Artificial Intelligence & Machine Learning – Tabletop 12

Background
AI and ML technology could be used to improve the speed and accuracy of credit decisions. However, most laws and regulations have been designed around a baseline expectation of auditability and transparency that may not be easily met by these models, raising safety and soundness concerns. Additionally, there are consumer protection and compliance issues that may be triggered by the use of AI/ML technology, such as the justification as to why a bank denied a consumer’s application for credit under ECOA and FCRA.

Discussion Questions
The Technology:
1. How are AI techniques, including machine learning, used or potentially used in activities related to banking (e.g., credit underwriting or monitoring, transaction monitoring, anti-money laundering or fraud detection, customer identification and due diligence processes, trading and hedging activities, forecasting, and marketing)?
2. Are there any challenges with the technology of AI itself? Are there cases where AI is limited by its inability to consider factors that would be “common sense” to a human underwriter? How can community banks put “guardrails” on AI to ensure its compatible with “relationship lending?”
3. Which technologies are banks, customers, and regulators most likely to adopt quickly based on a mutual understanding of their effectiveness (biometrics, fraud detection, robots facing customers, banking apps interfacing with nonbanking apps)?

The Challenges of AI:
4. Is AI a black box? How can banks answer the issue of explainability, for example in the context of Reg B adverse action notices?
5. Proponents of AI in lending have argued that it can expand access to credit, especially for smaller loans by driving down underwriting costs; but its opponents have argued that it may lead to disparate impact. What risk of disparate impact does algorithmic lending pose and is that risk offset if the end result is that the absolute number of people in disadvantaged communities that receive loans is increased?
6. What about the issue of AI considering alternative data to make underwriting decisions? Does alternative data have the potential to improve underwriting and is using it worth the regulatory and privacy concerns?
7. Does the current regulatory environment sufficiently address the following risks of AI/ML?
   - Privacy?
   - Data quality?
   - Transparency?
   - Discrimination?
8. Will the use of AI-enabled fraud detection technologies increase the level of transaction scrutiny to a level that regulators are no longer comfortable with?

The Role of Regulation:
9. Should agencies provide regulatory clarity for the use of new data and modeling approaches that are generally recognized as providing predictive value consistent with applicable law for use in credit decisions? What should this guidance consist of?

10. Are there ways the banking industry could be, but is not, using AI because of issues such as regulatory complexity, lack of transparency, audit and audit trail complexities, or other regulatory barriers?

11. How will regulators view technology companies with limited banking experience who attempt to provide artificial intelligence centered banking services through obtaining a federal banking charter?

12. How will regulators balance the desires of bank customers to utilize the most efficient banking technology provided through AI with the need to maintain sufficient checks and balances around the use of the technology to protect consumers?

Reading Material

General Background

Disparate Impact

Explainability
- Christopher J. Willis & John L. Culhane, Jr., “CFPB 2020 fair lending report highlights adverse action notices when using artificial intelligence,” Consumer Finance Monitor, Ballard Spahr, LLP (May 7, 2020), available at: https://www.consumerfinancemonitor.com/2020/05/07/cfpb-2020-fair-lending-report-highlights-adverse-action-notices-when-using-artificial-intelligence/. ("The Bureau states that the Regulation B (ECOA) official commentary provides that in giving specific reasons for adverse action, “a creditor need not describe how or why a disclosed factor adversely affected an application, or, for credit scoring systems, how the factor relates to creditworthiness. Thus, the Official Interpretation provides an example that a creditor may disclose a reason for a denial, even if the relationship of that disclosed factor to predicting creditworthiness may be unclear to the applicant.”")