

MAYER | BROWN

Winter 2019

2018

Consumer Financial
Services Highlights

For the third consecutive year, Mayer Brown was named a 2018 “Firm of the Year” on the basis of its victories in seven “Practice Group of the Year” categories.

Law360



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Dear Clients and Friends,

Virtually all major law firms provide legal advice in an array of matters ranging from the adversarial to the transactional and lots of disciplines in between. Mayer Brown, of course, is no exception; however, among other areas, we have a unique ability to provide integrated legal services to the regulated industry of consumer financial services. Providing effective legal services to a regulated industry requires an in-depth knowledge of the underlying business—how it makes money and how it can lose money—and the overlay of law and regulations that inform how that business must operate. In the area of consumer financial services, Mayer Brown brings an unparalleled understanding of how the pieces fit together—how our clients extend, administer, enforce, buy, sell and securitize consumer credit; how they finance their operations; how they protect and defend their assets and business; how they use, provide and receive third-party services; how they maneuver within and around the labyrinth of federal and state laws and regulations and the specter of government enforcement; and how they position themselves within the industry, with their customers and in matters of public policy that drive their very existence and their future. This knowledge of both law and business enables Mayer Brown to serve as a trusted advisor to our clients in the consumer financial services industry, a role that we cherish and constantly strive to improve.

In the pages that follow, we are pleased to offer a snapshot of our consumer financial services work in 2018. Hopefully, these representative engagements will help demonstrate how Mayer Brown can assist clients with navigating the complex world of consumer financial services. We look forward to continuing to work, or working for the first time, with you this year and in the years to come. Thank you for this privilege.

Sincerely,
Mayer Brown



Consumer Credit Compliance

In 2018, compliance with state and federal regulatory requirements was a fundamental component of the work of Mayer Brown's Financial Services Regulatory & Enforcement practice.

Our lawyers leveraged their extensive knowledge of the federal and state laws and programs that impacted consumer finance activities and a wide range of consumer finance products. The firm also counseled clients on government-insured or guaranteed mortgage loan programs and on the requirements of Fannie Mae, Freddie Mac and Ginnie Mae. The firm regularly analyzed policies and procedures for compliance with applicable federal and state laws; designed and evaluated enterprise risk, due diligence and quality control systems; assisted companies in obtaining necessary state licenses and approvals; and provided regular compliance counseling across a variety of federal and state laws. We also helped clients implement the latest federal and state laws and regulations.

2018 REPRESENTATIVE MATTERS

- Advised mortgage lenders and secondary market investors on compliance with the Consumer Finance

Protection Bureau (CFPB)'s Ability-to-Repay requirements for qualified mortgage loans (QMs) and non-QMs, including with regard to higher-priced mortgage loans, Federal Housing Administration-insured (FHA) loans, Veterans Affairs-guaranteed (VA) loans and loans made by small creditors.

- Advised a wide range of marketplace lenders, other small business lenders and participating lenders on marketplace lenders' websites on compliance with a variety of federal and state laws and on structuring relationships with bank partners to minimize "true lender" risks.
- Performed a consumer regulatory review and provided transactional structuring advice to a bank client launching a white-label partnership for the online origination of unsecured consumer loans.
- Served as counsel to mortgage originators, title insurance companies, settlement agents and investors regarding compliance with the CFPB's

Know Before You Owe (KBYO), or the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure (TRID) rule, including compliance with, and associated liability and penalties under, the rule.

- Advised numerous debt buyers, loan investors and lenders on issues related to the *Madden v. Midland Funding* decision.
- Developed anti-discrimination testing programs for institutions using artificial intelligence (AI) to make lending, fraud detection and other business decisions.
- Counseled lenders and investors regarding the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act (ECOA) and unfair, deceptive or abusive acts or practices (UDAAP).
- Performed fair lending compliance reviews and risk assessments for mortgage lenders and developed and implemented fair lending compliance programs for banks and non-bank lenders in connection with auto loans, student loans, credit cards and unsecured consumer loans.
- Advised federally chartered depository institutions on the preemption of state laws.
- Served as compliance counsel to mortgage lenders, real estate brokerage companies, home builders, title insurance companies, appraisal management companies, mortgage insurers and other settlement service providers on compliance with RESPA's anti-referral fee provisions, including the review of affiliated business arrangements, marketing services agreements, office rental arrangements and other business arrangements.
- Provided licensing and compliance advice, including development of a compliance management system, compliance policies, vendor management program and consumer loan documentation, to a mortgage broker, home improvement finance company, owners/operators of lease-to-own platforms and other fintech companies providing services related to residential real estate.
- Advised credit card companies regarding licensing and the requirements of ECOA, the Fair Credit Reporting Act (FCRA), the Military Lending Act and TILA.
- Advised banks and mortgage companies on compliance with restrictions on mortgage loan originator and branch manager compensation, including prohibitions against loan term-based compensation, exemptions from federal minimum wage and overtime requirements and FHA restrictions on branch expenses, and drafted compensation agreements.
- Advised clients, including an automobile company, regarding the federal Consumer Leasing Act.
- Advised retail sellers of consumer goods regarding federal and state requirements for retail installment contracts, including disclosures, cancellation rights and licensing requirements for purchasers of the contracts (i.e., sales finance companies).

- Advised financial institutions regarding compliance with privacy and cybersecurity requirements, including the privacy and safeguards requirements under the Gramm-Leach-Bliley Act; the identity theft, fraud alert and discrepancy investigation requirements of the FCRA; and New York cybersecurity program requirements.
- Advised regarding mortgage servicing requirements, including the servicing and loss mitigation requirements under RESPA and Regulation X, the National Flood Insurance Program, the Servicemembers Civil Relief Act and the Fair Debt Collections Practices Act.
- Served as counsel in the development of point-of-sale financing, payroll advance and debt management programs, including regarding product structure, licensing and usury issues.
- Advised mortgage lenders and servicers on compliance with requirements related to the origination and servicing of loans insured or guaranteed by FHA (including Home Equity Conversion Mortgages), VA or Rural Housing Service, including advising FHA-approved mortgagees in making their annual certifications and on reportable matters through the Notice of Material Event feature in the Lender Assessment Enterprise Portal.
- Performed UDAAP risk assessments, including coordination of third-party reviews, and developed remediation plans for financial institutions.
- Advised lenders regarding federal and state requirements applicable to offering home equity lines of credit (HELOC), including structuring HELOCs to avoid claims of spurious open-end credit.
- Advised clients on compliance with the Telephone Consumer Protection Act in connection with marketing, originating and servicing of loans.
- Advised clients on use of E-Sign and the Uniform Electronic Transactions Act in marketing, processing, closing and servicing loans.
- Assisted clients in setting up or licensing technology platforms and in addressing regulatory compliance issues arising from the use of those platforms.
- Conducted a mock CFPB examination of an auto lender/servicer with multiple origination channels for the purpose of providing risk-reducing consumer regulatory compliance guidance on an enterprise-wide basis.
- Advised on licensing and change-of-control provisions in connection with clients' potential acquisitions of a consumer debt collection agency and debt relief company.
- Conducted a regulatory review of call center activities and compliance with applicable laws and regulations and internal policies and procedures.

Top 5 Most-Read CFS Review Blog Posts in 2018

1. Congress Invalidates CFPB's Indirect Auto Lending Guidance
2. Ohio Consolidates its Mortgage Finance Licensing Laws into a new Residential Mortgage Lending Act
3. A Ray of Light Through the "Black Hole": TRID Amendment Permits Tolerance Reset with Revised Closing Disclosure
4. UDAAP Strikes Again: The New BCFP Seems a Lot Like the Old CFPB
5. Trump DOJ Settles its First Redlining Case

www.cfsreview.com

Consumer Credit Diligence

Mayer Brown's Financial Services Regulatory & Enforcement lawyers provided regulatory compliance transactional diligence services to consumer finance companies and their investors across a wide range of asset classes and business structures.

The firm leveraged its deep understanding of consumer financial and consumer protection laws to provide guidance on licensing, transaction structures and the risks of funding or acquiring the assets of a diverse set of investment targets. In 2018, the firm's consumer financial diligence practice involved confident navigation of an uncertain regulatory environment. Federal regulatory changes—generally expected to provide opportunities for growth and innovation, subject to procedural ambiguity—were tempered by potentially industry-altering cases working their way through the judiciary and by aggressive stances from state regulators. Our representative engagements have covered several major classes of financial assets.

2018 REPRESENTATIVE MATTERS

Residential Mortgage Origination and Servicing

- Conducted a mortgage regulatory and general corporate diligence of a

mortgage lender in connection with a client's potential acquisition of the target company.

- Performed consumer compliance reviews of mortgage servicers on behalf of investors and owners of master servicing rights.
- Provided licensing and policy development guidance to mortgage originators, purchasers and servicers.
- Advised a bank client with respect to restructuring its white-label mortgage origination partnerships.
- Evaluated the regulatory compliance of new-to-market, open-end credit products.
- Evaluated non-QM underwriting guidelines.

Unsecured Consumer Credit

- Conducted consumer financial regulatory diligences of credit card issuers and servicers in connection with the purchase

of retail credit receivables.

- Performed a consumer regulatory review and provided transactional structuring advice to a bank client launching a white-label partnership for the online origination of unsecured consumer loans.
- Conducted consumer financial regulatory diligences of short-term, high-interest consumer installment loans originated in various states, including California.
- Provided guidance to online marketplace lending platforms and investors regarding the structure of bank lending partnerships following preemption developments after *Madden v. Midland Funding* and a series of complaints challenging the “true lender” in bank partnership structures.
- Conducted multiple consumer regulatory diligences of student lenders and student loan servicers in connection with clients’ acquisition of loans from, or financing of, the target companies.

Secured Non-Mortgage Consumer Credit

- Conducted consumer financial regulatory diligences of home improvement and solar finance companies in connection with clients’ purchase of loans and extension of credit to the target companies.

Commercial and Small Business Credit

- Conducted a regulatory and consumer protection diligence of a business-purpose online lender in connection with a client’s contemplated acquisition of loans from the target company.

- Conducted a periodic refresher regulatory diligence regarding a client’s existing investment in a business-purpose lending program.
- Performed due diligence reviews of commercial “fix-and-flip” lenders on behalf of investors and other counterparties.

Financial Service Providers

- Advised on licensing and change-of-control provisions in connection with clients’ potential acquisitions of a consumer debt collection agency and debt relief company.
- Conducted a regulatory and consumer protection diligence of a small business loan marketplace and credit monitoring service in connection with a client’s follow-on equity investment in the target company.
- Conducted a consumer financial regulatory diligence of a consumer loan lead generator and technology service provider in connection with a client’s equity investment in the target company.

Ranked Band 1 for
Financial Services
Regulation - Consumer
Finance (Compliance &
Litigation)

Chambers USA 2018

Cybersecurity and Data Privacy

From responding to cybersecurity incidents to guiding compliance with regulatory frameworks, our Cybersecurity & Data Privacy lawyers advised a broad range of consumer financial services companies on these complex issues in 2018.

One of the ways in which we supported our clients' cybersecurity readiness was through the development of appropriate plans, procedures and playbooks and through tabletop exercises where our clients worked through hypothetical cybersecurity scenarios in order to test their responses. Members of our Cybersecurity & Data Privacy practice also helped shape important policy debates on topics that significantly affect consumer financial services companies, from data breach notification to artificial intelligence. Throughout this work, the lawyers in our multidisciplinary and cross-industry Cybersecurity & Data Privacy practice drew on their experiences working in a variety of fields to bring broad perspectives to bear for consumer financial services companies.

2018 REPRESENTATIVE MATTERS

- Advised several large financial services companies in connection with their compliance with New York State

Department of Financial Services' cybersecurity regulation, including provisions related to encryption, multi-factor authentication and third-party vendor management.

- Advised financial services companies in their responses to substantial cybersecurity incidents and resulting regulatory scrutiny.
- Advised several financial services companies regarding potential compliance obligations arising out of the California Consumer Privacy Act and its implications for their businesses.
- Advised several secondary market participants regarding privacy and cybersecurity considerations raised by their purchase of consumer credit receivables, including residential mortgage loans.
- Advised leading trade association on cybersecurity and data privacy policy issues for financial services companies,

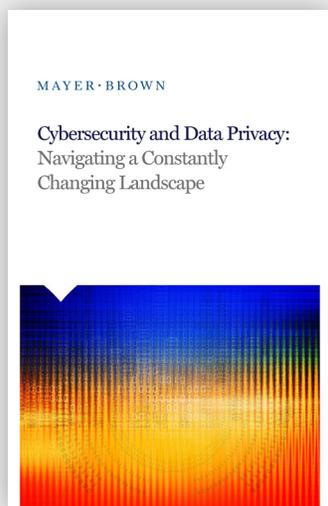
including the potential framework for new federal privacy legislation.

- Assisted a range of global consumer financial services companies in their preparation for compliance with the EU General Data Protection Regulation.
- Assisted several financial services companies in implementing and testing incident response plan with tabletop exercises.

Practice Group of the Year - Cybersecurity

Law360

Cybersecurity and Data Privacy: Navigating a Constantly Changing Landscape



The cybersecurity and data privacy landscape continues to change, creating significant new risks for businesses across economic sectors. New types of litigation are emerging, new regulatory regimes are entering into force, and new laws promise yet further compliance challenges in the future. At the same time, a wide range of threat actors are launching more complex and more consequential attacks against multinational businesses, further raising the stakes.

TO LEARN MORE OR REQUEST A COPY VISIT

www.mayerbrown.com/Cybersecurity-and-Data-Privacy-Navigating-a-Constantly-Changing-Landscape-09-27-2018/

Government Regulatory & Enforcement

Our Financial Services Regulatory & Enforcement practice regularly represents banks, independent mortgage companies and non-bank financial services companies in a wide variety of government supervisory and enforcement matters.

In 2018, we represented clients in numerous enforcement investigations conducted by the CFPB, Department of Justice (DOJ), Department of Housing and Urban Development (HUD) and state attorneys general, among others. Before these agencies, we represented clients in investigations involving mortgage origination, co-marketing agreements, mortgage servicing, bank deposit activities, debt collection and other activities regulated under federal and state consumer protection laws. We also represented numerous clients in connection with supervisory activities conducted by federal and state banking regulators. Our deep substantive experience in consumer finance law, coupled with our regular appearance before these agencies, allows us to provide our clients thoughtful advice that accounts for the regulator's expectations and the evolving state of the law. We work with our clients to help communicate with regulators and law enforcement, narrow the scope of investigations, develop the facts, defend

depositions and craft legal arguments that lead to positive results. When necessary, we draw on the knowledge of colleagues in our litigation department to ensure that we are prepared for litigation in the event that we cannot achieve a satisfactory resolution directly with the agency. Our extensive knowledge of the regulations and regulator expectations uniquely qualifies us to work with clients to implement corrective actions that remedy issues identified in the course of examinations and investigations.

2018 REPRESENTATIVE MATTERS

- Represented large banks, non-bank lenders and various other companies in CFPB investigations concerning deposit, mortgage origination, mortgage servicing and debt collection activities, as well as compliance with a variety of federal consumer financial laws such as the Home Mortgage Disclosure Act, the Fair Credit Reporting Act, the Electronic Fund Transfer Act and UDAAP and fair lending laws, among others.

- Negotiated a successful resolution of CFPB enforcement action involving debt collection practices of an online retailer.
- Assisted a payday lender in preparing for CFPB examination.
- Represented multiple FHA-insured lenders in connection with False Claim Act (FCA) investigations by the US Attorney's Office and the DOJ involving FHA mortgage insurance, including the origination and servicing of FHA loans and the reverse mortgage, or HECM, program.
- Represented a mortgage servicer in connection with investigation by state attorney general related to state consumer protection law.
- Represented multiple clients in responding to inquiries from HUD's Mortgagee Review Board, Quality Assurance Division, Office of Inspector General and National Servicing Center in connection with the origination and servicing of FHA-insured loans.
- Represented a national bank in an investigation by the Special Inspector General for the Troubled Assets Relief Program (SIGTARP).
- Represented a prominent online real estate advertising platform in an investigation into its marketing and advertising practices by the CFPB, which ultimately resulted in closure with no action taken.



Top 5 Most-Read CFS Legal Updates in 2018

1. Military Lending Act and Servicemembers Civil Relief Act: Important Updates
2. The Impact of Tax Reform on Securitization and Other Financing Transactions - What You Need to Know
3. Congress Passes Regulatory Reform for Financial Institutions
4. OCC Files Amicus Brief in Support of Bank in Ninth Circuit Case on Preemption of State Law on Interest on Escrow
5. US Supreme Court Refuses to Review Ninth Circuit Lusnak Decision Requiring National Banks to Abide by State Interest-on-Escrow Laws

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Sanctions and Anti-Money Laundering

Mayer Brown has leveraged its extensive experience in sanctions-related matters and anti-money laundering (AML) issues to advise a broad array of clients (global payments companies, large multinational banks, mortgage companies, state housing agencies) on a variety of consumer-facing and related matters.

These matters include sanctions-related advice, investigations and enforcement, as well as handling issues related to post-judgment recovery of blocked assets. In addition, Mayer Brown provided crucial AML insight into transactions in the consumer financial services space and gave strategic advice to mortgage companies on AML compliance. Mayer Brown also provided advice and direction to fintech companies charting new territory in the global payments space and advised non-financial institutions on AML requirements to work with government-sponsored enterprises.

2018 REPRESENTATIVE MATTERS

- Advised a global e-commerce company with a payments platform and finance product on the scope and application of US economic sanctions laws to company's activities in the United States and abroad.
- Advised a large US bank on how to respond to and remediate AML compliance concerns arising from an examination.
- Reviewed and revised AML compliance policies for mortgage lenders, money services businesses (MSBs) and payments companies.
- Advised a credit card company on specific AML compliance questions arising from transactions occurring outside the United States, including those relating to cannabis businesses.
- Reviewed target AML policies for adequacy during transaction-related due diligence.
- Advised an international payments processor on Office of Foreign Assets Control compliance questions arising from transactions involving companies based in Cuba.

Financial Institutions M&A

Lawyers in our Financial Institutions M&A practice handled consumer finance transactions involving the world's largest banks, mortgage companies, lending institutions, investment firms, hedge funds and insurance companies.

In 2018, we handled matters ranging in size and complexity from small and mid-sized transactions within a single national or regional market to multibillion-dollar transactions. Our team members have a thorough understanding of the underlying financial products and services of financial institutions, including asset structures, business and legal risks, and regulatory

issues and how such matters impact deal terms and transaction risk. We note that 2018 was a banner year for M&A activity in the financial services industry, which is driven by economic pressure on sellers, consolidation in the mortgage space and new strategic investors. We expect to see similar trends and deal volume in 2019.



2018 RESENTATIVE MATTERS

- Represented WMIH Corp., as regulatory counsel, in the \$3.8 billion merger with Nationstar Mortgage Holdings Inc., the Texas-based mortgage servicing company.
- Represented Accenture in the acquisition of TargetSt8 Consulting LLC, a privately held financial services consulting firm specializing in digital and technology integration experience.
- Represented MFA Financial, Inc. in connection with its preferred and minority common equity investments in a “fix-and-flip” and single-family mortgage loan originator.
- Represented investment funds managed by CarVal Investors, LLC in the acquisition of a portfolio of non-prime credit card receivables from Signet Jewelers Limited and a forward flow purchase program for future originations.
- Represented Stearns Lending in connection with its equity investment in multiple mortgage originators.
- Represented Wells Fargo & Company in its \$1.75 billion sale of certain commercial and retail auto loans in Puerto Rico from the loan portfolios of its Reliable Financial Services and Reliable Financial Holding Company subsidiaries to Banco Popular de Puerto Rico. Banco Popular also acquired certain other assets relating to Reliable’s auto financing business.
- Represented Flagstar Bank, FSB in its minority investment through its subsidiary, Flagstar Investment LLC, in Lenderful, LLC, an online mortgage brokerage service.
- Represented Rushmore Loan Management Services, a portfolio company of TPG Opportunities Partners, in its acquisition of ICON Residential Lenders, a leading US-based wholesale mortgage originator and servicer, from Grand Bank, N.A.
- Represented a mortgage lending services provider in the sale of substantially all of its mortgage servicing rights portfolio, representing unpaid principal balances of approximately \$25 billion, to a residential mortgage lender.
- Represented a group of commonly controlled non-depository mortgage banking companies in a program of bulk and flow acquisitions from multiple sellers of Fannie Mae, Freddie Mac, Ginnie Mae and FHLBs servicing rights related to mortgage loans with principal balances in excess of \$50 billion.
- Represented a non-depository holder of agency servicing rights related to mortgage loans with principal balances in excess of \$200 billion in negotiation of multiple new and amended subservicing agreements.
- Represented Nestlé S.A. in its sale of Gerber Life Insurance Company to Western & Southern Financial Group for \$1.55 billion cash.
- Represented Global Atlantic Financial Group on the reinsurance of approximately \$9 billion of fixed annuities and other spread-based reserves of Talcott Resolution, The Hartford’s runoff life and annuity businesses, in connection with The Hartford’s recently announced pending sale of Talcott Resolution.
- Represented a consumer financial services company in the organization of a life and annuity insurance company.

Securitization and Structured Finance

Mayer Brown's Financial Services Regulatory & Enforcement practice worked closely with our market-leading Structured Finance group to close more securitizations in 2018 than any other law firm.

In addition, we helped our clients develop and implement a variety of credit facilities, repurchase facilities, derivatives, participations and other structured finance arrangements. Our 2018 securitization and other structured finance transactions included virtually every consumer-related asset class, including forward and reverse residential mortgages, servicing advances, student loans, credit card receivables, auto loans and leases, marketplace consumer loans, single-family rental properties, unsecured personal loans, retail installment contracts and other consumer receivables. Whether we represent issuers, underwriters, servicers, investors or other counterparties, we emphasize close cooperation with our securitization lawyers to ensure compatibility between our client's compliance and financing strategies and to help identify and solve potential issues as early as possible in the transaction process. Together we helped our clients adapt to and implement a wide variety of new and existing laws and regulations that impact the financing of consumer financial assets and navigate, interact with and even

challenge a multitude of applicable government agencies and bodies, including the US Securities and Exchange Commission, Office of the Comptroller of the Currency, CFPB, HUD, government-sponsored enterprises (GSEs), US Internal Revenue Service and various other federal, state and local government agencies and regulators. We also represented our clients in connection with myriad non-financing transactions related to the origination, investment in or the management of consumer financial assets. In helping our clients negotiate asset purchase and sale agreements, servicing agreements, subservicing agreements, joint-marketing agreements, management agreements, custodial agreements and other agreements that facilitate the financing and ultimate realization of consumer financial assets, we apply the same integrated and team-oriented approach across all of our applicable practice areas to deliver consistent high-quality service through all phases of their business plans, from origination to securitization.

Ranked first for US ABS/MBS issuer counsel deals (for the third consecutive year) in the Year-end Report

Asset-Back Alert

2018 REPRESENTATIVE MATTERS

- Represented various issuers and other counterparties in connection with multiple securitizations, warehouse and servicing facilities and other financing of residential mortgage loans, including non-qualified mortgages, prime jumbo, reverse, non-performing and re-performing mortgage loans.
- Advised a variety of banks, funds and other entities in connection with purchasing, servicing and financing portfolios of student loans (including private student loans and Federal Family Education Loans). We represented lending syndicates on student loan warehouses, 144A/Reg S term securitizations, flow purchase agreements and financings, standalone trust structures, repurchase facilities for student loan residuals and working capital facilities for student loan originators.
- Represented multiple issuers, underwriters and initial purchasers in connection with the issuance of over \$15 billion in credit card asset-backed securities during 2018.
- Provided multistate licensing advice in connection with the origination, holding and servicing activities of numerous funds and financial institutions active in the residential and commercial mortgage loan and single family rental markets.
- Advised a variety of funds and other entities in connection with the purchasing, servicing and financing of portfolios of retail credit card portfolios, including advice regarding Madden related issues in connection with the foregoing.
- Performed extensive consumer regulatory diligence in connection with the origination and servicing of pools of secured and unsecured consumer loans acquired by funds and finance companies.
- Advised a variety of banks, funds and other entities in connection with purchasing, servicing and financing portfolios of marketplace loans (including whole loans and fractional interests) originated through many fintech lending platforms.
- Represented various clients in connection with the acquisition, sale of and financing of mortgage servicing rights and servicing advances, including advice regarding GSE and Ginnie Mae compliance in connection with the foregoing.
- Represented clients in connection with acquiring and financing residential solar loans originated through multiple origination channels and performed extensive due diligence and compliance reviews of related lending platforms and servicers.

Technology Transactions

Mayer Brown's Technology Transactions practice is at the forefront of helping our bank and financial institution clients navigate these challenges.

We work with our clients to strategically capture the most value from their third-party relationships while helping to mitigate third-party risks. Our depth in technology, sourcing, privacy and security, combined with our firm's more than 100 years representing bank clients, makes for an unparalleled sourcing team for banks and financial institution clients. The lawyers in our Technology Transactions practice have assisted clients in more than 400 key technology transactions, with an aggregate total contract value of more than \$200 billion. This volume of deals equips our lawyers with market knowledge that is unmatched.

In 2018, our Technology Transactions practice worked closely with Mayer Brown's Financial Services Regulatory & Enforcement practice. Our extensive knowledge of the regulatory and business environment in which our clients operate means that we are highly qualified to represent their interests in matters ranging in size and complexity

from small and mid-sized transactions within a single national or regional market to multibillion-dollar cross-border transactions.

2018 REPRESENTATIVE MATTERS

- Advised a US banking company in the negotiation of a cloud-based human resources outsourcing (HRO) software license agreement and associated software customization and implementation agreement.
- Advised a US branch of a major Israeli bank in connection with the renegotiation, expansion and extension of its outsourcing arrangement with FIS.
- Represented a large North Carolina community bank in connection with the renegotiation, expansion and extension of its outsourcing arrangement with Fiserv.
- Advised a major auto lending and finance company regarding an "open" platform using proprietary technology for auto loan pre-qualification.

- Advised a financial technology company that provides loans and credit cards in connection with the resolution of various financial, operational issues and performance disputes.
- Advised a leading global bank in negotiating a license and services agreement with a fintech company for the customization and use of its global currency exchange platform.
- Advised an American full-service bank with a major core banking transformation for its core retail and commercial banking systems, including negotiation of evaluation, development, licensing and implementation agreements opposite a system integrator and the software and system provider. This transaction incorporates all aspects of fintech work, including technology development and licensing, cloud, data regulation, financial regulatory work, anti-money laundering regulation and cybersecurity.
- Advised a major credit card bank and issuer regarding the use of AI tools and platform services.

Ranked Band 1 for Technology and Outsourcing
Chambers USA 2018

Ranked Tier 1 for Outsourcing
Legal500 USA

Fintech

Our Fintech lawyers regularly represented banks, lending platforms, financial technology companies, merchants, software developers, hardware suppliers, data and information suppliers, and investors with the design, drafting and delivery of consumer financial products and services, such as open- and closed-end credit programs, mobile banking and evolving payment products.

Our deep substantive experience in consumer finance law, coupled with our bank regulatory experience, allowed us to provide our clients with practical advice concerning the products and services being offered, and the alternative vehicles for offering, these products and services, including bank partnerships, bank charters and state licenses. When necessary, we brought to bear the knowledge of our

colleagues in the firm's Corporate & Securities, Technology Transactions and Banking & Finance practices to assist with transactions, financings and investments.

2018 REPRESENTATIVE MATTERS

- Advised HSBC Bank USA, N.A. in negotiating a loan origination services agreement with Avant, LLC, a leading online marketplace lending

For the ninth consecutive year, the *Financial Times* ranked Mayer Brown among the most innovative North American law firms in its 2018 report.

company, including customization and implementation of a white-labeled version of Avant's Amount lending platform for HSBC. HSBC expects to lend amounts of up to \$30,000 with loan terms of up to five years via the customized digital lending platform, which is scheduled to launch in the first half of 2019.

- Advised National Bank of Canada in the issuance of a \$150m, one-year floating-rate Yankee certificate of deposit, with a parallel simulation of the issuance using blockchain technology.
- Representing the purchaser of mortgage and student loans in assessing the fair lending risk associated with a marketplace lender's technology-driven non-traditional underwriting and pricing criteria.
- Advised credit card issuers and marketplace lenders on a wide variety of issues arising (including fair lending, UDAAP, regulator relations and compliance with customer adverse action notice requirements) from the use of alternative data in underwriting, dynamic underwriting standards and "smart" underwriting engines that adjust underwriting and pricing standards in real time to reflect correlations observed between portfolio performance and other data.
- Assisted consumer and small business lenders with the development of fair lending testing programs, including the design of testing models and interpretation of model results.
- Represented a fintech policy development organization in analyzing the fair lending and credit reporting issues related to the use of alternative data in underwriting consumer credit.
- Represented a bank holding company in the structuring of a first-of-its-kind multi-lender technology platform offering. The platform will reduce delays and increase customer satisfaction by enabling, through online and physical channels, real-time pre-qualification and on-the-fly structuring of financing products from participating lenders. The work Mayer Brown handled includes: (i) advising on the preparation and negotiation of terms for lenders and other associated third parties wishing to participate in the platform; (ii) advising on compliance with federal and state legal requirements, most of which never contemplated a platform like this one; and (iii) analyzing the complex federal preemption issues arising from the mix of federally chartered and state-chartered banks on the platform.
- Advised a major investment bank on investments in companies with significant cryptocurrency operations, including performing comprehensive regulatory reviews of these companies in connection with the investment transactions.
- Advised several major technology companies not primarily engaged in financial services on the application of CFPB regulations to their ancillary financial service offerings.

Payments

Mayer Brown's Payments practice has extensive knowledge and experience advising clients on a wide variety of issues related to traditional payment products, as well as emerging and evolving payment technologies.

We regularly counsel clients on the full range of laws that regulate the payments industry, including the Electronic Fund Transfer Act and Regulation E; the Bank Secrecy Act and Financial Crimes Enforcement Network regulations, as well as the analogous anti-money laundering regimes in countries around the world; TILA (including the CARD Act provisions) and Regulation Z; Financial Conduct Authority regulations; US state laws on money services businesses, credit and consumer protection; and laws prohibiting unfair, deceptive or abusive acts or practices. Throughout 2018, we advised clients with the design, drafting and delivery of private label and co-branded credit card programs, debit cards, prepaid products, Automated Clearing House payments, wire transfers and bill payment services, and regulatory issues related to these products. In addition, we assisted clients with their mobile banking and evolving payment products, including virtual currency, mobile payments and emerging payment platforms. Our extremely diverse

client base includes banks, financial technology companies, merchants, telecommunications companies, third-party payment processors, software developers, hardware suppliers, virtual currency developers, data and information suppliers, processors and companies seeking investment opportunities in this area.

2018 REPRESENTATIVE MATTERS

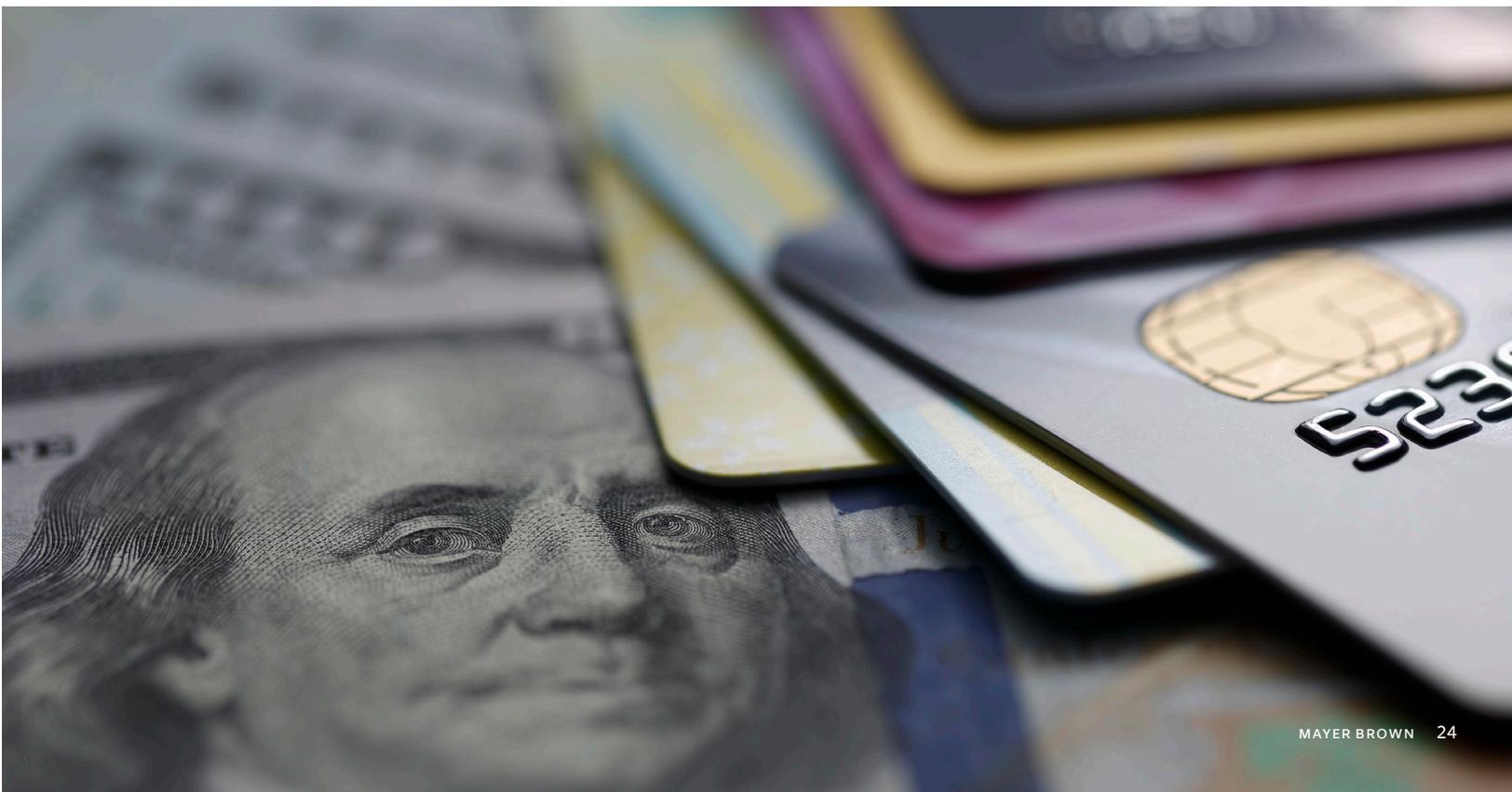
- Advised a major global financial institution in connection with its integration into several P2P payment systems.
- Advised Shopify, a leading provider of e-commerce solutions to businesses, on a variety of issues in connection with its inventory financing and payment processing services.
- Advised multiple companies, ranging from startups to several of the largest money service businesses in the world, on MSB regulatory requirements related to licensing, prudential rules, anti-money

laundering, consumer protection and other matters.

- Advised several major payment companies on the integration of their services into social media platforms and other “contextual commerce” situations.
- Advised numerous companies on the development of online point-of-sale consumer financing solutions that rely on innovative underwriting models and provide consumers with greater flexibility to finance purchases.
- Counseled several of the largest payment processing companies in the United States on the legal risks associated with providing payment processing services for cannabis transactions in the United States and also on the risks under US law from providing payment processing services for cannabis transactions in Canada.
- Defended multiple banks in litigation

involving allegations that the banks failed properly to obtain consumer consent for their overdraft practices in accordance with Regulation E; reviewed the overdraft practices of institutions not involved in this litigation to evaluate their risk from similar claims; and advised institutions on modifications to their overdraft policies and forms to manage the risk going forward.

- Advised several major prepaid account issuers and program managers on compliance with the CFPB’s prepaid account rule scheduled to take effect on April 1, 2019.
- Advised several major online retailers on the development of legally compliant practices to manage the risk of consumer fraud in connection with electronic payment transactions.



Consumer Class Actions

Mayer Brown's Consumer Class Actions group has extensive experience representing consumer credit and financial service providers in high-stakes consumer class-action lawsuits that span the country.

We routinely defend against consumer credit-related class actions arising under the TILA, FCRA, ECOA, Fair Debt Collection Practices Act, Telephone Consumer Protection Act (TCPA) and various state and federal unfair and deceptive trade practices statutes. We continue to pioneer ways to attack proposed class claims at the pleading stage in an attempt to obtain dismissals and lower fees and costs and to reduce overall litigation time. Moreover, we work closely with Mayer Brown's Financial Services Regulatory & Enforcement practice to prevent and/or limit litigation resulting from regulatory scrutiny. We have defended against hundreds of class and mass actions in the past decade and have a strong record of victories.

2018 REPRESENTATIVE MATTERS

- Defeated a putative class action in the Ninth Circuit on behalf of a mortgage servicer related to default-related

services and expenses.

- Represented a mortgage servicer in a putative class action related to inspection fees for FHA loans.
- Defeated a putative nationwide class action against a global financial institution under the TCPA.
- Defeated a purported class action under the TCPA related to junk faxes and defended a judgment in the Sixth Circuit.
- Obtained dismissals of FCRA and TCPA lawsuits for lack of standing under Spokeo.
- Represented a mortgage servicer in a putative class action alleging violation of Homeowner's Bill of Rights.
- Representing a financial institution in a class action challenging overdraft fees.
- Represented mortgage servicers in FCRA litigation throughout the country.

Practice Group of the Year Consumer Protection

Law360

Commercial and RMBS Litigation

Mayer Brown continued to be the leading firm for securitization trustees in 2018, winning far-reaching victories in trial and appellate courts.

The firm's representation of trustees related to Residential Mortgage Backed Securities (RMBS) ranged from multibillion-dollar investor litigation to advice on the distribution of settlement proceeds to the payment of property taxes on foreclosed property. The firm's prior appellate victories in *Commerce Bank v. BNY Mellon* and *Retirement Board v. BNY Mellon* continue to be the linchpins for trustees seeking to limit their duties to those set out in bond indentures, and the firm built on those wins with trial and appellate decisions this year. Mayer Brown also added to its roster of victories in litigation brought by mortgage borrowers and investors.

2018 REPRESENTATIVE MATTERS

- Represented an RMBS trustee in winning complete summary judgment on federal claims alleging that the trustee had failed to prosecute loan-level breaches relating to loan underwriting and servicing.
- Represented an RMBS trustee in winning dismissal on the pleadings of a suit brought by collateralized debt obligation (CDO) collateral managers on the ground that the managers lacked standing to sue on RMBS held by the CDOs.
- Represented a national mortgage servicer and MERS, Inc. in winning a motion to dismiss challenging the RMBS process under Minnesota law.
- Won appeal for an RMBS trustee, with finding that the trustee had no implied duty to declare default on securities.
- Won summary judgment for an RMBS trustee, defeating claim that it had a duty to pursue litigation against a bankrupt counterparty.
- At pleadings stage in a putative class action alleging violations of state and federal law related to mortgage servicing, convinced Court to strike class allegations from complaint and won dismissal with prejudice of all claims against two RMBS trustees and their respective trusts and nearly all claims against mortgage servicer.

Supreme Court & Appellate

Mayer Brown's Supreme Court & Appellate lawyers achieved victories in a variety of cutting-edge matters that deliver substantial value to our consumer financial services clients.

Mayer Brown has led the way in developing the law under the Federal Arbitration Act (FAA) surrounding the enforceability of arbitration agreements that waive class actions, which allows businesses and consumers alike to benefit from the lower costs, expediency and informality that arbitration provides as a means for resolving disputes compared to litigation in court. The firm's path-breaking 2016 victory in *Spokeo, Inc. v. Robins* also continues to pay dividends across the consumer finance sector and beyond, ensuring that lawsuits against businesses must be based on actual harms, not technical missteps. And our Supreme Court & Appellate team routinely handles appeals and files amicus briefs in major cases that affect the consumer financial services industry.

2018 REPRESENTATIVE MATTERS

- Secured Supreme Court review and briefed and argued a significant case in the Court addressing whether the FAA protects companies from being

compelled to class-wide arbitration when an arbitration agreement does not expressly authorize that procedure.

- Drafted an amicus brief on behalf of trade associations representing the consumer financial services and banking industries in a Supreme Court case assessing whether requirements of the Fair Debt Collection Practices Act apply to non-judicial foreclosures.
- Represented companies on the merits and leading business associations as amici curiae in numerous appeals raising significant issues surrounding the Article III standing after *Spokeo* and the requirements for class certification under the Federal Rule of Civil Procedure 23.

For the eleventh consecutive year, Mayer Brown was named to the “Appellate Hot List” in 2018.

The National Law Journal



Meet Our New Partners



Michael McElroy
Partner
Washington DC

Previously, Mike was general counsel and secretary of First Guaranty Mortgage Corporation, and general counsel, chief compliance officer, and secretary for Stonegate Mortgage Corporation.



Melissa L. Richards
Partner
Palo Alto

Previously, Melissa was the chief legal & risk officer at national mortgage banking firm CMG Financial.



Megan S. Webster
Partner
Chicago

Previously, Megan was vice president and associate general counsel at BMO Financial Group and senior vice president and associate general counsel at HSBC.

Why did you decide to join Mayer Brown?

Mike McElroy

“When I was general counsel for a few mortgage bankers and servicers, I had a pretty clear sense of what I wanted from a firm—strong finance, consumer regulatory, and corporate expertise, with excellent litigation capabilities in the financial services space. I looked for the same qualities when I decided to return to private practice, and no firm fit the bill like Mayer Brown.”

Melissa Richards

“I was looking to return to private practice as a compliance, licensing and risk management specialist for the financial services industry doing business in California. To do that, and best serve the industry, including the ever growing fintech sector established in the San Francisco Bay Area, I needed a global law firm with Northern California offices. I chose Mayer Brown over other firms because of the personal relationships I have built over two decades with key FSRE partners including Jon Jaffe in Palo Alto/San Francisco.”

Megan Webster

“A substantial portion of my practice both as outside counsel and in-house counsel has been related to consumer financial services litigation, investigations, regulatory matters and advisory work. I chose Mayer Brown for several reasons including the firm’s depth and breadth of experience in issues faced by financial institutions, Mayer Brown’s experience in high-stakes complex commercial litigation and investigations, and the firm’s commitment to women, other diverse lawyers and diversity of thought.”

How has your experience practicing at Mayer Brown been so far?

Mike McElroy

“Fantastic. If you asked others at Mayer Brown, we hoped my addition would build on the complementary capabilities that were already here and add a holistic depth that comes from being a general counsel at a financial services company, and that’s definitely happened. We’ve been very busy, and I hope our clients are happy with the results.”

Melissa Richards

“Better than I could have ever imagined. I pinch myself every day. I am so impressed with Mayer Brown as an organization and with its attorneys. The FSRE practice group has a deep bench with extremely talented and experienced attorneys specializing in financial services industry as a whole. I get to work with interesting clients each day on a variety of issues and in a wide variety of consumer and commercial financial service platforms that I have not experienced before. I learn something new every day, and that’s after practicing law in this space for three decades.”

Megan Webster

“My experience so far has exceeded my expectations. While I was an in-house lawyer, I worked with the leaders of the Consumer Litigation & Class Actions group, Lucia Nale and Debra Bogo-Ernst (and many others), who are exceptional lawyers. Together, we provide outstanding service to our clients through a team-based approach embedded in the firm’s culture. We have national (and global) expertise to be able to assemble teams quickly, efficiently and effectively to address and solve problems.”

What is the top piece of advice that you would give law firm lawyers regarding working with in-house counsel?

Mike McElroy

“Remember that while, for many outside counsel, your job is to be an expert about one substantive area (or a few substantive areas), most in-house counsel have to be experts about a multitude of substantive areas. So adding complexity to their days (even for assignments that are, objectively speaking, complex) is generally unhelpful. Simplifying a complex area is almost always a welcome approach.”

Melissa Richards

“Focus on delivering a high level of service to your clients, and with a high level of communication. In house practice is quite different; counsel is giving legal advice and support to the business partners in rapid fire pace. Opportunities in house for deep thinking and analysis are rare. That’s where outside counsel comes in. You are serving a key support function to legal departments, the trusted advisor.”

Megan Webster

“Listen to your clients and try to make their lives easier when possible. As an in-house lawyer it is rare to have isolated issues so you need to think about your clients’ matters holistically and through different lens. In-house lawyers do not have the luxury of only being reactive so you need to help your clients spot emerging risks and identify potential avenues to reduce those risks in addition to focusing on what could just be an isolated case or issue.”

What are CFS-related legal issues or developments that you’re watching in 2019?

Mike McElroy

“This isn’t completely a legal issue, but I’m eager to see if fintech solutions achieve greater penetration in the mortgage market—both in terms of origination share and increasing velocity from application to close.”

Melissa Richards

“The key development in my practice is without question California’s 2018 Consumer Privacy Act. That legislation was passed in 7 days, leaving many interpretive questions including the scope and impact on financial services industry that is already subject to California’s Consumer Financial Privacy Act and the federal Gramm Leach Bliley Act. The CCPA will touch the vast majority of consumer facing businesses here in the state and the scope of “personal information” to be identified by category, sequestered, and deleted upon verified request by the consumer is wide ranging. The California Attorney General is tasked with rulemaking and enforcement starting July 1, 2020. I am monitoring legislative and regulatory development, and fielding calls from clients on creating CCPA compliance management systems.”

Megan Webster

“There are several, but certainly consumer class and mass action issues including arbitration developments, enforcement and remediation trends, cybersecurity and other state and federal privacy laws, designing and implementing compliant and effective risk management frameworks, and the variety of issues facing fintech.”

Congratulations



Tori K. Shinohara
Partner | Washington DC

Tori was promoted to partner in Mayer Brown’s Washington DC office and a member of the Consumer Financial Services group. She practices in the areas of mortgage banking and consumer finance.

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To discuss how Mayer Brown's Consumer Financial Services lawyers can assist your business, please contact us.

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Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our “one-firm” culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

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