

**MORRISON
FOERSTER**

FinTech@MoFo



Expertise for growth, transactions
& risk management globally





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INTRODUCTION

It may not be intuitively obvious that a leading technology law firm also would be one of the leading financial services firms in the world. Morrison & Foerster has long been recognized as both. Our leadership, expertise, and exemplary handling of our client relationships make us an ideal partner for FinTech companies.

Fast-growing FinTech companies appreciate our multidisciplinary, hands-on, global network of lawyers. Our FinTech lawyers are located in the firm's Washington, D.C., New York, Los Angeles, and San Francisco offices, and our international offices in Hong Kong, Shanghai, Beijing, Tokyo, London, and Berlin.

Our FinTech team provides seamless advice to bank and non-bank FinTech clients to assist in navigating the evolving legal landscape, including assistance with drafting commercial agreements, obtaining licensing, and alliances; M&A; initial public offerings; and financings. Our advice is informed by our extensive expertise in financial services, technology, intellectual property protection, data protection, and cybersecurity, as well as our deep understanding of how industry-specific practices and regulations affect the implementation of technology solutions.

We are client-focused and drive results. Our clients have described us as: *“intensely dedicated to achieving the client’s objectives”*; *“highly creative problem solvers”*; *“very interested in understanding what’s important to us, so in addition to helping on the deals, they’re very keen to help raise our understanding of issues”*; and *“incredibly responsive,”* noting that our group has *“the deepest knowledge of the intersect between commercial and IT law. That’s rare to find in a person, let alone an entire group.”*

KEY FINTECH SUBSECTORS



BANKING
SERVICES



DIGITAL/CRYPTO
CURRENCIES



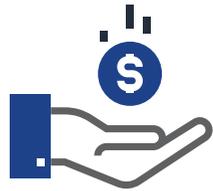
EQUITY
CROWDFUNDING



FUNDS
TRANSFER



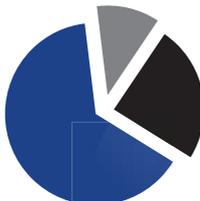
LEDGER
TECHNOLOGIES



MARKETPLACE
LENDING



PAYMENTS/BILLING
TECHNOLOGIES



PERSONAL
FINANCE



WEALTH
MANAGEMENT

MORRISON & FOERSTER'S FINTECH PRACTICE



KEY OFFERINGS

Consumer Financial Services

We are the leader in the field of consumer lending and payment card systems, as we have been since the early days of the Truth in Lending Act and the Electronic Fund Transfer Act. In recent years, the growth of the mobile payments industry has provided ample opportunity to assist clients in developing and implementing mobile payment systems, in structuring, documenting, and negotiating licensing agreements for mobile payment processing platforms, and in developing mobile wallets across a diverse array of technology platforms.

Securities and Capital Markets

Morrison & Foerster has for decades been known as a leading firm advising issuers and underwriters on initial public offerings. With our depth of capital markets experience, and our expertise in some of the most active industries for offerings, we are a key partner for issuers transitioning to public ownership. Given our roots in Silicon Valley, we are committed to emerging companies and have championed many of the reforms that made their way into the JOBS Act. Once the JOBS Act was enacted, we promptly launched various dedicated JOBS Act resources. We regularly represent issuers, underwriters, and placement agents in all aspects of equity capital markets transactions, including advising on public (IPO and follow-on) and private offerings, including confidentially marketed public offerings, at-the-market offerings, shelf offerings, private placements of equity securities, and

PIPE transactions. We also are one of the preeminent firms advising on debt issuances.

Technology Transactions

For many years, Morrison & Foerster has been recognized as one of the world's leading law firms handling complex technology transactions. In fact, we've been referred to as "probably the premier IT practice in the world" by Chambers and Partners. We've also been named the #1 Technology Law Firm by *Vault Guide* 2014 and the 2013 "Law Firm of the Year" in the United States in Information Technology Law by *U.S. News & World Report/Best Lawyers*®. Our clients include many of the most innovative technology companies and recognizable technology brands. We actively assist both established and emerging technology sector clients in creating and leveraging new technology platforms and harnessing evolving business models. We also advise a wide range of companies on their agreements and projects to implement technology. We have one of the largest dedicated technology transactions groups of any general practice firm.

Intellectual Property

Morrison & Foerster's Intellectual Property practice is the work of an interdepartmental group of lawyers whose practice focuses on patent, trademark, copyright, trade secret, unfair competition, and related intellectual property matters. The firm has one of the largest intellectual property practices of any general practice firm, with approximately 300 lawyers. Our size and breadth of expertise enable us to provide a full range of cutting-edge IP services, including representation in patent and trademark prosecution, litigation and

alternative dispute resolution, and business and licensing transactions. The firm's practice is ranked by independent observers, such as *Chambers USA*, *Chambers Global*, and *Legal 500*, as one of the top intellectual property practices in the world.

Privacy and Data Protection

Morrison & Foerster has the leading privacy and data protection practice in the United States. We advise financial institutions and other financial services enterprises on compliance with federal and state privacy laws. For our global financial institution clients, we advise on how local privacy laws and laws applicable to regulated financial institutions may affect the sharing of data within the enterprise across multiple jurisdictions. Our attorneys have also advised clients on contracts and other approaches to comply with the EU Privacy Directive and similar privacy initiatives in other countries.

Given the diverse factors driving the evolution of fintech globally, it's not surprising that investment into VC-backed fintech companies soared to \$13.8 billion in 2015. This increase of more than 100% is even more significant given that 2011 fintech investment was only \$2.1 billion.

(KPMG/CB Insights:
The Pulse of Fintech,
2015 in Review)

CHALLENGES FACING FINTECH



Banking Services

Traditional banking and financial institutions are facing a rapidly changing landscape, as banks evolve from relying on physical, tangible distribution channels to utilizing technology-enabled channels. With significant changes in banking regulations, customer behaviors, and technology, together with changing market dynamics and aggressive non-bank competitors, traditional banking institutions cannot rely on old ways of banking to remain relevant.

The barriers to entry for non-traditional banking entities to provide ‘core’ banking services continues to decline, and new entrants are finding innovative ways to deliver core banking services in more cost effective, secure, and convenient ways. Technology-driven processes and services such as automated investing platforms, P2P transfers, and mobile payment technologies allow technology companies the ability to deliver financial services at a fraction of the cost.

Payments/Billing Technologies

Technology is transforming the way purchases and payments are processed and is contributing to strong growth in the area, with McKinsey & Company projecting that payments revenue will account for 43% of all banking-services revenue by 2018. As technology advances, new channels for faster and more convenient payments between individuals and institutions are emerging, including online, mobile, automated, and peer-to-peer payment processing systems that handle both traditional and cryptocurrencies. Regulators have taken notice of these rapidly evolving systems. The CFPB has released a series of consumer protection principles for the development of new payment systems, and the Federal Reserve

System has created the FedPayments Improvement initiative, aimed at “collaborate[ing] with payment system stakeholders including large and small businesses, emerging payments firms, card networks, payment processors, consumers and financial institutions to enhance the speed, safety and efficiency of the U.S. payment system.” As new players enter the sector and existing financial institutions introduce new payment and billing products, companies will need to monitor national and international payment regulations in this dynamic and expanding area.

Marketplace Lending

“Nontraditional” lending is experiencing rapid growth as alternative lenders reshape the lending process through finance platforms including crowdfunding, peer-to-peer lending, and marketplace lending. According to the *Harvard Business Journal*, “the outstanding portfolio balance of online alternative lenders is doubling every year, compared to a decline of about 3 percent in the traditional banking sector.” These online lenders are particularly attractive to small businesses, which prefer the simple online applications and quick decisions on loans. Regulators are beginning to take a closer look at marketplace lenders to determine how and to what extent the online lending community should be regulated.

Digital/Crypto-Currencies and Ledger Technologies

The rise of digital currencies has taken the familiar act of currency exchange and removed it to the Internet. The digital currency industry consists primarily of two types of currencies: centralized currencies, which value a digital unit based on a tangible, offline

asset and decentralized currencies (e.g., Bitcoin), which value units independently and have no centralized control point over supply. The legal questions surrounding digital and cryptocurrencies have proliferated and include basic questions on how such currencies should be regulated—as a currency, as property, as a commodity, or as a prepaid account? In addition, key legal issues pertaining to anonymity, governmental licensing, and registration requirements and consumer protection continue to shape the industry and necessitate the need to monitor this burgeoning sector of financial services.

Ledger technology is a revolutionary sector that has immense potential to transform the financial services industry by making processes more efficient, inexpensive, and transparent. Currently, the most well-known ledger technology is blockchain, the public ledger of all transactions in the Bitcoin network. However, ledger technology is still in its very early stages and has the potential for applications beyond cryptocurrencies. Both startups and established financial institutions are investing money and resources into the sector. In fact, several major banks are partnering with startups to develop and explore commercial applications for decentralized distributed ledger technologies, demonstrating the financial services community’s commitment to developing this technology as a way to advance financial services operations while reducing infrastructure costs.

Equity Crowdfunding

Equity crowdfunding, also known as investment crowdfunding, allows for accredited investors to fund start-ups and small companies through online platforms in return for an equity interest. Crowdfunder

reported that in the short time between Q4 of 2014 and Q1 of 2015, there was a 34.7% increase in equity crowdfunding capital raised, jumping from \$482.5 million in capital raised to \$649.8 million. This growth in equity crowdfunding has given both entrepreneurs and investors more opportunities to engage in partnerships with each other outside of private funding. The U.S. Securities and Exchange Commission (SEC) has also taken notice of equity crowdfunding platforms and its growing prominence as a funding method, which is reflected in its new securities regulations. Just recently the SEC expanded Regulation A to help facilitate smaller companies' access to capital. As equity crowdfunding expands, both entrepreneurs and investors will need to keep up to date with the securities laws surrounding this growing source of funding.

Personal Finance

The ways in which individuals are taking control of their personal finances today are changing the financial world as we know it. The Internet and mobile technology allow users to analyze their income and spending, plan for retirement, automate their investing and savings, and customize their financial planning, all with the click of a button. These new tools and technologies represent a shift away from the established entities that have long dominated personal finance management. And, as household debt continues to grow past the estimated \$11.85 trillion in 2015, these platforms are now well-positioned at a time when individuals are seeking new ways to control their spending and improve their financial planning.

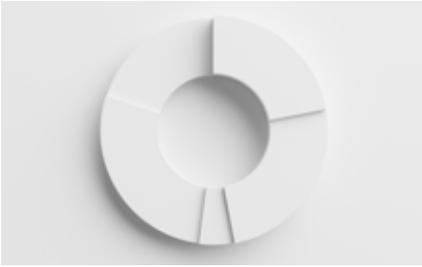
Wealth Management

There is perhaps no financial service at greater risk of disruption than traditional wealth management. Wealth managers could be replaced by robo-advisors, online services that provide automated portfolio advice using algorithms instead of humans. Robo-advisors cut out the middleman and offer much more affordable services, making wealth management services available to younger consumers. But these services do not come without their challenges. In May 2015, the SEC and FINRA released an alert warning of the risks associated alternative investment tools, including programming limits, overgeneralized advice, and data security issues.

“MoFo attorneys are practical, business-minded professionals. I would highly recommend them because they deliver excellent value.”

Chambers

INDUSTRY ISSUES TO CONSIDER



Legal and Regulatory Requirements

For FinTech companies, legal and regulatory issues often represent an initial and ongoing hurdle to product launch and success. Financial services laws and regulations can have broad applications, and regulatory compliance in this area can be difficult due to a complex and antiquated mix of state, federal, and international obligations.

For example, FinTech companies that move money are often ensnared by state money transmitter statutes that require licensing in each state of operation, compliance with the separate laws of each state of operation, compliance with the federal Bank Secrecy Act and, if applicable, compliance with international licensing and regulatory obligations. Similarly, FinTech companies that operate in either the consumer or commercial lending space are confronted with a myriad of legal and regulatory issues, including state licensing, state and federal compliance obligations, the legal implications of partnering with a chartered financial institution, and issues surrounding back-end securitization and financing. On top of that, FinTech companies face other legal and regulatory concerns such as state and federal laws dealing with credit, debit, privacy, and data security, as well as non-legal regulatory frameworks such as payment network rules and ACH rules. With these myriad

regulatory requirements it is critical that FinTech companies think and act strategically in order to not only survive, but flourish in an ever changing regulatory environment.

Data Protection and Cybersecurity

FinTech companies, which rely on technology to deliver their products and services to consumers, have an important responsibility to protect their customer's data and privacy. The media regularly highlights stories of organizations that have suffered data breaches. The U.S. government has also begun sounding alarm bells about the potentially debilitating effects that cyberattacks may have on the U.S. economy. Modern trends towards increased use of social media, user-generated content, cloud computing, data analytics, and more sophisticated advertising and marketing techniques such as behavioral targeting have all raised data protection and cybersecurity issues. FinTech companies must design and implement their data security policies and practices in an effort to not only prevent and mitigate data security breaches, but also to comply with the ever-growing landscape of state and national data security regulations.

Data protection and cybersecurity requires an astute understanding of all aspects of the information life cycle—from the collection, use, disclosure, and storage of information to its ultimate destruction. In particular, FinTech companies need to operationalize effective internal and external data security policies and procedures. Finally, FinTech companies must be prepared for when the inevitable security incident arises—an appropriate response to an emergency situation requires not only an understanding of

applicable legal requirements, but also an ability to address public and customer relations issues, understand contractual obligations and remedies, work with technologists to understand the threat, and respond to threatened litigation or government investigations.

Managing IP Disputes

FinTech companies face a broad range of intellectual property litigation risks. These threats include traditional patent litigation instituted by patent trolls or competitors, as well as standard-essential patent infringement actions.

There is also an increased risk of trade secret misappropriation since FinTech companies frequently rely on software-intensive technologies. Due to the necessity for collaborative working relationships among numerous participants in the various financial services ecosystems, there is also a larger risk of indemnification claims arising from these relationships.

While some of these risks may be unavoidable, companies can prepare themselves by knowing where the land mines are, how best to respond when disputes arise and how to fairly allocate risk through the structuring and negotiation of commercial relationships.

Commercial and Technology Transactions

FinTech companies structure and negotiate a broad array of commercial and technology agreements to support their businesses. When an unexpected problem arises, the potential damages can be significant. As a result, FinTech contracts must allocate risk carefully to improve predictability.

FinTech companies also operate in a rapidly evolving and complex technology, intellectual property, and business environment. The technologies and

standards that a company uses must change to meet demands for greater security and reduced fraud. Accordingly, agreements that touch on the development, licensing, and commercialization of products and services often need to anticipate and accommodate future changes. When structuring FinTech transactions, contracts should be structured to focus on strategic objectives, provide for flexibility in the face of rapid change, and allocate key risks in a manner that enhances predictability.

M&A and IPOs

The recent investment boom in the FinTech sector highlights the importance of thinking strategically about growth and exit opportunities. To maximize returns on these opportunities, FinTech startups must manage not only challenges that are typical to startups (such as protection of IP and business methods), but also challenges that are unique to the FinTech sector. These challenges include navigating the broad range of laws and regulations introduced in recent years, targeting consumer protection, and privacy, among others. As mobile payments, virtual currencies, and crowdfunding platforms continue to grow, government agencies such as the FTC and the Consumer Financial Protection Bureau are likely to further focus their enforcement efforts on the FinTech sector.

Well-represented FinTech startups can turn these challenges into opportunities. By building strong IP and compliance protections early on – when the implementation costs are lower – a company can ensure that they are in the strongest possible position when an exit opportunity arises. Once there, the company will need to navigate the numerous challenges that are bound to arise in a strategic transaction, be it a private investment, a merger and acquisition, or an IPO.



Obrea Poindexter
Partner
Washington, D.C.
(202) 887-8741
opoindexter@mofo.com



Susan McLean
Of Counsel
London
44 (20) 79204045
smclean@mofo.com



Joshua Klayman
Of Counsel
New York
(212) 336-4085
jklayman@mofo.com



Angela Kerek
Partner
Berlin
49 0(30) 72622-1324
akerek@mofo.com



Kristina Ehle
Partner
Berlin
49 (0)30 72622-1346
kehle@mofo.com

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NEW YORK NORTHERN VIRGINIA PALO ALTO SAN DIEGO SAN FRANCISCO
SHANGHAI SINGAPORE TOKYO WASHINGTON, D.C.

RESOURCES

Blockchain + Smart Contracts

Overview

What is Blockchain?

Building Block(Chain)s

The (Heart)Beat Has Sounded

Hype or Hero? Demystifying Blockchain

The Internet of Things

EU Moves Toward Regulating Virtual Currencies

Morrison & Foerster's Blockchain + Smart Contracts Group provides a holistic, comprehensive approach to the emerging blockchain, smart contracts and distributed ledger space. Our cross-practice, cross-industry, global team unites attorneys in our [finance](#), [mergers and acquisitions](#), [investment](#), [technology transactions](#), [real estate](#), [financial services](#), [FinTech](#), [intellectual property](#), [privacy + data security](#), [capital markets](#), [tax](#), [restructuring](#), and other legal content areas and provides our clients with cutting-edge knowledge and strategic guidance. The following resources provide an in-depth look at blockchain, smart contracts and other distributed ledger technologies. Whether you are just getting started in blockchain or have deep industry expertise, we are here to help. Contact us at blockchain@mof.com.



Article

What is Blockchain?

What are Blockchain and Smart Contracts? Are they just about FinTech?



Client Alert

Building BlockChains(s)

6 Key Findings – and Featured Predictions – From the World Economic Forum's Blockchain Report



Client Alert

The (Heart)Beat Has Sounded

The World Economic Forum Places Blockchain Front and Center

Meet Our Blockchain + Smart Contracts Chair



Joshua Klayman

The Wall Street Blockchain Alliance Appoints Joshua Klayman to Lead Legal Working Committee



Client Alert

Hype or Hero?

Demystifying Blockchain and Distributed Ledger Technology



Blog Post

The Internet of Things

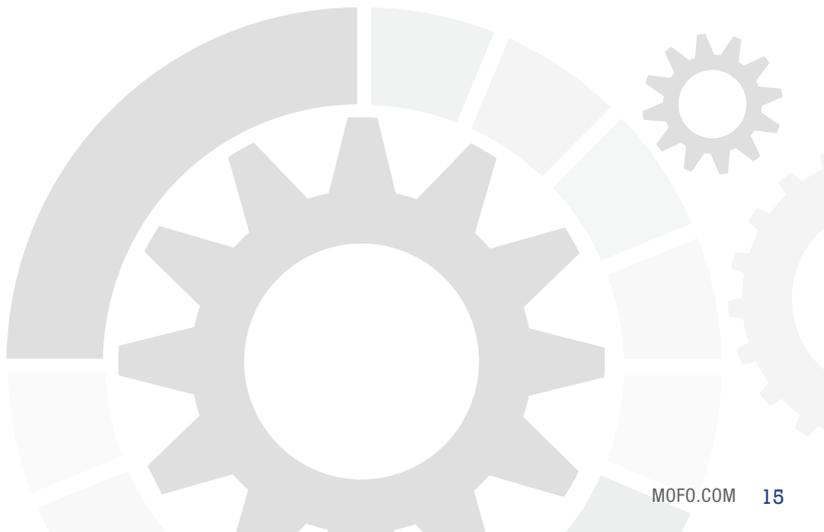
Evaluating the Interplay of Interoperability, Industry Standards, and Related IP Licensing Approaches



Article

EU Moves Toward Regulating Virtual Currencies, Blockchain

New Task Force in the EU Could Transform Financial Services



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