



## Status quo of the US and UK's P2P lending regulation

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### ABSTRACT

The paper analyzes the current status of the US and UK's P2P lending regulation and compares China's regulatory system with the US and UK's to extract experiences and lessons from relatively mature regulation. For the US, it does not make any new laws but relies on current existing laws and regulations to supervise P2P lending industry. US's strong functional regulatory pattern makes it become the strictest in regulating P2P lending among three countries, emphasizing compulsory registration system and constant information disclosure management. Strict regulation makes the P2P lending market more orderly but also restricts the industry's innovation. For the UK, it does not count on existing laws, but reassesses P2P lending industry and proposes new legal instrument to regulate this novel industry. Appropriate laws can regulate related businesses effectively and also leave enough space for industry's innovation. Another bright spot of UK's P2P lending regulation is the strong self-discipline from the industry association, making a great contribution to standardize P2P lending industry, promote benign competition, and protect consumers.

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P2P, USA, UK, regulation

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## Introduction

The paper analyzes the current status of the US and UK's P2P lending regulation and compares China's regulatory system with the US and UK's to extract experiences and lessons from relatively mature regulation. For the US, it does not make any new laws but relies on current existing laws and regulations to supervise P2P lending industry. US's strong functional regulatory pattern makes it become the strictest in regulating P2P lending among three countries, emphasizing compulsory registration system and constant information disclosure management. Strict regulation makes the P2P lending market more orderly but also restricts the industry's innovation. For the UK, it does not count on existing laws, but reassesses P2P lending industry and proposes new legal instrument to regulate this novel industry. Appropriate laws can regulate related businesses effectively and also leave enough space for industry's innovation. Another bright spot of UK's P2P lending regulation is the strong self-discipline from the industry association, making a great contribution to standardize P2P lending industry, promote benign competition, and protect consumers.

## Status quo of the US's P2P lending regulation

The US has not made any new laws but relies on its current existing laws and regulations to supervise peer-to-peer lending. P2P lending involves actions of lending and issuing securities, which means that related lending and securities industries' regulations are applied.

## Regulators

Federal and state regulators take the responsibilities of regulating P2P lending industry together. The Securities and Exchange Commission (SEC) is the main regulator, and the Consumer Financial Protection Bureau (CFPB) takes charge of consumer protection (Treasury, 2016). State securities regulators and state department of financial institutions are responsible for detailed regulation works within each state.

## Lending regulations

State Licensing Requirements require eligible

institutions to originate borrowing loans. Therefore, the typical lending mode for P2P lending platforms in the US is through traditional financial institutions like banks. According to Lending Club and Prosper's annual report (SEC, 2016), loans are originated by issuing banks first and then are transferred to P2P platforms. Issuing banks of P2P lending are regulated by The Federal Deposit Insurance Corporation (FDIC). There are also series of federal and state's consumer protection laws to protect borrowers' legal rights and benefits. (Table 1)

## Securities regulations

After transferring the creditor rights of borrowing loans from issuing banks, P2P lending platforms will issue securities to investors. SEC and state securities regulators are responsible for regulating such behaviors, and the Securities Act of 1933 and Blue Sky Laws are main laws. P2P lending platforms are required to register with the SEC as well as states' securities regulators. Information disclosure is also strengthened. The US has very strict disclosure requirements on P2P lending platforms, which mainly include underlying loans' information and issued securities' information.

## Other regulations

There are also some other regulations on P2P lending industry, which are listed as follows (Table 2).

## Status quo of the UK's P2P lending regulation

Not like the US, which counts on existing laws, the UK reassesses this novel industry and proposes new legal instrument to regulate P2P lending market.

## Regulators

In December 2012, the UK delivered a fundamental reform of financial regulatory framework, assigning the Bank of England to bring together macro and micro prudential regulation. In addition, the Financial Services Authority (FSA) became two separate regulatory authorities, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) (Gov.UK, 2012). The new regulatory system came into

Table 1. Consumer protection laws in US's P2P lending

Laws	Content
State Usury Limitations	Interest rate caps
State Disclosure Requirements	Loan disclosures
Truth in Lending Act	Uniform information
Equal Credit Opportunity Act	Equal lending
Fair Credit Reporting Act	Credit reports
Fair Debt Collection Practices Act	Third-party debt collectors
Privacy and Data Security Laws	Nonpublic personal information
Servicemembers Civil Relief Act	Military members' civil obligations
The Dodd-Frank Wall Street Reform and Consumer Protection Act.	Consumer protection

Table 2. Other relevant laws in US's P2P lending

Content	Laws
Electronic transfer	The Electronic Fund Transfer Act
Electronic records and signatures	Electronic Signatures in Global and National Commerce Act
	Uniform Electronic Transactions Act
Anti-money laundering	Bank Secrecy Act

Table 3. Comparison of P2P lending regulation among three countries

	China	US	UK
Lending nature	Private lending (Lenders to borrowers)	Professional lending (Issuing banks to borrowers)	Loan-based crowdfunding (Lenders to borrowers)
Investing nature	Loan agreements	Securities	Loan agreements
Regulators	Central and local; CBRC	Federal and state; SEC, CFPB	FCA P2PFA
Regulations	Existing laws CBRC rules	Existing laws	FCA laws P2PFA rules
Regulation pattern	Institutional regulation	Functional regulation	Functional regulation

force in April 2013, marking the UK has entered into a new era of twin peaks financial regulation (Taylor, 2009).

The loan market regulation was transferred from the Office of Fair Trading (OFT) to the FCA in April 2014. So FCA is the main regulatory authority for P2P lending industry.

### **FCA laws**

In March 2014, the FCA published the policy statement 14/4, amending its original FCA Handbook in terms of P2P lending behaviors. Later in March 2016, the FCA issued PS 16/8, further amending its Handbook regarding the P2P lending's client money and Innovation Finance ISA.

FCA (2014) classifies P2P lending into the category of loan-based crowdfunding and standardizes P2P lending market mainly from 6 perspectives: Financial resources requirement, client money, cancellation rights, disclosure rules, dispute resolution, and reporting requirements. Main rules include specific capital requirements; segregation of client money and platform money; customers' right to cancel contracts; high-level information disclosure; investors' complaint to platforms and Financial Ombudsman Service; reports on financial position, client money, and loans arranged.

### **P2PFA rules**

Besides FCA's laws, the industry association P2PFA also has more specific rules to manage the P2P lending industry, making up the blank space of laws. P2PFA was established by three main UK P2P lending platforms, Zopa, Rate-Setter, Funding Circle in March 2011. Current members of this association are UK P2P lending platforms with a certain size, covering more than 96% of the whole market share (P2PFA, 2016). P2PFA has applied to become a legal organization and receive the government's supervision. The association published a set of strict rules to promote high-standard industry operations and consumer protection. Before FCA's formal intervention, P2PFA played a vital role in regulating the industry. It published the principals in 2013, providing basic ideas to FCA's policy making. After that, P2PFA also updated the principals every year. The current principles are imple-

menting rules on the clarity & transparency, risk management, governance & controls, data requirements, and waivers (P2PFA, 2015).

### **Comparison of three countries' P2P lending regulation**

P2P lending's typical business models are different in China, the US, and the UK, leading to different regulatory treatments on it. The loans are originated by investors directly in China and the UK, while by qualified financial institutions in the US. Therefore, the products for investors are loan agreements in China and the UK, but securities in the US. For this reason, the US has SEC to regulate this industry, while other two countries have loan market regulators to supervise. Only the UK has enacted new laws to accommodate this novel industry, and other two countries still use the existing laws to regulate. The following table is presented to compare three countries' regulatory system. For the specific business models, only most typical ones are listed. The platforms used as reference are Yirendai in China, Lending Club in the US, and the Zopa in the UK (Table 3).

China's P2P lending industry was in a regulatory vacuum environment from 2007 to December 2015, at which time the Draft Measures were released. Although some of China's existing laws are matched with P2P lending behaviors, China does not implement functional regulation (Huang, 2015). Therefore, it is easy to create legal blankness and blurs after a new industry emerge. The practice of existing laws in P2P lending market is not ideal. After the Draft Measures were published, China has entered a new era of P2P lending regulation. Especially in 2016, central and local governments promulgated implementing rules one after another, improving the regulatory system together. Nevertheless, all rules are only departmental rules and have relatively low legal force. It is still an uncertainty when these rules will be written into China's laws. As for the industry self-regulation, the national industry association has just been established and has low coverage rate, while the local associations seldom have substantial effects.

The US is the strictest in regulating P2P lending industry among these three countries. The US brings P2P lending into its current financial regu-

latory system, implementing multilevel regulation from federal and state governments, and emphasizing compulsory registration system and constant information disclosure management. Strict laws and regulations make P2P lending industry become more normative and orderly. However, too strict regulations also bring P2P lending platforms great burden. When issuing a new project, the P2P lending platform is supposed to register with SEC and each state that they want to issue securities in. Besides, different states have various regulatory requirements, sometimes even contradictory (Slattery, 2013). Cross-regulation decreases both lending and regulating efficiency. P2P lending's single loan amount is relatively small, and each loan is lent by a number of investors. As a result, P2P lending platforms' registration and information disclosure work are really heavy. Repeat registration and high-frequency information disclosure raise P2P platforms' operation costs significantly, driving many platforms out the market. Strict regulations also limit industry's innovation, as P2P lending related businesses are restricted strictly.

The UK's government laws and industry association rules regulate P2P lending market from macro and micro angles respectively. Regulatory authorities make appropriate laws to accommodate a new industry, regulating related businesses effectively but also leaving enough space for industry innovation. Another light spot of UK's P2P lending regulation is the strong self-discipline from the industry association, which has a broad coverage and strong speaking right among the industry. P2PFA has made a great contribution to standardize P2P lending industry, promote benign competition, and protect consumers.

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