

## Banking Group Of The Year: Cravath

By **Chart Riggall**

*Law360 (January 24, 2024, 2:03 PM EST)* -- Landing the plane of the voluntary self-liquidation of cryptocurrency-aligned bank Silvergate Capital was one of the achievements that won Cravath Swaine & Moore LLP a spot among Law360's 2023 Banking Groups of the Year.

Working amid the instability that rocked the crypto-finance world in 2023, Cravath's team guided the bank through its wind-down without the help of precedents to study, the firm's attorneys said.

"For all my years in both government service and the private sector, I have not encountered an entity that self-liquidated," said partner Jelena McWilliams, who served as chairman of the Federal Deposit Insurance Corp. from 2018 to 2022. "So we thought, alright, the bank is going to self liquidate — how hard can that be?"

The bank's financial struggles coincided with a widespread scandal related to services it provided for defunct and allegedly fraudulent crypto exchange FTX. Silvergate reported a \$1 billion loss and a considerable flight of customer deposits in the quarter after FTX's collapse.

McWilliams — now the managing partner of Cravath's Washington, D.C., office — told Law360 that regulators on the other side of the table were likewise feeling their way through the process.

"Very few [regulators] have seen a case of a bank self-liquidating. ... Usually a bank gets absorbed in a merger into another entity, or it fails, surrendering the charter and the deposit insurance and all of that," she said. "It has been just a really interesting learning experience, frankly, and one that we hope we don't have to replicate with other banks. ... But it's certainly something that I think very few law firms and lawyers have had exposure to."

McWilliams credited the roster of former regulators in the D.C. office with being able to grasp both the black-and-white legal issues of a given matter and the broader implications for the industry.

"[We have] the ability to not only understand what the legal issue is ... but for something that hasn't been really done before, quite often it goes above and beyond that," she said. "It goes to the question of what is good policy."

"Being able to bring that perspective, frankly, is what has allowed us to navigate quite a few, I will say,



uncharted issues in some of the matters, specifically with liquidation," McWilliams added.

Also in 2023, the firm defeated an antitrust suit brought against several of the country's largest banks by stock lending platform SL-x. The company, which shuttered in 2014, claimed the banks caused its failure by locking it out of the market.

While Cravath, which represented Morgan Stanley, notched an initial dismissal of the claim in New York federal court in 2021, it was in March 2023 that the firm secured victory at the appellate level by successfully arguing the statute of limitations in the case had run.

"One of their arguments was that they hadn't gone completely bankrupt — they actually sold their IP much more recently — and their view was that the statute of limitation should be extended, at least until that time, because their damages in their view continued until they finally sold off all of their property," said litigation partner Lauren Rosenberg, who said accepting that argument would have created an "odd exception in which you could essentially indefinitely toll the statute of limitations."

"The real test should be when the alleged conspiratorial conduct ceased," Rosenberg added. "None of the financial institutions said that they wanted to do business with them. Every one had unanimously indicated that they weren't interested in working with the plaintiff company."

Meanwhile, in the financing sector, Cravath represented the arranger in several credit facility deals for industrial technology company Crane NXT and customer-facing technology firm Concentrix Corp. in transactions that ranged from \$800 million to over \$1.3 billion in value.

Jed Zobitz, managing partner of Cravath's corporate department, told Law360 the firm just as often represents the borrower in such transactions, giving it a full picture of all parties' needs.

"We think it's very helpful to the practice, and frankly, to the clients on both sides. It's always good when you're not looking at problems from the same perspective continually," he said.

The partners agreed that much of the group's success is attributable to the quality of its associates who rotate among Cravath's practice areas to develop a broad base of expertise. Attorneys at all three of the firm's offices — in New York, Washington, D.C., and London — all touch on banking-related matters.

"We try to find our niche in the market, which is the deals that are a little bit more unique, in terms of having more structuring considerations, [and] are a little bit more complicated to execute," Zobitz said. "That broad background of our lawyers, and the broad training we have, really facilitates an ability to be creative and come up with structures that work for those unique deals."

Added Rosenberg: "A necessary component of that, in the same way, is that it also allows us to know our associates really well on our teams. That's true in litigation, in the same way it is in corporate."

"We have relatively small teams that we work with," she said. "We then get to know those associates incredibly well. So in a way, we're able to mentor them much, much more closely than you would in another system. It obviously allows us to train them, but it also means that we know them as people."

--Editing by Linda Voorhis.

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