

## 5 Trends to Watch: 2024 Financial Services Litigation

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1. **Increasing Regulatory and Enforcement Risk** – As we enter an election year, and considering the government’s aggressive hiring, financial institutions can expect to see increased activity by federal and state regulators and enforcement authorities, including the DOJ, SEC, CFTC, CFPB, FINRA, and State AGs. Jurisdictional creep continues to be of concern. We expect key rulings in the cryptocurrency space. Focus on AML/sanctions issues likely will also increase, with the Deputy AG describing “sanctions as the new FCPA.” We continue to watch the impact of the SEC’s new cyber rules and reporting obligations and look for upcoming guidance from FINRA and other agencies on their priorities. Additional risk from the Corporate Transparency Act is also expected. We can also expect tag-along civil actions resulting from consent orders and DPAs, including derivative lawsuits.
2. **Fair Lending Issues** – We expect a continuing push in this space, not just at CFPB, but also the prudential regulators and DOJ. Small business credit, redlining allegations, pricing issues, and traditional cases can be expected with vigor. This year may bring about the first public instance of fair lending issues crossing with artificial intelligence. There may also be a UDAAP case involving fair lending, artificial intelligence, and allegations of unfair treatment – alleging, among other things, false advertising and/or deception in the way in which the product or opportunity was described and/or the outcome of the decision.
3. **Expanding Fraud** – Advances in technology, the sophistication of schemes, and other variables create an increasing risk of fraud across all product areas, including in the M&A space, as financial institutions seek to expand and grow their businesses in other areas. Payment fraud schemes will continue to grow. The plaintiffs’ bar will continue looking for opportunities to expand bank liability for the fraudulent conduct of others, including through lowering applicable legal standards, expanding the reach of existing laws, and focusing on AML and other policies as the basis for holding banks responsible.
4. **Increasing Use of Arbitration/Mass Arbitration** – As it becomes more clear that consumer and other arbitration provisions are here to stay for the foreseeable future, plaintiffs’ counsel continue to find more ways to use arbitration and mass arbitration as an offensive tool. Financial institutions can expect increased use of arbitration and mass arbitration across product lines as a tool for addressing common claims, trying out new case theories and forum shopping, and, for mass arbitrations especially, obtaining additional fee and cost leverage to

pressure outcomes. With some arbitration forums not inclined to change their rules to address misuse and/or potential overreach, we can expect arbitration to be considered a more viable alternative for some claimants and for certain types of claims.

5. **Rising Use of Data and Artificial Intelligence** – Financial institutions can expect increased scrutiny and monitoring as artificial intelligence and data is used and relied upon in decision making. Plaintiffs' counsel continue to look for new ways to assert privacy and related claims, including through online use, terms and conditions, and the use of data when making decisions or taking other actions. Lending and other credit decisions will be closely watched for unfair treatment and other claims. That includes unintended consequences resulting from the use of such data.

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