

# An Ensemble Approach to Payment Systems

An Interview with  
Rebecca J. Simmons, Partner, Sullivan & Cromwell

**EDITORS' NOTE** *Rebecca Simmons developed the first synthetic triple-A rated derivatives products program for an insured U.S. bank and the first synthetic securitization of swaps receivables, and has worked with a broad range of credit risk transfer and credit-risk mitigation techniques. Simmons leads S&C's resolution planning practice, and is the lead S&C attorney representing The Clearing House on its discussions with the FDIC and other regulators concerning the resolution planning process and the implementation of Dodd-Frank's Title II.*



Rebecca J. Simmons

**FIRM BRIEF** *Headquartered in New York, Sullivan & Cromwell LLP (sullcrom.com; S&C) provides the highest-quality legal advice and representation to clients around the world. The results the firm achieves have set it apart for more than 135 years and have become a model for the modern practice of law. Today, S&C is a leader in each of its core practice areas and geographic markets. S&C's success is the result of the quality of its lawyers: the most broadly and deeply trained collection of lawyers in the world.*

## What are payment systems, and how has the legal field of payment systems evolved in the past decade?

Payment systems are a part of the “plumbing” that keeps the financial system moving – the mechanism that allows parties to move funds, or value, from one person to another. There has always been a variety of mechanisms that allow parties to do this, ranging from small-value systems aimed principally at consumers to wholesale wire transfer systems facilitating large-scale transactions. Today, payment systems include checks, credit and debit cards, the automated clearinghouse system, and funds transfer systems used for a broad range of payments, as well as other systems targeted at specific types of transactions, such as foreign exchange settlements.

Payment systems utilizing newer technologies are developing at a rapid pace, including mobile payments mechanisms, using mobile phone and other internet-based interfaces, and systems using virtual currencies.

The legal work supporting these systems has long included a number of issues, ranging from the commercial issues determining when a payment has been made and when it becomes final, to the

work involved in ensuring that systems are legally robust and able to withstand errors, participant defaults, and financial crises. As cybersecurity, anti-money laundering, and similar issues have become more pressing, the impact of those issues on payment systems and, through the payment systems, on the financial system more broadly, has also been a significant focus. As new methods and systems for making and settling payments are developed, intellectual property and related concerns are also significant elements of this field.

## What is notable about S&C's approach to handling matters relating to payment systems?

We approach most matters, including payments matters, from a functional perspective – meaning, we are focused less on being “payments lawyers” per se and more on addressing the specific range of issues that arise in any given matter. As a result, we take our usual “ensemble” approach, bringing together the lawyers who have the relevant expertise for the particular questions at issue.

In the past, S&C dealt mostly with larger financial institutions operating in the payments space, whether individually or through industry groups. However, S&C has also served smaller entities with big ideas and worked with a number of companies in the fintech arena. Large or small, we try to assemble the firm's combined resources to deliver seamless service.

## What are the greatest challenges that clients face in this area?

Given the significance of the payments function to the financial system, and the fact that payments systems are generally operated by or involve regulated financial institutions, it is essential to achieve legal certainty as to the enforceability of the participants' rights and obligations and ensure that all regulatory requirements are met. It is a challenge to help clients, who are often focused on insightful and innovative ideas, to fit their businesses into the existing regulatory framework. At times, it is necessary to achieve change in the existing legal or regulatory structure to facilitate the development of new ideas. Particularly for clients that have not previously operated in a regulated environment, the process can be frustrating.

## Where do you see financial technology and payment systems going in the future?

On the one hand, there is the ever-increasing recognition of the risks posed by the interconnectivity of the financial system through the medium

of the payment systems. This has led, and will continue to lead, to an ever more detailed analysis of the optimal structure for such systems, and a clear understanding of the enforceability of the systems' rules in the context of various types of crises. An initial “wave” of analysis, building upon the Principles for Financial Market Infrastructures, has led to a reexamination of many of the most basic questions underpinning the payment systems in the broad sense, including questions about the rights and obligations of the various participants in the systems, the effect of a failure of any of those participants on the systems, and the impact of those effects on the financial system as a whole. As other risks emerge, their impact must also be understood.

At the same time, both users and regulators are focused on increasing the benefits of an interconnected world, through faster payments, payments made in new ways, and participation by new entrants in the payments business. Virtual currencies may offer new ways of achieving these possibilities and, depending on who you ask, may increase systemic risks or offer new ways of mitigating them. As both traditional banks and new players seek to use both existing and new technologies to make faster, more convenient payments available to more users in new ways, understanding, applying, and adapting the legal structure to support those developments will continue to be a fascinating effort.

## Would you describe your path into the field and what spurred your interest?

As a summer associate at S&C, I had the opportunity to review early drafts of the FDICIA netting statute as it was being developed and was asked to identify gaps or errors. I began learning about the impact of insolvency on the operation of payment systems and other market utilities. After my third year at law school, I returned to S&C and began working on a variety of matters, including questions relating to the regulation of financial intermediaries and the treatment of payments under the UCC. I worked on the project that led to the establishment of CLS Bank International. I also worked with a consortium of banks to develop an identity certification service for use in internet-based commerce, which involved structural and regulatory issues similar to payment systems work. With my colleagues, I have also assisted in advising other financial market utilities, such as central counterparties for derivatives. More recently, we have been working with both large and small entities seeking to develop blockchain-based systems for payments and other functions. ●