

Winter 2020

2019

CONSUMER FINANCIAL SERVICES HIGHLIGHTS

MAYER | BROWN

Law360

For the fourth consecutive year, Mayer Brown was named a 2019 "Firm of the Year" on the basis of its victories in eight "Practice Group of the Year" categories (Appellate, Banking, Benefits, Consumer Protection, Environmental, Project Finance, Securitization and Tax).



Contents

Consumer Credit Compliance	2
Consumer Credit Diligence	5
Payments	8
Fintech	9
Government Regulatory & Enforcement	11
Cybersecurity and Data Privacy	13
Financial Institutions M&A	15
Securitization and Structured Finance	17
Sanctions and Anti-Money Laundering	19
Technology Transactions	20
Litigation	22
Contacts	27



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 2019. 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 2019, 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.

- Provided compliance advice in the development of mortgage programs, including advising lenders, servicers, and investors on licensing and compliance policy development.
- 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.
- Served as compliance counsel to mortgage lenders, real estate brokerage companies, iBuyers, home builders, title insurance companies, appraisal management companies, other settlement service providers, and technology companies on compliance with RESPA's anti-referral fee provisions, including the review of affiliated business arrangements, advertising services agreements, office rental arrangements, technology and data services arrangements, and other business arrangements.
- Advised mortgage lenders and secondary market investors on compliance with the 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 banks and mortgage companies on compliance with restrictions on mortgage loan originator and branch manager compensation, including prohibitions against loan-term-based compensation.
- Served as counsel to a consortium of mortgage lenders and trade associations on proposals by HUD to amend FHA certification language and its Defect Taxonomy to address concerns regarding the use of the False Claims Act for violations of FHA requirements, as well as advised several mortgage loan originators in interpreting these amendments.
- Advised regarding mortgage servicing requirements, including the servicing and loss mitigation requirements under RESPA and Regulation X, the National Flood Insurance Program, the SCRA, and the FDCPA.
- Advised lenders regarding federal and state requirements applicable to offering home equity lines of credit, including structuring HELOCs to avoid claims of spurious open-end credit, and disclosure requirements for HELOCs.
- Conducted federal and state regulatory analysis for a lender launching proprietary reverse mortgage products.
- Counseled lenders, servicers, and investors regarding compliance obligations under HMDA, ECOA, the Fair Housing Act and UDAAP standards.
- Performed fair lending compliance reviews and risk assessments for mortgage lenders and servicers, and provided compliance advice related to fair lending compliance for banks and non-bank lenders in connection with auto loans, student loans, credit cards, small business loans, and unsecured consumer loans.
- Assisted a financial institution in developing its model governance process, including tailored consumer regulatory training for modelers related to issues such as algorithmic bias, UDAAP, and privacy.
- Counseled homebuilders and lease-to-own companies regarding the Fair Housing Act.
- Counseled financial institutions regarding UDAAP risks in connection with sales practices, ancillary products, auto loans, and small business loans.
- 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.
- Advised numerous debt buyers, loan investors and lenders on issues related to the Madden v. Midland Funding decision.
- Served as counsel in the development of point-of-sale (POS) retail financing, home improvement financing, payroll advance, and debt management programs, including regarding product structure, licensing and usury issues, and design and implementation of compliance management systems and compliance policies and procedures.
- Advised credit card companies regarding licensing and requirements imposed on licensees under state law, as well as the requirements of federal consumer financial laws, including ECOA, EFTA, FCRA, the MLA, SCRA, TILA, and UDAAP standards.

- Advised clients on licensing, disclosure, and practice requirements for student loan programs, and advised a client establishing an Income Share Agreement (ISA) program for education financing, including with respect to agreement structure and risks of recharacterization as a loan, and compliance with federal consumer financial laws.
- Provided licensing and compliance advice, including development of a compliance management system, compliance policies, and vendor management program, to Fintech companies providing services related to residential real estate.
- Counseled single-family rental/option to purchase platforms on compliance with federal consumer protection laws and applicable state real estate laws.
- Advised clients on compliance obligations in connection with the electronic delivery of financial services, including requirements under the E-SIGN Act and state implementations of the UETA.
- Assisted clients in setting up or licensing technology platforms, and in addressing regulatory compliance issues arising from the use of those platforms.
- Advised financial institutions regarding compliance with privacy and cybersecurity requirements, including the privacy and safeguards requirements under the GLBA; the identity theft, fraud alert, and discrepancy investigation requirements of the FCRA; and New York's cybersecurity program requirements.
- Advised Clients on compliance with the TCPA in connection with the marketing, originating, and servicing of loans and other consumer financial products and services.
- Advised federally chartered depository institutions on the preemption of state laws by federal banking laws and other federal statutes.
- Advised cross-border programs on the territorial application of US consumer financial laws, including the application of such laws to US lenders, servicers, and investors acting in connection with loans to non-US residents and to foreign lenders, servicers, and investors acting in connection with loans to US residents.
- Advised clients on the development and enhancement of arbitration clauses in consumer agreements to mitigate litigation risks.
- Advised lenders and other consumer financial companies on licensing obligations under state consumer credit laws; advised on licensing and change of control provisions in connection with clients' potential acquisitions; and assisted clients in obtaining licenses and federal approvals and registrations to engage in mortgage and non-mortgage consumer financial activities.

Consumer Credit Diligence

Mayer Brown's Financial Services Regulatory & Enforcement lawyers provided regulatory compliance transactional diligence services to lenders and investors, including banks, funds, insurance companies, investment banks, private equity funds and hedge funds, 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 acquiring the stock, or funding or acquiring the assets of a diverse set of investment targets. In 2019, 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.

RESIDENTIAL MORTGAGE ORIENTATION AND SERVICING

- Conducted multiple mortgage regulatory and general corporate diligences of mortgage lenders in connection with potential acquisitions.
- Performed multiple 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 on behalf of mortgage lenders and investors in mortgage companies and mortgage loan portfolios.

GENERAL-PURPOSE UNSECURED CONSUMER CREDIT

- Conducted multiple consumer financial regulatory diligences of credit card issuers and servicers in connection with the purchase of retail credit receivables and/or financing of credit card programs, including white-label retail programs and programs tailored to the financial needs of foreign nationals studying in the US.

- Conducted multiple consumer financial regulatory diligences of marketplace lenders, including evaluation of bank partnership structures for Madden and “true lender” risks, and servicers of marketplace loans.

SECURED CONSUMER CREDIT AND SPECIALTY FINANCE

- Conducted multiple consumer regulatory diligences of auto financing programs, including direct and indirect lending models, and including traditional auto lenders and programs tailored to the financial needs of foreign nationals residing in the US.
- Conducted multiple consumer regulatory diligences of home improvement financing programs, including direct lenders, sales finance companies, and lending platforms involving bank partnerships, and including reviews of the servicing and collection of home improvement loans and installment sales contracts.
- Conducted multiple regulatory and consumer protection diligences of solar financing programs and community solar programs, including servicing and collection reviews.
- 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, including companies tailored to the financial needs of foreign nationals studying in the US.
- Conducted multiple consumer financial regulatory diligences of elective medical

and dental financing programs, including analysis of exemptions from state consumer financial laws and regulations for medical or professional credit.

- Conducted multiple consumer financial regulatory diligence of consumer retail financing programs, and advised clients offering buy now/pay later point-of-sale (POS) financing during the course of regulatory diligence by their investors.
- Conducted multiple consumer financial regulatory diligence of non-recourse wage advance products offered by payroll processors and third-party service providers.
- Conducted regulatory and consumer protection diligences of a cemetery and funeral service company offering pre-need funeral service contracts.

COMMERCIAL AND SMALL BUSINESS

- Conducted multiple regulatory and customer protection diligences of business-purpose lenders and servicers, including programs operating under state-licensed, bank partner, and/or choice of law models, in connection with a clients’ contemplated acquisition of loans from, or provision of financing to, target companies.
- Conducted multiple regulatory and customer protection diligences of business-purpose “fix-and-flip” lenders on behalf of investors and other counterparties.
- Conducted regulatory and customer protection diligence of an agricultural financing program, including analysis of the applicability of state consumer credit protections to agricultural-purpose financing.

Chambers USA 2019

Ranked Band 1 for Financial Services Regulation – Consumer Finance (Compliance and Litigation)

- Conducted regulatory and customer protection diligence of an agricultural financing program, including analysis of the applicability of state consumer credit protections to agricultural-purpose financing.
- Conducted multiple regulatory and customer protection diligences of small business financing companies offering loan alternatives, including merchant cash advances (MCAs).
- Conducted a regulatory and customer 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 multiple regulatory diligences of debt settlement/debt relief providers in connection with potential equity investments and/or financings.

PAYMENTS

- Conducted regulatory diligences of the US and European activities of an international money transmitter, and provided advice on structuring a secured financing within constraints of relevant licensing laws.

OTHER FINANCIAL SERVICES PROVIDERS

- Conducted a regulatory and consumer protection diligence of an online real estate marketplace.
- Conducted a regulatory diligence of a single-family rental/option to purchase platform under federal consumer compliance laws on behalf of an investor.
- Conducted a consumer financial regulatory diligence of a consumer loan lead generator and technology service provider in connection with a client's follow-on equity investment in the target company.

- Conducted a regulatory diligence of a title insurance agency based on applicable federal laws, state licensing and state anti-inducement laws in connection with the acquisition of the title insurance agency.

DILIGENCE-RELATED SERVICES

- Advised multiple funds on the development of diligence policies and guidelines to be applied across such funds' investments in consumer and small business loans.
- Advised multiple clients on the regulatory content of disclosures used in connection with securitization of loans acquired after transactions involving regulatory diligence.
- Advised multiple clients on licensing and change of control requirements in connection with mergers, acquisitions, and substantial, non-majority equity investments.

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 2019, 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.

On the international level, we advised clients on new European obligations under the new Payment Services Directive (PSD2), the Single Euro Payments Area (SEPA) and the Wire Transfer Regulation. We also advised on recent updates to the fourth, fifth and sixth EU Money Laundering Directives (AML4, AML5, AML6) which included issues related to virtual currencies, distributed ledger technologies, cannabis regulation, KYC and other questions related to payments.

- Represented PayPal in connection with its participation in the consortium of companies working on "Libra," the prospective cryptocurrency being.
- Advised American Express in connection with the expansion of PayPal and American Express' relationship that will provide Amex cardholders with a more integrated experience within PayPal and Amex apps.
- Advised a bank on development and implementation of its new credit card program.
- Represented various investment banks and funds in connection with financings and investments in fintech companies.
- Advised HSBC France on the EU Payments Services Directive (PSD2) implementation across the bank in France as well as Single Euro Payment Area (SEPA) and the Wire Transfer Regulation and the local transposition in numerous EU countries.



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 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 and payments 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, Financial Institution M&A, Capital Markets and Structured Finance practices to assist with transactions, including financings and investments.

Legal 500 USA

FinTech – Tier 2

Chambers USA


FinTech Legal USA, Band 2

- Advised Ally Financial Inc. on its partnership with Better.com, one of the fastest-growing digital mortgage disruptors in the US, to create a new end-to-end digital experience for consumers looking for a mortgage loan from Ally.
- Advised a full-service bank in the United States 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.
- Advised LiquidX, Inc., the operator of a leading electronic trade credit and working capital finance marketplace, on the addition of trade credit insurance to its electronic platform.
- Advised a major lending and finance company regarding the creation of an “open” multi-lender platform using proprietary technology for consumer credit decisions. This representation involved completing the platform participation agreements for participating lenders, OEM captive financing companies, credit unions and electronic delivery providers.
- Counseled a bank with the development and deployment of its AI service offerings which required us to handle a number of component matters. We advised the bank on the suitability of the AI tools for use for particular purposes, appropriate contract and risk allocation terms, intellectual property protection with respect to AI, and regulatory issues associated with the use of AI by a supervised financial institution.
- Acted as counsel to LendingClub as sponsor, seller, administrator, and servicer in a \$287.80 million consumer loan ABS transaction involving the issuance by Consumer Loan Underlying Bond (CLUB) Credit Trust 2019-P2 of three tranches of asset-backed notes and residual certificates.
- Represented various investment banks and funds in connection with financings and investments in fintech companies.

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 2019, we represented clients in numerous enforcement investigations conducted by the CFPB, Department of Justice (DOJ), Department of Housing and Urban Development (HUD), SIGTARP, FDIC, state agencies, 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 laws. We also represented numerous clients in connection with supervisory activities conducted by 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 construct 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.

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- Negotiated successful resolution of a CFPB enforcement action involving background screening company.
 - Represent a national bank in a CFPB investigation and examination related to deposit-account-related activities.
 - Represent a residential mortgage servicer in a CFPB investigation related to practices in Puerto Rico.
 - Represent a residential mortgage servicer in Massachusetts Attorney General investigation involving debt collection practices.
 - Represented a client in an FDIC investigation involving RESPA claims.
 - Represent a national bank in a joint investigation by the Department of Justice and the Special Inspector General for the Troubled Assets Relief Program (SIGTARP).
 - Represented a residential mortgage lender in resolution of a Delaware Human Relations Commission complaint by a home purchaser.
 - Represented multiple FHA-insured lenders in connection with 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 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 multiple mortgage lenders in responding to inquiries from the Department of Veterans Affairs (VA) and the VA's Office of Inspector General regarding the origination of and refinancing of VA-guaranteed loan transactions.
 - Represented homebuilder in connection with a fair housing investigation by the Florida Commission on Human Relations.
 - Represented a mortgage lender in responding to a Civil Investigative Demand from the Illinois Attorney General.
 - Represented two national title insurance companies before the Illinois Department of Financial & Professional Regulation in connection with a cease-and-desist action and a market conduct audit.
 - Represented client in FDIC investigation involving RESPA claims.

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 2019.

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.

- Advising multiple major financial services companies in connection with their efforts to comply with the CCPA.
- Advising multiple loan servicing companies in connection with their efforts to comply with the CCPA.
- Analyzing various components of the jurisdictional reach of the CCPA for clients in the financial services industry, including to what extent a business may be covered by the CCPA because it "controls or is controlled by a business" within the scope of the CCPA.
- 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.
- Assisted several financial services companies in implementing and testing incident response plan with tabletop exercises.
- Assisted a range of global consumer financial services companies in their preparation for compliance with the EU General Data Protection Regulation.
- Advising multiple major financial services companies regarding the interplay between CCPA and the GLB Act, FCRA and business-to-business exemptions.

Top 5 Most-Read CFS Review Blog Posts in 2019

1. Nationwide Safe Water Requirements for FHA-Insured Loans
2. CFPB Increases Civil Penalty Maximums
3. Acceptance of Private Flood Insurance – Final Rule
4. HUD Updates FHA Total Mortgage Scorecard
5. FHA Changes Course on PACE Obligations

www.cfsreview.com

Financial Institutions M&A

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

In 2019, 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 involving public-traded companies.

Our team members have a thorough understanding of the underlying financial products and services of financial institutions, including product lines, asset structures, business, technology and legal risks, and regulatory issues and how such matters impact deal terms and transaction risk. We note that 2019 was a strong year for M&A activity in the financial services industry, which is driven by the economic and credit markets, emerging new fintech products and services and new strategic investors. We expect to see similar trends and deal volume in 2020.

- Represented Redwood Trust Inc. in its \$490 million acquisition of CoreVest American Finance Lender LLC, a leading nationwide originator and portfolio manager of business-purpose residential loans, from Fortress Investment Group LLC and certain management holders.
- Represented Värde partners in connection with the sale of Deephaven Mortgage to Pretium Partners.
- Represented Opendoor labs in the acquisition of National, LLC, a provider of commercial and real estate services.
- Represented Fortress Investment Group in its acquisition of Guardian Asset Management, a leading investment advisor and provider of property management services for REO properties.
- Represented Ally Financial in its partnership with Better.com, a digital mortgage and home financing provider, to create a new end-to-end digital experience for consumers looking for a mortgage from Ally; and in connection with its preferred equity investment in Better.com's Series C funding, significantly increasing Ally's overall ownership in the company.

Law360

For the ninth consecutive year, Mayer Brown was included in *Law360's* "Global 20" list, which recognizes 20 global law firms that are "trusted by clients to handle their most challenging cross-border matters, from multibillion-dollar mergers to bet-the-company litigation."

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 2019 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 2019 securitization and other structured finance transactions included virtually every consumer-related asset class, including forward and reverse residential mortgages, servicing advances, servicing rights, 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 cooperate closely 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.

- Represented various issuers and other counterparties in connection with multiple securitizations, warehouse 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 Loan (FFEL) 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 credit card asset-backed securities during 2019.
- 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.

Chambers Global 2020
Ranked Band 1 for Capital Markets: Securitization

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, credit card companies, and fintechs) on a variety of compliance and enforcement matters.

On the sanctions front, these matters include providing sanctions-related compliance advice, conducting investigations and defending institutions subject to enforcement proceedings, as well as handling issues related to post-judgment recovery of blocked assets. Mayer Brown provides similar support to clients confronting crucial AML challenges, including advising on the sufficiency of policies and procedures, investigating suspicious transactions, and defending clients subject to litigation and enforcement proceedings. In the areas of sanctions and AML compliance, Mayer Brown lawyers also counsel clients involved in transactions with respect to the scope of representations and warranties and the sufficiency of the compliance procedures of target companies.

- Advised credit union regarding application of OFAC sanctions to online and mobile access to customer accounts from sanctioned countries.
- Advised global e-commerce company with payments platform and finance product on scope and application of US economic sanctions laws to company's activities in the US and abroad.
- Successfully defended a bank in litigation alleging that it wrongly paid blocked funds to terrorism victims, instead of paying the assets to its customer's heirs after the customer was delisted by OFAC.
- Initiated interpleader action on behalf of bank to resolve dispute among the bank's customers and other claimants seeking blocked assets.
- Advise international credit card company on a wide range of anti-money laundering and sanctions compliance issues associated with cross-border payments and network providers.
- Advise several leading private equity funds with respect to establishing AML compliance protocols in order to align with bank requirements.
- Conduct internal investigation regarding offshore payments made through the United States that potentially involved the proceeds of financial crime.

Technology Transactions

Mayer Brown's Technology Transactions practice is at the forefront of helping our bank and financial institution clients navigate numerous challenges related to data, digital, outsourcing and software.

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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 2019, 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.

*International Association of
Outsourcing Professionals*

2009 – 2019 Top Law Firm

Chambers USA

2004 – 2019 Band 1: Technology and Outsourcing

- Advised a leading financial group in the negotiation of a multi-year agreement opposite FIS for the licensing, development, implementation and hosting of a core banking cloud platform for our client's consumer and commercial banking divisions. Mayer Brown attorneys advised on contract negotiations, structure, bank regulatory issues and the accompanying implementation agreements with Wipro and IBM.
- Advised a major lending and finance company regarding the creation of an open multi-lender platform using proprietary technology for consumer credit decisions. This representation involved completing the platform participation agreements for participating lenders, OEM captive financing companies, credit unions and electronic delivery providers.
- Advised a financial technology company that provides loans and credit cards in 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 auto-finance lender in a series of innovation initiatives including applying ensemble machine learning for predicting repayment on automobile loans, adoption of public cloud computing for critical workloads, and development of an innovative approach to supporting borrowers.

Litigation

CONSUMER CLASS ACTIONS

In 2019, Mayer Brown's Consumer & Class Actions group continued to represent consumer credit and financial service providers in high-stakes consumer class-action lawsuits that span the country.

We routinely defend against consumer credit-related and other class actions arising under the TILA, SCRA, FCRA, ECOA, Fair Housing Act, RESPA, 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.

- Represented a major mortgage company in an important victory, when a federal court in Arizona granted our client summary judgment in a putative class action alleging that a notary notarized hundreds of foreclosure documents after her notary commission had been revoked and therefore violated Arizona's false lien statute, which provides for substantial statutory penalties. Our client convinced the court that neither it, nor the notary, received proper notice of the revocation and thus could not be held liable under the statute. The case raised several issues of first impression under the statute and during expert witness discovery.
- Represented a Fortune 500 financial services company by winning an industry-leading victory, when a federal court in San Francisco compelled arbitration in a nationwide class action regarding overdraft fees. Unlike other banks, our client was able to convince the court to send almost all of the case to arbitration, and under a novel theory, even sent the liability aspects of two California statutory claims to arbitration as well, keeping only the remedy aspect in federal court if liability is found during the arbitration.
- Represented a global financial institution and mortgage company in another important victory in the decade-long effort, along with other leading banks, to defend the use of Mortgage Electronic Registration Systems Inc.'s nationwide

registry for interests in mortgage promissory notes. The Pennsylvania Supreme Court ruled in favor of defendants in upholding the use of MERS under Pennsylvania law in a series of five lawsuits brought by Pennsylvania counties. In its ruling, the Pennsylvania Supreme Court joined every federal appellate court and state supreme court to have addressed the issue by validating the MERS business model.

- Represented a client and other defendants in a series of putative class actions filed against a major insurance company in federal court in Florida, alleging violations

of the Fair Debt Collection Practices Act and Florida Consumer Collection Practices Act. Plaintiffs alleged that our client and other defendants sent them debt collection letters that lacked statutorily required notices, attempted to collect arbitrary costs and fees, threatened adverse consequences to Plaintiffs' credit history and reports, and threatened to publicize Plaintiffs' debt. The Court granted our client's motion to dismiss with prejudice in the first-filed putative class action and subsequently dismissed all other related actions with prejudice on the same grounds.

COMMERCIAL AND RMBS LITIGATION

Mayer Brown continued to be the leading firm for securitization trustees in 2019.

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.

- A court in the Southern District of New York dismissed on the pleadings the FDIC's claims against BNY Mellon and Citibank, in their capacities as trustees of RMBS trusts. The Firm also represented Citibank, as the indenture trustee of a resecuritization trust that had purchased the FDIC's bonds.
- The Ohio Court of Appeals issued a complete affirmance of the Firm's across-the-board trial win in a suit brought by Western & Southern Life Insurance Company and affiliates against BNY Mellon, as trustee for over 30 RMBS trusts.
- A court in the Southern District of New York issued two favorable rulings in a putative class action brought by Royal Park Investments against BNY Mellon. First, it denied certification of a class of all investors in the affected RMBS trusts. Second, it denied the plaintiffs' request to sample loan files to prove pervasive breaches, finding that such evidence was irrelevant because the trustee had no duty to search for breaches across the trusts.

SUPREME COURT & APPELLATE

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.

- Represented Lamps Plus by obtaining a US Supreme Court victory in a case addressing whether a court may order class-wide arbitration when an arbitration agreement does not expressly discuss the subject. The Court held, by a 5-4 vote, that the Federal Arbitration Act requires an affirmative basis in the contract for concluding that the parties agreed to class arbitration—recognizing that class arbitration is fundamentally different from the individualized arbitration protected by the FAA. The Court therefore reversed the Ninth Circuit's decision that had allowed class arbitration by applying the state-law public policy rule that ambiguities are construed against the drafter. That holding is likely to have broad impact in other cases challenging the enforcement of arbitration agreements.
- Represented creditors in a resounding victory in the United States Supreme Court in a case involving when a bankruptcy court can impose contempt sanctions on a creditor for seeking to collect on a debt when it was unclear if that debt was discharged in bankruptcy. Adopting the rule advocated by Mayer Brown, the Court unanimously held that the creditors cannot be held in contempt if there is a "fair ground of doubt" as to whether the creditor's conduct was lawful, unless the creditor acted in bad faith. The Court rejected the near-strict liability rule urged by the debtor, explaining that such a rule would be bad for the bankruptcy system. The Court remanded to the Ninth Circuit to apply the new rule.
- Convinced a federal court to grant a preliminary injunction against the enforcement by state officials of California AB 51, which would have imposed criminal and civil penalties on businesses that entered into arbitration agreements with workers as a condition of the working relationship. According to one estimate, the statute was targeted at over two-thirds of California employers.

The National Law Journal

For the twelfth consecutive year, Mayer Brown was named to the "Appellate Hot List" in 2019.

Welcome



Marlon Paz

Partner, Washington DC

Marlon Paz joined the firm in 2019 as a partner in the Financial Services Regulatory & Enforcement practice to lead the firm's Broker-Dealer Regulatory & Compliance practice. Marlon's practice focuses on advising broker-dealers and other financial services firms in matters related to securities regulation, examinations, internal investigations, SEC and FINRA enforcement, and compliance.

Congratulations



Eric T. Mitzenmacher

Partner, Washington DC

Eric was promoted to partner in Mayer Brown's Washington DC office and a member of the Consumer Financial Services group. His practice involves providing regulatory compliance advice to companies that offer various consumer and small business financial products and services, as well as conducting regulatory due diligence reviews on behalf of investors in, and financing sources for, such companies.

Contacts

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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