

## Banking Group Of The Year: Covington & Burling

By Jon Hill

*Law360 (January 18, 2019, 3:49 PM EST)* -- Covington & Burling LLP's financial institutions practice over the past year guided PayPal to a settlement with the Federal Trade Commission, steered two of 2018's largest financial services acquisitions and notched a win for a major bank trade group in litigation over a federal credit union regulation, earning a spot as one of Law360's Banking Practice Groups of the Year.

Based out of Washington, D.C., but with offices in New York, San Francisco, London and other world financial capitals, the team of more than 60 attorneys who make up Covington's banking group are continuing a decadeslong legacy of counseling financial institutions clients on transactions, regulation, enforcement and policy issues.

"We're really a full-service shop when it comes to financial services clients," said Michael Nonaka, who co-chairs the practice. "Covington's strength is the diversity of our practice mix and experience of our attorneys, including many former regulators, and I struggle to think of an area where we can't advise a client in a superb manner."

Change has been a constant in the financial services world since Covington's banking group formed more than 50 years ago, and as the industry continues to evolve in the face of technological innovation, new regulations and shifting consumer behavior, Nonaka credits the firm's collaborative culture and multidisciplinary strength with allowing the practice to stay ahead of the curve.

"Having strong practice groups across the board enables you to be more nimble and to adjust to change more readily," Nonaka said.

As banks explore digital technologies for reaching customers, for example, some have established relationships with outside service providers. But outside counsel may be needed to address the host of transactional, intellectual property and other legal issues that can crop up with increased reliance on those providers, according to Nonaka.

"Those are areas where we happen to have a lot of expertise, so as changes in technology result in different legal needs, having those practice areas there to pitch in is incredibly useful," Nonaka said.



This ability to muster skills, experience and insights from across the firm was on display this past year with Covington's work guiding PayPal to a February 2018 settlement with the Federal Trade Commission over the agency's claims related to Venmo, the money transfer service acquired by PayPal in late 2013 that blends social media with mobile payments.

"This case was really at the intersection of financial services, social media, privacy and mobile technology, and I was able to draw upon the firm's resources for each of those issues," said Eric Mogilnicki, the Covington partner who led the firm's representation of PayPal in the matter. "Mike [Nonaka] played a vital role in the privacy issues that arose in the matter, for example, and others here who are alumni from the FTC provided support on tactics and strategy with the FTC. It was very much a team effort."

The FTC alleged compliance problems from before the PayPal purchase that included, among other things, violations of the Gramm-Leach-Bliley Act's privacy rule, which regulates how financial institutions are supposed to deliver privacy notices to customers, as well as the law's safeguards rule, which sets out requirements for financial institutions' customer information security programs.

PayPal did not admit or deny these allegations in settling with the agency, but it did agree to make additional disclosures about its transaction and privacy practices, abide by certain prohibitions and undergo third-party reviews of its privacy and data security practices for the next 10 years. Notably, the settlement did not include any fines.

"This matter was an example of a pattern we see often as we deal with financial institutions that are growing at a rapid rate, where it can be difficult for compliance and legal to keep up," Mogilnicki said. "What was fortunate here is that we were able to demonstrate that Venmo and PayPal, Venmo's new owner, had taken substantial steps to fix the issues that arose during that period of rapid growth."

Covington's banking group has shown its prowess over the past year in both the boardroom and the courtroom, as well.

Over the summer, for example, WSFS Financial Corp. — the parent company of the Delaware-based Wilmington Savings Fund Society FSB — announced its roughly \$1.5 billion acquisition of Beneficial Bancorp Inc., while Veritex Holdings Inc. unveiled its \$1 billion purchase of Green Bancorp Inc.

These transactions, which represent the fifth and sixth-largest financial services M&A deals of 2018, respectively, have been guided along with help from Covington, which is advising both WSFS and Veritex.

"Transactions like these are multidisciplinary," Covington partner Michael Reed said. "We may have our regulatory and compliance folks helping with regulatory approvals, compliance and integration, but we will also have people from our executive compensation and employee benefits, labor, tax, intellectual property and other practice areas as well involved in a transaction. It highlights our strength as a firm that we have strengths in all these areas and can combine them to help put together and complete a transaction."

Covington has also been serving as counsel to the American Bankers Association in litigation challenging the National Credit Union Administration's 2016 "field of membership" rule, which paid off in March when a D.C. federal judge invalidated two aspects of that rule, which loosened limits on who credit unions can serve.

And the firm has been representing Mitsubishi UFJ Financial Group in litigation with the New York State Department of Financial Services stemming from MUFG's decision to convert its subsidiary banks' state-licensed branches to federal branches. Covington likewise counseled MUFG and its subsidiary banks on these conversions, a move MUFG has credited with helping to streamline the supervision and regulation of its U.S. banking operations.

But Covington's banking group doesn't just work on traditional bank regulatory matters. In fact, the firm last year provided counsel and other legal services on a host of regulatory issues in the financial technology, or fintech, space — among other things, Covington has been counseling cryptocurrency exchange Coinbase Inc. on regulatory requirements, advising banks on their efforts to roll out new offerings to customers through mobile platforms and other digital channels, and helping a number of fintech firms clear the regulatory hurdles involved with becoming commercial banks.

"We do have an active fintech initiative, which is an interdisciplinary group of attorneys who work on financial innovation issues," Nonaka said. "But I think the bigger story here is that the banking industry has been innovating for quite a long time. We've been champions of those efforts, and we're working very closely with banks and other firms to help them bring innovative products and services to customers."

--Editing by Marygrace Murphy.