

Banking Group Of The Year: Ballard Spahr

By Taylor Arluck

Law360, New York (January 19, 2018, 4:23 PM EST) -- Ballard Spahr LLP led the pack in challenging significant Consumer Financial Protection Bureau regulations over the past year, including its outsized role in defeating a consumer arbitration regulation, landing it a spot among Law360's 2017 Banking Groups of the Year.

The firm represented the financial services industry, including major trade groups such as the Financial Services Roundtable, after the CFPB first began examining consumer arbitration. The firm ultimately helped bring about President Donald Trump's November decision to sign a resolution eliminating an agency rule that would have prevented companies from banning class actions in consumer arbitration clauses.

Alan S. Kaplinsky, co-practice leader of Ballard Spahr's consumer financial services group, said the firm's work behind the scenes, from attending CFPB field hearings to producing white papers and lobbying members of Congress, was instrumental in defeating the regulation.

"All this work was a natural evolution from the work we did during the entire rulemaking process," Kaplinsky said. "We were involved from the very beginning when the CFPB first looked at the issue of consumer arbitration."

As the de facto head of the firm's practice, which is the firm's largest at 125 lawyers, Kaplinsky spearheaded the effort to stop the consumer arbitration rule. In that role he challenged both former CFPB Director Richard Cordray and Sen. Elizabeth Warren, D-Mass., who both argued that data showed that class action litigation was better for consumers than individual arbitration. In particular, Kaplinsky said the firm used the data the agency collected for a March 2015 study on consumer arbitration to undermine the rule.

"We weaponized the CFPB's own data and torpedoed the arbitration rule with it," Kaplinsky said. "The data in the study demonstrates that arbitration is faster and more economical than litigation."

Kaplinsky also rebutted Sen. Warren's argument that consumers recovered in only a small fraction of the disputes that arbitrators resolved, saying the statistics she relied on "were riddled with mistakes." Kaplinsky and Ballard Spahr partner Mark J. Levin chronicled them on the firm's Consumer Finance



Monitor blog, which was recognized in December 2016 on the ABA Journal's 10th Annual Blawg 100.

Ballard Spahr counsel Barbara S. Mishkin has run the blog since it was formed on July 21, 2011 — one year to the day after former President Barack Obama signed the Dodd-Frank bill into law, which established the CFPB.

Mishkin pointed to the blog's wide and influential readership, which includes media outlets, private attorneys and government agencies, as part of the firm's strategy in challenging the CFPB's consumer arbitration rule and in establishing the firm's high profile in consumer finance law.

"Our blog and firm were real thought leaders on the issue of consumer arbitration and the whole battle with the CFPB. The arguments we advanced in our blog and why the regulation was ill-conceived may have influenced some lawmakers," Mishkin said.

In addition to its work on consumer arbitration, the firm has also taken on the CFPB's payday lending rule and inserted itself into the ongoing fight over who is the agency's rightful acting director.

Ballard Spahr's Jeremy T. Rosenblum, co-practice leader of the firm's consumer financial services group, has represented payday lenders, including ACE Cash Express and Advance Financial, in their fight against the CFPB's payday loan rules. The regulation, which was introduced in October, would impose an ability-to-repay test to all payday loans with a 45-day repayment term, vehicle title loans with 30-day terms and other small-dollar loans.

Rosenblum submitted comment letters to the CFPB arguing the rules were too restrictive, would limit financial services for cash-strapped consumers and would threaten the business model of payday lenders.

"I don't think the CFPB did adequate research at any APR on payday loans," Rosenblum said. "The agency plucked a number — the 36 percent rate trigger for the ability-to-repay restrictions — out of the air, because some states and consumer groups cite that number."

Payday loans, which are structured to be repaid around a consumer's pay schedule, can carry an annual rate of about 400 percent if a borrower falls behind, according to data from the CFPB. Congress is considering bipartisan legislation that would eliminate the CFPB's payday lending rule, and on Jan. 16 the CFPB said it planned to reopen the rulemaking process on payday lending regulation.

In December, Rosenblum also submitted an amicus brief on behalf of the Credit Union National Association arguing against CFPB Deputy Director Leandra English's claim to be the agency's acting director in ongoing litigation with President Trump, who appointed Office of Management and Budget Director Mick Mulvaney for the job.

Rosenblum backed the Trump administration's argument that the Federal Vacancies Reform Act empowers the president to appoint a successor to the CFPB after former acting Director Cordray stepped down. Cordray promoted English to acting director before he left the agency.

In January, a California federal judge denied English's bid to replace Mulvaney as acting director. The case is currently before the D.C. Circuit.

Given the firm's success in the consumer finance space and September merger with Minneapolis-

headquartered Lindquist & Vennum LLP, Ballard Spahr's consumer finance practice group is one to watch in 2018.

"I've always been too conservative in growing our practice out of fear that there'd be declines in the volume of work or how the economy would affect the practice," Kaplinsky said.

"I was admittedly much too conservative for a good part of my practice."

--Additional reporting by Evan Weinberger. Editing by Alyssa Miller.