

BUCKLEY

Bank Counseling & Compliance Practice

Few industries are as fiercely competitive and as aggressively regulated and supervised as banking. Buckley delivers regulatory, enforcement, transactional, and litigation counsel to federal and state-chartered depository institutions and their holding companies.

Our clients include banking institutions of all sizes — global banks, domestic banks, regional and community banks, and specialty banks. We also help banks, financial services providers, and fintech companies perform “whole institution” enterprise-level oversight — from risk and data management to capital planning, governance, and other prudential issues — which can resolve regulators’ concerns, help firms grow, and expedite the lifting of limitations.

Representative Matters

- We conducted a comprehensive compliance review for a large bank to identify laws and regulations applicable to various lines of business and internal bank processes, including deposits, credit cards, mortgages, and consumer loans, and to review the related support functions of a number of affiliates of the bank.
- We have provided ongoing regulatory advice to a bank, including evaluation of its Community Reinvestment Act performance and related issues, assistance with fair lending self-assessments, review of the bank's appraisal program, and advice on multifamily loan origination policy based on state-issued guidance.
- We advised a publicly traded, multinational financial services corporation in its efforts to acquire U.S. banking operations, including the performance of extensive due diligence on the target bank and analysis of the proposed business plans. We also advised the company as it considered the bank holding company application process, assessing the proposed transaction against applicable banking law, including the Bank Holding Company Act and the Change in Bank Control Act; drafting application materials; engaging with state and federal regulators; and advising the company on the steps necessary to obtain regulatory approval and analyzing alternative transaction structures.
- We assisted a national bank to ensure that its online mortgage loan origination portal was compliant with relevant federal consumer financial

laws, including the Truth in Lending Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, ESIGN Act, and CAN-SPAM Act, by identifying features of the portal that triggered key regulatory requirements or could attract regulatory scrutiny, and developing procedures and scripts designed to assist mortgage applicants.

- We advised a large U.S.-based financial institution on its participation in a mobile P2P payments network. We reviewed the network's operating rules and payment transactions, renegotiating existing contracts to enable its participation, and negotiating extensive amendments to its existing payment processing and related outsourcing contractual arrangements to handle transactions by its customers on the network.
- We assisted a large international financial institution prepare reports demonstrating compliance with the requirements of a U.S. banking agency consent order.
- We advised a private equity fund on regulatory due diligence for a noncontrolling equity investment in a bank participating in marketplace lending.

Sub Practices

Bank Regulatory

Buckley works with national and state-chartered commercial banks, federal and state-chartered thrifts, and credit unions in complying with the laws and regulations governing their operations. Our experience includes advising on bank formation and de novo charters; routine filings, disclosures, and financial reporting; and reviewing, drafting, and implementing compliance policies and procedures involving all consumer protection and bank regulatory requirements.

We work with our clients to comply with capital, liquidity, reserve, credit rating, affiliate transaction, and corporate governance requirements (including those under the Sarbanes-Oxley Act, the Dodd-Frank Act, and other sources of director and officer responsibilities), as well as to comply with payment system requirements and e-commerce laws and regulations (including those related to investing in digital assets and making payments using digital currency). We also advise on mergers, acquisitions, divestitures, joint ventures, and outsourcing agreements, and navigate our clients through regulatory examinations, enforcement actions, litigation, and transactions.

Corporate Governance

Corporate governance standards applied by the banking agencies have never been more demanding. We counsel bank boards and executive management on regulatory expectations, and conduct reviews of corporate governance processes, working closely with boards, board committees, and executive management. Our lawyers regularly present to clients on the latest developments and provide recommendations on

strengthening corporate governance practices.

New Products

Buckley assists banks and holding companies in developing new financial products and services that are permissible as part of, or incidental to, banking while remaining consistent with regulatory expectations, and risk management. We have assisted a number of banks entering the wealth management, trust, and insurance agency businesses, and with acquisitions of these companies.

Director & Officer Liability and Defense

Bank directors and officers are at greater risk of personal liability than other corporate directors and officers. They are subject to a variety of enforcement actions, including civil money penalties, restitution, and cease and desist orders and removals. If their bank fails, the Federal Deposit Insurance Corporation as receiver of the failed bank may sue them. Buckley supports the efforts of bank directors and officers to mitigate risk of personal liability through customized training and reviews of policies, processes, and practices to ensure that bank boards and management conduct business in a manner that protects them.

Our attorneys advise bank boards and management on protecting themselves against personal liability through D&O insurance policies, charter and bylaw indemnification provisions, and indemnification agreements with individual directors. Our team also defends against enforcement and civil actions filed by banking agencies and other governmental authorities. Members of our team include former bank regulators, white-collar crime prosecutors, and experienced civil and criminal litigators.

Troubled Banks

Our firm advises on issues that banks and their holding companies, directors, and officers face when confronted with a threat to their operations. We offer troubled banks comprehensive advice on complex regulatory, transactional, litigation, and personal liability issues, and work closely with investors to identify, negotiate, and close on investment opportunities with troubled institutions and their regulators. Our team defends matters involving the FDIC, Office of the Comptroller of the Currency, Federal Reserve Board, Securities and Exchange Commission, Department of Justice, and other regulatory and enforcement authorities. We help our clients conduct internal investigations, and represent directors and officers of insolvent banks, thrifts, and their holding companies through bank receivership and bankruptcy processes. We are also involved in transactions and design strategies that help our clients increase capital levels in order to avoid or delay regulatory enforcement actions and receiverships. Our attorneys assist banks operating under change in management or golden parachute restrictions comply with approval requirements.

Bankruptcy Trustee

Buckley represents Chapter 7 trustees of insolvent banks and thrift holding companies in fulfilling their responsibilities to creditors seeking to recover their interests through bankruptcy. We serve as special counsel to trustees and conduct or assist in

investigations concerning the financial affairs of the debtor holding company and the failure of its underlying bank or thrift. We assess and litigate claims against insiders and third-party advisers of the debtor holding company and advise on investigations and litigation of avoidable transfers. We defend against government enforcement and civil actions naming or otherwise involving the debtor holding company. Our firm also handles similar matters for debtors in Chapter 11 proceedings.