FINANCIAL INSTITUTIONS

Our familiarity with the issues and concerns of financial institutions in today’s complex, evolving economic and regulatory landscape allows us to serve as trusted advisers to bank executives and directors on matters ranging from day-to-day concerns to complex financing transactions, “bet the bank” litigation and transformative acquisitions.

The members of our financial institutions team have worked with large and small financial institutions across the country for many years and offer clients a wealth of practical, hands-on experience and legal knowledge. Financial institutions rely on us to monitor and advise them on all the issues that affect their industry, including compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act.

We complement our knowledge of the law with an intensive effort to understand each individual client, including their history, management team, customers, employees and how they serve their community. Our commitment to innovative solutions, understanding of the regulatory process and relationships with investment bankers, accountants, trustees, and other service providers, prove us an invaluable asset to financial institutions seeking a value-driven law firm that can help them achieve their goals in every area of their business.

REGULATORY COMPLIANCE

Banks face a fluctuating and increasingly complex regulatory environment, and there is increased scrutiny from federal and state regulators who are focused on protecting the consumer. These multi-layered regulations require legal interpretation to ensure compliance.

We provide functional compliance support resulting in a reliable and dynamic compliance framework that is value-driven and business-ready. For project-based or in-house assistance, we provide a complete suite of compliance solutions from bank deposits to mortgage lending. Services include:

- Initial assessment
- Identify gaps/implement remediation
- Compliance transaction testing
- Periodic regulatory assessments
- Monitor regulatory environment

LENDING AND CREDITORS’ RIGHTS

Our lending and creditors’ rights practices have extensive experience in representing banks in a wide variety of lending transactions, loan participations, creditors’ rights cases, workouts, lender liability suits, ESOP loans, asset-based financing, FDIC and other aspects of the bank’s lending business.

REAL ESTATE LENDING

We have extensive experience representing financial institutions in all types of real estate lending transactions. We negotiate terms, draft loan documents, and conduct due diligence on the real estate and other collateral securing the loans. We have advised in most industries involving commercial property lending, including retail, hospitality, resorts, manufacturing and industrial.
FINANCIAL LITIGATION

While we always try to resolve disputes before they get to the courthouse, our team has extensive experience in using litigation to protect the rights of financial institutions. Banks turn to us to defend lender liability, creditors’ rights and fiduciary claims, to find and recover assets and to represent them in enforcement and compliance issues before state and federal regulatory agencies.

WORKOUT AND FORECLOSURE

We have extensive experience working with troubled loans through the workout and foreclosure process. Our transactional and litigation team members come together to provide strategy and guidance to determine whether foreclosure, litigation or workout—or a combination of these approaches—is the best option. We can craft and negotiate forbearance agreements, loan modification documents and collateral substitution documents. Beyond the workout, we efficiently manage all of the steps in foreclosure sales and proceedings.

ASSET-BASED LENDING

When bank corporate clients look for capital to fund growth with loans backed by corporate assets, we assist them in all aspects of structuring these transactions, including negotiations, the drafting and negotiation of complex loan documents, conducting due diligence on the collateral securing the loans, crafting structured agreements, and in the closing of revolving credit facilities and term loans.

CAPITAL INVESTMENT

We help banks and bank holding companies raise capital in public offerings and private placements of debt or equity, negotiate the terms of underwriting and placement agency agreements and registration rights agreements, prepare and file any required regulatory applications, and ensure compliance with applicable federal and state securities laws. We understand the regulatory capital requirements applicable to banks and are also familiar with the terms of trust preferred securities, TARP and SBLF preferred stock, Tier 2-compliant subordinated debt, and other securities that are often issued by banks and bank holding companies.

BANK MANAGEMENT AND OPERATIONS

A bank’s day-to-day management and operation involves a wide variety of issues and transactions that require legal analysis. For example, we help clients respond to data security issues; lease, purchase, buy and sell branches; prepare employee benefit plans and employment agreements; advise clients on human resources issues; ensure that any trademarks or service marks are registered; review and negotiate the terms of data processing agreements; review D&O insurance policies; respond to garnishment actions; and manage large or small litigation matters.

SEcuritized LOANS

Our attorneys work with financial institution clients to structure the securitization and warehousing of debt, with a focus on vacation ownership receivables, accounts receivable sales, hypothecation/loan transactions, real estate and related asset secured loans and other complex credit facilities.
BOND AND TAX-EXEMPT FINANCING

We guide banks throughout the process of working with the issuers of municipal and other tax-exempt bonds. Our attorneys are experienced at issuing letters of credit, analyzing tax implications, structuring documentation and guiding all aspects of these transactions through to closing.

MERGERS AND ACQUISITIONS

A large part of a bank board’s responsibility is determining whether (and when) to “buy, sell or hold.” We represent buyers and sellers in bank mergers and acquisitions and advise directors on their duties relating to these transactions. We prepare and negotiate transaction documents, proxy statements, and prospectuses; prepare and file regulatory applications; and ensure that tax, ERISA, securities, and other “specialty” issues are addressed.

CORPORATE AND ENTITY FINANCING

We advise financial institutions throughout the life cycle of entity debt financing. Lenders turn to us for counsel in managing and structuring all aspects of corporate financing, from documentation and due diligence to closing. The scope of our experience in other industries allows our financial institutions team to draw on the knowledge of attorneys who understand the unique needs of borrowers in most areas of business.

SHAREHOLDER DERIVATIVE SUITS, DIRECTOR AND OFFICER LIABILITY, AND CORPORATE GOVERNANCE INVESTIGATIONS AND CASES

The experience of our litigators is complemented by attorneys who have served as corporate general counsel and have practical experience regarding the legal duties and responsibilities of officers, directors and managers. Financial institutions have retained us to conduct internal investigations into alleged wrongdoing, and we sometimes are retained as an outside law firm in order to protect the attorney-client privilege. Our attorneys have represented institutional clients, as well as individual directors and officers, in cases involving allegations of securities fraud, breach of fiduciary duty and other claims before state and federal regulatory agencies, including the Office of Comptroller of the Currency (OCC), Federal Deposit Insurance Corp. (FDIC), Federal Reserve System (FRS), National Credit Union Administration (NCUA), and Office of Thrift Supervision (OTS).

OTHER TRANSACTIONS

We also have experience in bank holding company formation, “going private” and ”staying private” transactions, establishment of employee stock ownership plans (ESOPs), estate planning for bank employees and directors, Subchapter S conversions, establishment of REIT subsidiaries for state tax planning purposes, and other transactions designed to meet a bank’s strategic and operational objectives.

PRACTICE HIGHLIGHTS

Real Estate Lending. Represented numerous national, regional and local banks the origination, negotiation and closing of loans secured by real estate located in Georgia and in providing local counsel opinions.
Real Estate Lending. Represented clients in line of credit transaction to secure financing for future acquisitions of properties.

Led defense of patent infringement suit brought by patent troll relating to check scanning and processing. Represented VeriCheck, Inc., a leading ACH payment processor, in E.D. Texas litigation against a patent troll. As part of our defensive strategy, we prepared and filed a petition with the USPTO for Covered Business Method review and argued that the asserted patent claims were invalid under Section 101 for being directed to patent ineligible subject matter. The parties reached a confidential settlement shortly after the CBM petition was filed. Lyssa Networks, LLC v. VeriCheck, Inc. (E.D. Texas)


FDIC professional liability investigations, as receiver for four Georgia-based banks. Directed investigations into potential professional liability claims associated with the failures of four state-chartered banks in Georgia from 2006 to 2014. The investigations included examination of the conduct of bank directors, officers, lawyers, accountants, appraisers, engineers, architects, and other professionals, as well as the assertion of claims in connection with bankers’ bonds. Claims against directors and officers in two of the matters were settled in mediation prior to filing suit, and a bond claim was also settled prior to litigation. In 2013, upon completion of an investigation, the firm filed suit on behalf of the FDIC against former directors and officers of Darby Bank & Trust Company in the U.S. District Court for the Southern District of Georgia in Savannah, seeking more than $15 million in damages. The case remains pending and is in discovery.

Successful resolution of trade secret and breach of loyalty case. Led defense of claims of misappropriation of trade secrets and breach of loyalty in connection with departure of group of employees and establishment of competitive business. The parties reached a confidential settlement. Wells Fargo Foothill, Inc. v. Cratos Capital Partners, LLC.


Resort developer financings in excess of $1 billion. Represented national and regional resort developers as lead and/or local counsel in connection with the financing of vacation ownership receivables through numerous term securitization, warehouse lines of credit, receivables hypothecation and whole loan sale transactions with combined transaction sizes/commitments in excess of $1 billion including the following: (1) Representation of a national resort developer in connection with a term securitization transaction which involved a unique private offering of notes to investors including both qualified institutional buyers and individual accredited investors; and (2) Representation of a national resort developer in connection with the structuring, negotiation and documentation of an innovative whole loan sale program involving the sale of vacation ownership receivables to a federal credit union.

Sale of majority ownership and recapitalization of private receivables management firm.
Financial Institutions

Represented a receivables management and purchasing firm in connection with all senior and subordinated financings/credit facilities with combined transaction values in excess of $50 million. An example of a recent representation for this client includes a recapitalization transaction in which we served as lead counsel in all aspects of structuring, negotiating and documenting a senior and mezzanine debt refinance and a concurrent third party equity investment. This matter represents the most significant liquidity event to date for this client and the reorganized structure is anticipated to provide an entirely new platform for this client’s future growth.

$75 million senior notes offering for a national developer. Served as lead counsel to a national developer (and certain subsidiaries) in connection with the structuring, negotiation and documentation of a private offering of $75 million senior secured notes. The note issuance was a highly significant event in the life of this client providing a part of the financing ultimately necessary for a subsequent merger transaction resulting in this client’s becoming a private company.