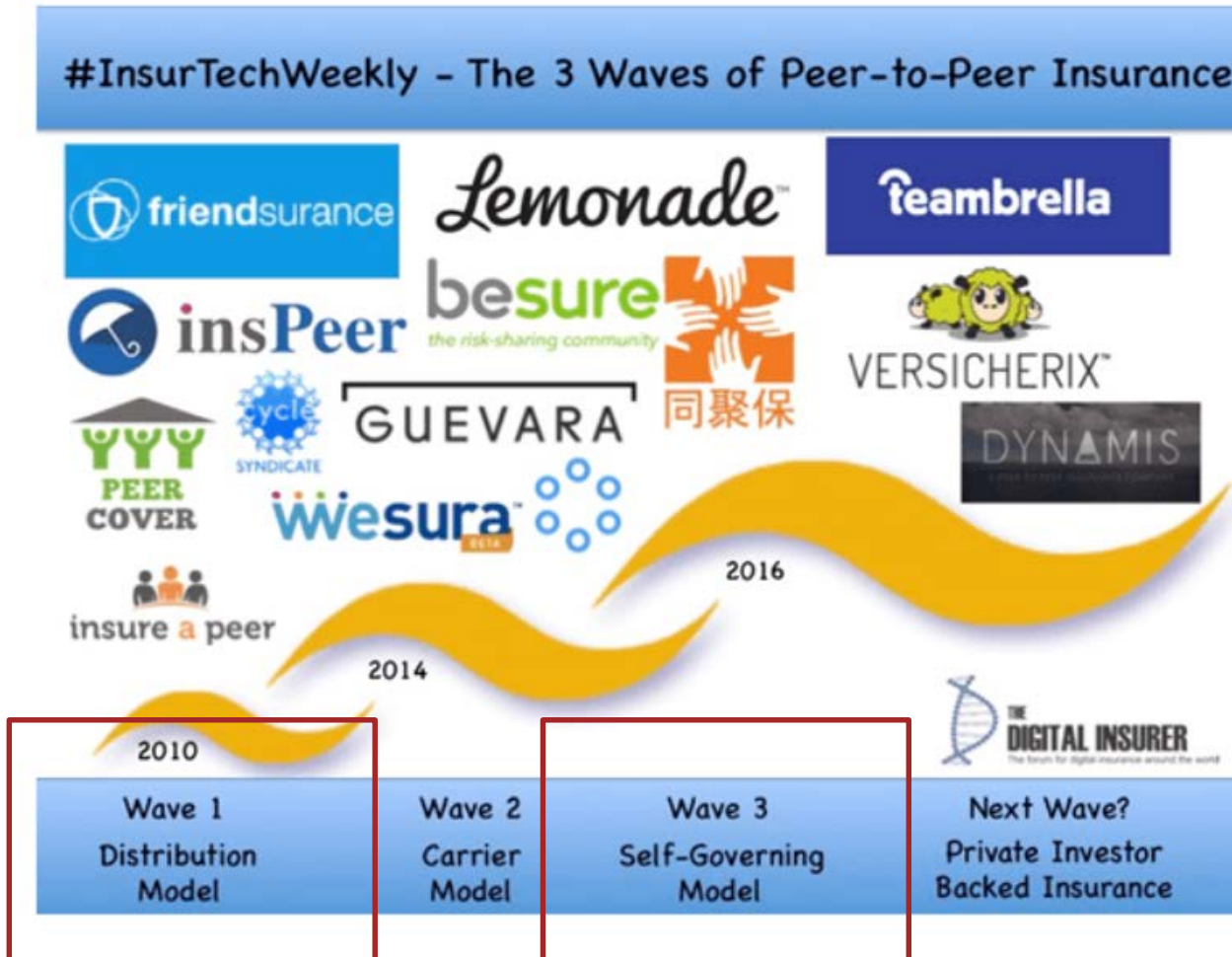
토론자: 양기진 (전북대 법전원)



1. 제조/판매 분리 이슈

- 자치보험 이슈: 보험업 규율이 필요한가
- 기타 금융플랫폼 이슈: 네이버 통장 등

○○○ 보험업 신유형: P2P보험 ○○○



Self-governing models as the 3rd wave of P2P insurance

[Rick Huckstep, The Digital Insurer 기고문](#)

보험업 신유형: P2P보험

(Wave3: 자치보험형)

- ▶ 팀브렐라 (TeamBrella)의 사례 (*Self-governing model*)
 - ▶ Alex Paperno, the co-founder of Teambrella.com
 - ▶ Alex's concept is to form **customer teams with large numbers** (not just friends and families).
 - ▶ Teams are **self-governing user communities**. A team consists of peers (teammates) that **collectively manage all insurance functions, such as setting of policy rules**, accepting new members, making and approving claims, reimbursements.
 - ▶ Any person can create a team and define its initial set of rules. Insurance is activated once a minimal number of peers join the team (two by default) and fund their distributed wallets.

[Rick Huckstep, The Digital Insurer](#) 기고문

빅테크 운영 온라인플랫폼의 보험산업 영향 전망

- ▶ 빅테크와 *Self-governing model*
 - ▶ 자율자동차 제조업체나 공유경제플랫폼 제공자 등 다수의 이용자들을 가진 빅테크들의 위험 관리 이슈
 - ▶ 빅테크들이 위험을 외부 보험회사에 이전하는 대신, 자사의 다수 이용자들을 활용하여 자가보험 (self-insurance)를 시도할 여지
 - ▶ cf. 저빈도/고심도의 재난적 상황을 대비한 재보험 제외

양기진 (2020.12.17, 리스크관리학회 발제문)

금융플랫폼 업무유형

▶ 금융상품 관련 온라인플랫폼의 행위 유형

단순노출	정보제공	자문/추천	중개/대리	직접판매
<ul style="list-style-type: none"> 금융상품의 이미지를 플랫폼에 단순 게시 	<ul style="list-style-type: none"> 금융상품 계약 내용 정보 제공 	<ul style="list-style-type: none"> 상대방 소비자의 정보 수집 (KYC) 수집된 정보 바탕으로 금융상품 자문/추천 (금소법상 불특정 다수인 대상 조연은 자문업 제외) 	<ul style="list-style-type: none"> 보험 모집에 해당 계약 체결 중개 및 계약 체결 대리 	<ul style="list-style-type: none"> 스스로 제조한 상품을 판매
<ul style="list-style-type: none"> 배너이미지 등 단순게시 	<ul style="list-style-type: none"> 보험다모아, 인슈마켓 사이트 등 	<ul style="list-style-type: none"> 뱅크샐러드 앱의 맞춤형 보험추천 ('보험설계') 	<ul style="list-style-type: none"> 전통적 보험 모집조직이 수행해온 기능 	<ul style="list-style-type: none"> 보험회사 임/직원 등을 통한 판매

금융플랫폼 업무유형

▶ 금융상품 관련 온라인플랫폼의 행위 규제

단순노출	정보제공	자문/추천	중개/대리	직접판매
<ul style="list-style-type: none"> • 특별히 규제 실익 없음 	<ul style="list-style-type: none"> • 소비자의 오인가능성 방지 위한 규제 (판매주체, 정보의 최신성 등) 	<ul style="list-style-type: none"> • 소비자의 이익에 맞는 자문/추천 유도 	<ul style="list-style-type: none"> • 영업규제 필요 (적합성, 설명의무 등) 	<ul style="list-style-type: none"> • 모집에 준하는 영업규제 필요
<ul style="list-style-type: none"> • 보험업법시행령 제42조의4 제2항 (보험료·보험금에 대한 구체적인 예시 없이 보험상품의 이미지만을 노출) 	<ul style="list-style-type: none"> • 보험업법상 광고규제 • 금소법 및 표시광고법 규제 	<ul style="list-style-type: none"> • 금소법상 금융상품자문업자 (이익을 얻는 목적으로 계속적 또는 반복적 자문) 	<ul style="list-style-type: none"> • 금소법상 금융상품판매대리·중개업에 해당 • 영업행위 규제 적용 	<ul style="list-style-type: none"> • 금소법상 금융상품직접판매업자 • 영업행위 규제 적용



검토할 이슈



- ▶ 제조와 판매 분리
 - ▶ 제조/판매가 분명히 분리될 수 있는가?
 - ▶ Self-governing P2P 보험 등
 - ▶ Platform 운영사의 제품 홍보/광고



2. 핀테크 업자의뱅크인가

- 은행 등(SPNB 등)의 인가
- 어느 수준의 규제를 할 것인가

○○○ 배경: 미국의 Paypal 이슈 ○○○

- ▶ 모바일 지급서비스업자에 대한 은행 규제 부재
 - ▶ In the USA, **no state has required mobile payment providers, such as PayPal/Venmo**, that accept and hold deposits (up to \$31 billion as of June 30, 2020: KRW 약35조원) from customers, **to obtain a banking license even though** virtually every state requires a banking license in order to accept deposits.
- ▶ 페이팔의 이용자 약관 (PayPal's user agreement)
 - ▶ **Customer funds held in PayPal accounts** in which customers are general creditors constitute 'deposits'.
 - ▶ Balance in your Cash Account and any funds sent to you which have not yet been transferred to a linked bank account or debit card if you do not have a Cash Account represents **an unsecured claim against PayPal and is not insured by** the Federal Deposit Insurance Corporation (FDIC).

Seward & Kissel LLP (Oct. 15, 2020)

○○○ OCC의 SPNB 제도 창설 ○○○

▶ Special Purpose National Banks (SPNB)

▶ OCC의 charter 받는 국법은행

▶ A special purpose national bank is a national bank that engages in a limited range of banking or fiduciary activities, targets a limited customer base, incorporates nontraditional elements, or has a narrowly targeted business plan.

▶ Special purpose national banks include those banks whose operations are **limited to certain activities**, such as credit card operations, fiduciary activities, community development, or cash management activities.

對SPNB 은행업 규제

▶ 은행의 정의

- ▶ National Bank Act's powers provision, 12 U.S.C. § 24(SEVENTH).
 - ▶ Three core banking functions by the OCC's interpretation
 - ▶ To grant a charter to an institution that engaged in “**any of the three** core banking functions **of receiving deposits, paying checks, or lending money.**”

▶ 국법 은행에 대한 연방법 규율대상

- ▶ As a national banking association, a Fintech SPNB would be **subject to the federal statutes applicable to other national banks**
- ▶ Federal statutes such as lending limits, limits on real estate and securities investments, the Bank Secrecy Act and other anti-money laundering laws, OFAC sanctions requirements, and,
- ▶ where applicable, such as with respect to lending, federal consumer law. A Fintech SPNB would be required to become a member bank in the Federal Reserve System and subscribe for stock in its applicable Federal Reserve Bank in an amount equal to six percent of the bank's paid-up capital and surplus.

Arthur S. Long et al. (Aug. 22, 2018),

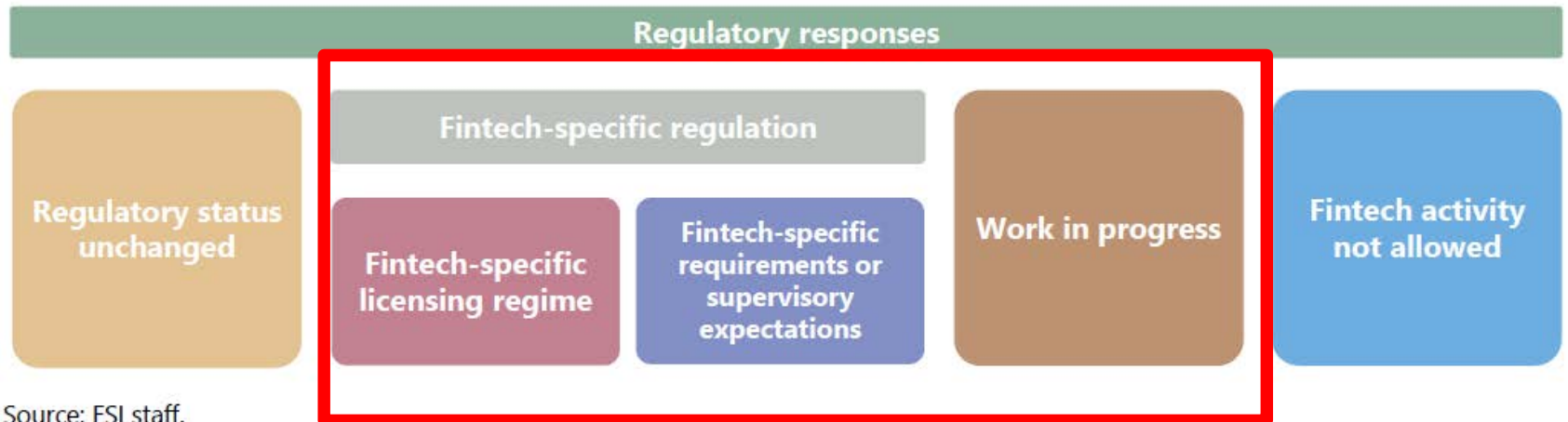
핀테크 SPNB의 인가시 고려요소

- ▶ The key factors the OCC will consider in evaluating charter applications from **fintech companies** OCC (July 2018)
 - ▶ (a) **have nontraditional or limited business models,**
 - ▶ But SPNB would engage in one or more of the core banking activities of paying checks or lending money
 - ▶ (b) **do not take deposits, and**
 - ▶ SPNB would **not be insured** by the Federal Deposit Insurance Corporation (FDIC). <FDIC의 부보 대상 아님>
 - ▶ (c) **rely on funding sources different from those relied on by insured banks.**
- ▶ 국법은행 규제 의 준수 의무 ABA (Mar. 20, 2019)
 - ▶ SPNB, perhaps the most important factor for any fintech company is that as a national bank (i.e., a SPNB), they will ***be subject to the laws, rules, regulations, and federal supervision that apply to all national banks.***

핀테크활동과 규제적 대응

BIS (Jan. 2020)

Fintech activities					Table 1
Financial services	Deposits and lending	Capital-raising	Asset management	Payments, clearing, settlements	Insurance
Fintech activities	Digital banking Fintech balance sheet lending Loan crowdfunding	Equity crowdfunding	Robo-advice	E-money services Digital payment services	Insurtech business models
Cryptoasset-related activities					



Source: FSI staff.

○○○ 금융디지털화와 검토 과제○○○

- ▶ 금융디지털화에 기한 편익 존재
- ▶ 적정 규제 미흡시 규제 차익(regulatory arbitrage)
 - ▶ 전자금융거래법 개정(안)의 ‘종합지급결제사업자’ 도입 여부 및 도입시의 적정 규제 논란
- ▶ 금융소비자 보호 이슈
 - ▶ 허가/인가시 금융소비자 보호 조치는?
- ▶ 충분한 예방적 규제 없이는 금융체계에 위험이 파급 우려

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<https://www.nacha.org/system/files/resources/OCC-Fintech-Charter-July-2018.pdf>
- ▶ Seward & Kissel LLP (Oct. 15, 2020), “The Fintech War Between the States and the OCC is Redefining What it Means to be a Bank in the United States”, <https://www.sewkis.com/publications/the-fintech-war-between-the-states-and-the-occ-is-redefining-what-it-means-to-be-a-bank-in-the-united-states/>
- ▶ Arthur S. Long, Jeffrey L. Steiner, and James O. Springer, Gibson, Dunn & Crutcher LLP (Aug. 22, 2018), “National Bank Charters for Fintech Firms”, <https://corpgov.law.harvard.edu/2018/08/22/national-bank-charters-for-fintech-firms/>

