

## Fintech Group Of The Year: Cravath

By Elise Hansen

*Law360 (February 18, 2022, 3:13 PM EST)* -- Cravath Swaine & Moore LLP helped steer some of 2021's biggest moments in fintech, including Robinhood's initial public offering and "meme stock" litigation and Block's \$29 billion acquisition of Afterpay, earning the firm a spot among Law360's 2021 Fintech Groups of the Year.

Fintech burst into the spotlight last year, garnering headlines surrounding retail stock trading, cryptocurrencies, digitization trends and blockbuster corporate deals. Fintech issues have also been top of mind for a wide range of regulators as they grapple with applying existing regulations to new technology.

Cravath has been on the front lines of several key fintech moments of 2021, and is working with industry clients and government officials to help hone the regulatory landscape that will shape the space moving forward.

Cravath's fintech attorneys are mostly located in its New York and London offices, but their work routinely crosses state and national lines and frequently requires interdisciplinary expertise. Roughly 10 partners comprise the firm's core group of fintech practitioners — each with specialties like tax, capital markets or litigation — and Cravath's generalist approach means that many other partners frequently support and weigh in on fintech matters, partner Dave Kappos said.

"We cover fintech issues wherever they occur," Kappos said. "So many of them are international or even global in nature that we frequently play a role of coordinating global matters involving fintech and working with individuals, specific firms and specific countries where needed in order to deal with those kinds of matters."

Cross-border and interdisciplinary expertise were key to Cravath's role in steering Block Inc.'s deal to buy Afterpay Ltd. Block, previously known as Square, is a payment technology heavyweight headquartered in the U.S., while buy-now, pay-later firm Afterpay makes its home in Australia.

Cravath was brought in by Afterpay to "quarterback" the deal, as Kappos put it. The blockbuster acquisition, Australia's largest-ever buyout, illustrates the ballooning popularity of buy-now, pay-later offerings, especially since the onset of the pandemic. On top of the deal size, the firm had to delve into the complexities of one of fintech's pivotal features — data.



"Data becomes so pervasive in these deals," Kappos said.

Legal and regulatory requirements vary by jurisdiction, and the firm grappled with questions around how long data can be stored, whether it's personally identifiable and who controls the physical infrastructure underpinning the digital storage, Kappos said.

Regulations are also in a near-constant state of flux, partner David Portilla noted.

"When you're thinking about a deal with a fintech company, one of the issues that's acute now is that the regulatory landscape is shifting under our feet," he said. "You need to be able to advise the client not just on what the regulations say, but where the regulatory landscape is going, and then using that to make a risk-based decision about how to factor that in to the transaction."

Portilla said the firm is always striving to maintain that perspective by staying "in the flow" of conversation between clients and regulators. Last year, for example, Cravath represented various trade associations submitting comments to the Basel Committee about the prudential treatment of crypto-asset exposures. Cravath attorneys also submitted comments to the Federal Reserve regarding who should have access to the Fed's payment system.

The firm's work for Robinhood, the popular stock-trading platform, also involves a sophisticated understanding of the regulatory landscape and data and information technology. Cravath advised Robinhood in its \$2.1 billion initial public offering, which Kappos called "a huge effort."

In addition to questions around user information, companies like Robinhood "bring on really interesting issues involving cybercrime and fraud detection and cyber intrusion detection," Kappos said, noting that those are "important kinds of issues that come up in helping to deal with the IPO for a company like that — or any fintech transaction for companies like that."

Cravath is also spearheading Robinhood's defense against claims related to last year's "meme stock" trading wars. Robinhood temporarily blocked customers from buying several highly volatile stocks such as GameStop and AMC Entertainment Holdings, in the midst of a surge of popular demand mostly driven by retail traders.

Those stocks' prices plunged shortly after, and Robinhood found itself facing an onslaught of legal claims that have since been consolidated into multidistrict litigation. The company recently triumphed over state law claims of negligence and breach of fiduciary duty, among others, although the plaintiffs have vowed to appeal.

In another "tranche" of the litigation, Robinhood is fighting to dismiss plaintiffs' federal securities law claims. A ruling on that question is still pending.

Looking ahead, Portilla said the firm is closely watching the Consumer Financial Protection Bureau as it crafts regulations around third-party access to consumers' financial data.

"The terms on which that happens will be a really important issue for how the treatment of data and how financial services develops, and for competition, so that's a really interesting [and] important area," Portilla said. "I think we've really been at the forefront of the development of the policy debate around that issue through our work with trade associations and clients."

And of course, there's also the metaverse, an emerging digital space in which technologies such as nonfungible tokens, cryptocurrencies and stablecoins are already helping shape an online economy.

"Financial transactions are very much moving into the metaverse," Kappos said. "The metaverse and the role of fintech in the metaverse is so fascinating. It's going to keep us busy for years and years."

--Additional reporting by Nathan Hale, Benjamin Horney and Jon Hill. Editing by Daniel King.

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