

# FinTech Veteran Eyes Regulatory Risks

By David Ruiz

**A**mber Dolman was doing FinTech before it was a buzzword. One of her first clients at Goodwin Procter, which she joined in 2004, was Placemark Investments LLC, a company that makes software for asset managers. Today Dolman, who is based in Boston, and her team at Goodwin Procter serve clients big and small in the FinTech spectrum. She recently sat down with The Recorder to discuss the friction between brick-and-mortar banking regulations and cutting-edge technology.

**With an industry that includes newcomers like Apple Pay to more institutional clients, what does a law firm need in building a FinTech practice?** What's unique about FinTech is you've got the financial regulatory piece of it. A lot of these, particularly the smaller tech companies, but even the big ones, don't really realize the legal minefield that they've stumbled into. It is a series of laws that were built for a different time and a different setup, so they're not always well suited to where we are now. [These laws] are designed for a



Amber Dolman, Goodwin Procter partner

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bank with a location and paper and all those sorts of things. You need a lot of flexibility and you need a lot of people who can operate in different ends of the [industry] spectrum. You also need to have the regulatory expertise so you can identify where people are stumbling and make sure that they're not in a position where they've been working on something for five years and they get to an event and they can't sell the company, go public, whatever it is they want to do, because it turns out that they don't have

money transmitter licenses where they needed, or something similar.

**What are clients asking you today and where do you find they're stumbling?** It's often less of what they're asking us and more what they don't realize, particularly with companies that think of themselves as technology companies. Some of our greatest competitors in the tech company legal space really don't have a historical financial services or regulatory practice to draw upon, so it's more that we will be talking to a client or a prospective

client who has an idea and we'll ask them if they've thought about the banking regulation or the broker dealer, because what they're doing is banking, or what they're doing is operating as a broker. And they'll say "What do you mean? We're just making software. What do you mean? We just have this particular solution."

It's something that they have not built into their thinking or their business model and it's a place where we have a real opportunity to help them get on something early and build their business in a way that isn't going to cause them to stumble. Unfortunately, I've seen on the other side, too, where we've gone to sell Company X to a large strategic buyer and the large strategic has a lot of leverage and tends to be very conservative and also has a monster legal department that constantly deals with the regulatory environment there. As a result, they end up getting a lot of price and risk concessions from the seller because the seller didn't have any kind of regulatory preparation or had taken positions that were arguably very aggressive when they were getting started out and it reduced their value on the back end.

**How does an emerging company respond when you introduce them to banking regulations that may feel outmoded?** Recently, we had one [issue] and I would say the reaction was very positive. In some sense they were grateful because they were very early on and we were able to tell them that what they were doing technically made them a bank. And in order to do it, they had to have a bank. They were very happy that that had been caught early enough in the process and they were also grateful that, with the contacts that we had in the banking world, particularly with the small, community banks, that we were able to identify for them some distressed banks that were actually for sale. They were able to go out and take a look at acquiring a bank that was out there for not an especially large amount of money and that got them off on the right foot.

**What is the hairiest issue facing your practice right now?** For me, it's really, you are dealing with federal, international and state-based regulations. This is one of the most heavily regulated industries and at this point in time, virtually everything out there is either way outdated and is not meant to apply to financial technology companies, or, it's new and it's coming under Dodd-Frank or something else, and it is broad and untested and not very well defined. Then you've got to multiply that by 50 in the U.S. And then when you're talking about technology solutions, which are designed to cross borders and they're designed not to be staying within the four square blocks around a particular institution, now you're looking outside the country. You're looking at having customers in 48 of 50 states. To be able to give clients advice is very difficult because we really can't be concrete a lot of the time and a lot of the time it's interpretive and it's forward looking and it's sort of our best advice based off what we've seen, but, you're trying to take an overlay that was designed for something else and put it on this. I imagine that will get better over the next five to 10 years, but I don't think it's ever going to be perfect. You're on one side dealing with a heavily regulated industry in post-2008—something that people have a lot of focus on—in a technology space where things are changing, on an hour-by-hour, minute-by-minute basis.

**Because of the regulatory component, how much of this practice relies on working in Washington, D.C.?** Normally, whoever is assisting the client will be based wherever [the client] is based. Grant Fondo is based out of California here. They'll travel to where the regulators are when it becomes necessary and then of course a lot of it is still just done by phone and electronic submissions and the like. It's funny. So much comes out of D.C., but there's regulators everywhere, right?