FINTECH

OVERVIEW

Financial technology (Fintech) is making the financial services sector more dynamic, efficient, and agile by enhancing customer experiences, reimagining established practices and optimizing middle- and back-office processes. Although Fintech innovations are potentially significant sources of revenue enhancement and cost reduction to our clients, the legal and regulatory issues presented by application of new technologies are oftentimes novel, complex and multi-jurisdictional in nature.

WHY BCLP?

To help our clients navigate the risk of these Fintech technologies, Bryan Cave Leighton Paisner offers a team of committed, senior-level lawyers integrated across the firm's regulatory, intellectual property, commercial agreements, corporate and disputes practices to cover the latest developments and market trends in the Fintech ecosystem. Our lawyers are often at the forefront of these advances and pioneer first-of-their-kind products, transactions and solutions in the space. They include former financial regulators in the US and abroad, former in-house lawyers and executives at financial institutions and leaders in the private financial services and Fintech bars.

OUR PRACTICE

BCLP’s Fintech team advises on a range of matters, from carefully crafted pilot programs, on the one-hand, to fundamental enterprise-wide digital transformations, on the other. Our Fintech team spans the globe and we have critical bench strength among our 30 global offices in the key financial and technology centers throughout the world. We, thus, are able to deliver comprehensive Fintech solutions to our clients along regulatory, transactional, enforcement, litigation and public policy practice areas. Our clients cut across the Fintech subverticals and include:

- Marketplace commerce and lending platforms
- Payments companies and platforms
- Card issuers and networks
- Banking organizations
- Cryptocurrency and blockchain companies and products
- Exchanges and alternative trading systems for digital assets
- Alternatives to traditional credit and banking platforms and products

OUR EXPERIENCE

In addition, BCLP’s lawyers routinely represent investment banks, private equity and venture capital firms, and other active financial investors in the fintech space. The firm’s global coverage, combined with its ability to draw specific expertise from more than 40 established practice and industry groups, enables BCLP to advise participants across the fintech ecosystem of the full scope of issues they might face.

BCLP’s Fintech team has advised clients on projects as diverse as P2P mobile payment networks, disbursement networks, digital wallets, prepaid payment schemes, marketplace lending arrangements, cryptocurrencies and digital asset trading platforms, and the digitization of traditional banking products. We have also helped establish joint ventures and other arrangements between regulated financial institutions and technology partners as well as industry consortia.

We counsel start-ups as well as both mature Fintech companies and financial institutions on:

- Product guidance and regulatory advice for traditional and new Fintech products and services, including licensing, chartering and the formation of strategic relationships
- Digital transformation of offerings in financial services, including complex sourcing engagements and new development
- Complex commercial transactions in the Fintech sector, with an emphasis on new products and engagements between platforms
- Venture capital, corporate investment, M&A, IPOs
- IP protection and monetization
- Enforcement defense, pre-enforcement counseling and, if needed, litigation

CLIENT STORY

Getting clients from A to B

Apto payments

BCLP advised Apto Payments, a San Francisco based fintech company, on its launch of the UK’s first cryptocurrency debit card. BCLP’s solution helped Apto navigate the complex regulatory requirements challenging the launch.
MEET THE TEAM

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As OpenAI’s release of ChatGPT in late 2022 and expected release of GPT-4 in 2023 continues to garner widespread attention, there is renewed focus on both opportunities and risks presented by the use of artificial intelligence (“AI”). With this focus comes the inevitable call for regulation. At the end of 2022, the U.S. White House weighed in through what it calls an “AI Bill of Rights” for the American public, a non-binding policy document. Banks and others in financial services should take note of the particular civil rights, privacy, and other priorities expressed in this vision for the future of AI governance.
New federal anti-crime rule requires millions of businesses to report true ownership

FRB Action Brings Lower Costs to Merchants for Online Debit Card Transactions

The purpose of the Durbin Amendment was to lower merchants’ costs of accepting debit cards for customer payments. Up to now, because of technology limitations, online merchants were not provided lower cost debit card processing options that were available for cards used at “brick and mortar” locations, where customers and their cards are physically present. Recognizing that technical constraints have been overcome, the Federal Reserve Board recently took action meant to ensure that the Durbin Amendment’s cost reductions are made widely available to merchants for their online debit card payments also.

New sanctions reporting obligations on cryptoasset providers

On 30 August 2022, two new statutory instruments that amend existing sanctions legislation and target cryptoasset businesses came into force. The Regulations extend reporting obligations under the UK’s sanctions regime to cryptoasset businesses, bringing them expressly within the remit of the Office of Financial Sanctions Implementation (OFSI) for reporting purposes. Cryptoasset exchange providers and custodian wallet providers must act now to ensure compliance to avoid the risk of civil or criminal penalties. We consider the regulatory changes and practical steps that affected cryptoasset businesses can take to minimise risk and ensure compliance.

Deceptive and unfair – multiple NSF fees on representments of the same transaction

In guidance issued recently, the Federal Deposit Insurance Corporation (“FDIC”) advised that charging multiple non-sufficient funds (“NSF”) fees constitute “violations of law” when customer disclosures do not fully and clearly explain that the same unpaid transaction might result in multiple NSF fees if an item is presented more than once. [1] Supervisory Guidance on Multiple Re-Presentment NSF Fees, Federal Deposit Insurance Corp. Financial Institutions Letter, August 18, 2022.

CFPB guidance on pay-to-pay fees impacts consumer loan agreements

Consumer debt collectors may not be permitted to charge consumers “convenience fees” for card payments, which the Consumer Financial Protection Board (the “CFPB”) calls “pay-to-pay” fees, unless the underlying loan agreement expressly provides that such fees may be charged. Such language may also lessen exposure to UDAAP enforcement. Consumer lenders may want to review their loan agreements as a result of a recent Advisory Opinion[1] issued by the CFPB and determine whether additional language would enhance the ability of debt collectors to charge convenience fees for card payments. Debt collectors may want to determine whether the existing loan agreements they are seeking to enforce are sufficiently worded to support charging convenience fees to consumer debtors from whom they collecting payments on defaulted loans.