
THE CONSUMER FINANCE PODCAST: A DAY IN THE LIFE OF A FINANCIAL SERVICES GENERAL COUNSEL

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Chris Willis:

Welcome to The Consumer Finance Podcast. I'm Chris Willis, the co-leader of Troutman Pepper's consumer financial services regulatory group, and we have a very special episode for you today about what it's like to be the general counsel of a financial services company. But before we explore that topic, let me remind you to visit and subscribe to our blog: ConsumerFinancialServicesLawMonitor.com, where you'll see all of our daily updates about what's going on in the consumer finance industry and check out our other podcasts. We have lots of them. We have the [FCRA Focus](#), all about credit reporting; [The Crypto Exchange](#), about all things crypto; and [Unauthorized Access](#), which is our privacy and data security podcast. All of them are available on all the popular podcast platforms. And if you like this podcast, let us know. Leave us a review on your podcast platform of choice and tell us how we're doing.

Now as I said, today we're going to have a special episode because a lot of the times on this podcast, we focus on very narrow regulatory issues that are of interest to the industry. But I thought today we'd take a step back and think about all the things that it takes to be the general counsel of a financial services company. And to help us with that, we have a new member of our team here at Troutman Pepper, Vin Thomas. Vin is an industry veteran who's been in the financial services industry for many years and has served as general counsel for a number of financial services companies, and we're really glad he's part of our team now at Troutman Pepper. So, Vin, welcome to the podcast.

Vin Thomas:

Thanks, Chris. Great to be here.

Chris Willis:

And if you don't mind, just give the audience a little bit of background about what you've done in your career.

Vin Thomas:

Yeah, absolutely. First of all, I'd like to just say I'm excited to have joined Troutman Pepper, a firm that's not only done some really great legal work for me in the past, but also one that I consider to have a best in class and comprehensive financial services practice. I do appreciate the opportunity to be here today. I'll give a little bit of my background and then turn it back over to you, Chris. I started my financial services career about 15 years ago in the subprime lending space, and not necessarily by design. Around that time, and after four to five years of being in private practice, I joined a private consumer lender in the Southeast as their in-house counsel.

And at that stage in my career, it was very much about having a chance to go in-house and try to learn how to be a general counsel.

It just so happened that once I became inundated with the complexities of the various state and federal laws and regulations as well as the other moving parts of a growing business, I knew I wanted to continue to focus on the space, and have spent, as I said, the last 15 years being a part of it. So in that role, we grew the business quickly from about 450 stores when I joined over 1500 stores and doubled the states in which we operated. My department grew there from a team of about five to around 30, and we also had convinced launching an e-commerce platform around the time I left.

After about six years, I joined another subprime lender that had a multinational omnichannel presence. Specifically, the business was operating in the US, Canada, and the UK. That company was founder and private equity sponsor owned, and after about four years, we took that company public in late 2017. I spent the next four years there as we continued to grow and expand organically and by acquisition, and I managed legal compliance, privacy, enterprise risk. Ultimately, those teams were about 45 individuals. And then my last experience before joining Troutman was with a large leased owned FinTech business that had a national presence, some very high-profile business partners, and served similar customers, but with just different financial products.

Chris Willis:

Yeah. Well, it's evident, Vin, that you've had a tremendous amount of experience in the financial services industry. We talk about consumer finance regulatory issues on this podcast a lot. So let's start the audience with that. Give us an overview of the kind of regulatory matters you've managed as a GC over your tenure in the industry, and what is your philosophy about how to handle those when you're the general counsel of the company that's the target of them.

Vin Thomas:

Sure, good question. Certainly anyone that is involved in the subprime financial services space knows that the space, as you mentioned, is highly regulated. And because of that, I've had the opportunities to work through civil investigative demands issued by the CFPB, multi-month CFPB supervisory exams, federal trade commission, post consent order, monitoring, state attorney general investigations and litigations, and then lastly, many state audits and examinations. And in fact, there are certain local municipalities that also conduct branch audits and examinations. One particular state comes to mind, but it goes without saying that all of these are typically very comprehensive. Some result in regulator action, some result in no action, some result in just ongoing monitoring communication with the regulators. But typically, when these are ongoing and oftentimes, they're ongoing at any given time, these matters are the highest priority for the GC and their teams and require almost full attention. In addition to overseeing the responses and productions, a GC will oftentimes be the point person communicating with the regulator, and certainly the voice of the company internally reporting back to management and the board of directors. And it can't be stressed enough how important it is in these types of material matters to have a highly competent and effective law firm to work with the GC.

Chris Willis:

Well, and it seems to me, Vin, too when you're talking about regulatory matters like that, in addition to just the communication skill with the regulator, the internal communication skill, and the management skill of having to manage the various pieces of the matter like document production and outside counsel and stuff like that, it seems to me that one of the most important aspects of one of these matters is judgment, having the judgment about what course to take, what outcome to try to aim for. Can you comment on that for a second?

Vin Thomas:

Absolutely. I think the judgment is a big part of a general counsel's job, being measured, taking the emotion out of decision making while there are various emotional people that are surrounding you in the various capacities in which they may be working. So absolutely judgments important. Having, as I mentioned, a close advisor or close advisors that can help the GC wade through those difficult decisions and judgment calls is very critical.

Chris Willis:

Now, I live in a regulatory world that revolves around the kinds of matters you just talked about with the CFPB or the state financial services regulators or Federal Trade Commission, folks like that, some of the state AGs. But the thing is, when you're the general counsel, you aren't just limited to financial services regulatory matters, there are others that come up too. Can you tell the audience a little bit about those?

Vin Thomas:

Sure. The public company context, I mentioned that we took the second company I referenced in my intro, public, and I was there for about four years and then the last organization I joined was public. And it's part of being a public company. Unfortunately there are other regulators as you mentioned to that a GC will oftentimes deal with or a company will oftentimes deal with. So, I've worked through FINRA inquiries, SEC investigations, and then just to mention, not necessarily a regulator matter, but potentially resulting shareholder class action litigation. But these are similar in terms of priority to some of the matters I mentioned earlier. And the pressure point for the GC is that while these have to be managed effectively, the business continues to run, and the company needs the everyday legal compliance support that it's accustomed to receiving. So, there's oftentimes friction there for the general counsel, and his or her legal department.

Chris Willis:

So now let me take even a further step back. We've talked about regulatory matters or the day-to-day stuff, but beyond those things, what are some of the other things a general counsel of a financial services company would have in his or her sort of wheelhouse in his or her daily or normal responsibilities?

Vin Thomas:

So many of these companies in this sector are growth companies, which is very exciting, and with that growth comes a need for capital. There are various ways to raise capital, a GC should expect to work closely with the CFO and oftentimes the CEO on these efforts. And so, whether the company is raising debt through term or revolving credit facilities for growth or in other ways like offering high yield bonds, these transactions again, are time-consuming and many cases require an in-house lawyer or GC's full attention because of the critical nature of the transaction.

Chris Willis:

And as it relates to these transactions, as you said, they're really critical to the company's business success, but it's a world that I don't really know that much about. Can you give me an idea and our listeners too about what is the GC's typical role in these kinds of transactions?

Vin Thomas:

In most cases, a lender or an underwriter's primary interest in these deals outside of the deal points themselves is the regulatory and compliance risk associated with the debt. Oftentimes, the lender will engage outside lawyers to conduct a comprehensive diligence on the business and work with a borrower, or in this case the company's internal counsel to provide detailed information to the lender. This will typically be done in the form of setting up a data room and providing, in some cases, up to five years of materials to the lender and the lender's external counsel for review.

The lender and the lender's counsel will review those and then subsequently set up follow-up calls and discussions with the company, with the borrower, but also joined by borrowers' counsel and joined by lender and lenders' counsel about various matters from the consumer facing disclosures, outstanding litigation, past litigation, current regulatory exams and audits, the regulatory climate, legislative risk, and various other risk associated with the business. To put it plainly, Chris, and just like in any other lender-borrower relationship, the lender's primarily focus on getting paid back, and what the regulatory and legal risk exist that could put that likelihood in jeopardy.

Chris Willis:

And those regulatory risks are obviously quite familiar to our audience and to me too, but in addition to the due diligence aspect of these commercial finance transactions, what other components of the deal should the GC expect to be focusing on?

Vin Thomas:

The transaction documents are going to be a key focus on getting from term sheet to signing and ultimately a closing. As I've learned, time kills deals, and typically this is due to the changing macroeconomic factors that the business and the lender ultimately have no control over. But because of this, the documents must move quickly. And so these documents become a priority for the GC in addition to managing the diligence. And this entails the GC's own review and comprehension of the various open deal terms, legal and business, continuously keeping

the CEO and the leadership team and often the board of directors informed, but also managing effectively the company's external deal counsel to keep these documents a priority. And so again, having effective outside counsel is critical here for a general counsel.

Chris Willis:

So we talked about these transactions by which the company is going to raise capital through debt financing, but what about the other side of it? Because companies will raise capital through equity deals as well. Talk to the audience about what a GC's role is in connection with those kinds of equity transactions.

Vin Thomas:

In the private company context, a GC may be involved with an equity capital raise in the form of, it may be an angel investor, venture capital investment or a private equity sponsor investment. And while the investment in return on capital focus for these investors is different than in the debt context, the process really for the GC and for the company's in-house legal team will look very similar. And that is comprehensive legal, regulatory and compliance diligence on the business, and then detailed negotiations and drafting the transaction documents. The nuance here that is in the public company context, a company may decide to offer equity to the public markets through an initial public offering or a SPAC transaction.

The latter of those two, as many of the listeners now is very popular over the last couple years. For these transactions, the underwriter of the transaction, typically a large investment bank, will lead the company through a similar process as described above with a focus on the regulatory environment and the risk to the company. But the added element for these public transactions is that the Securities and Exchange Commission must be involved as the company moves through the process of preparing to offer equity to the public markets. And a GC will partner with the CFO, maybe the chief accounting officer as well to submit various forms, filings and materials to the SEC pursuant to the 1933 Securities Act.

Chris Willis:

So Vin, we've talked about different financing mechanisms, debt and equity that a financial services company has to try to facilitate organic growth, but that's not the only growth that happens in the industry. There's plenty of times when there are combinations between companies in the industry. So give me a little bit about a GC's role in connection with these kinds of business combinations that can occur that we see so frequently in the industry.

Vin Thomas:

Yeah, high growth companies in the financial services space, as you mentioned, will oftentimes grow by way of merger and acquisition, and sometimes dispose of a profitable or other times a lagging business unit as well. But in the acquisition or merger context, a GC's role will shift from being diligence by the lender or underwriter to performing the diligence on the acquisition or merger target on behalf of the company. And again, these deals move quickly and a GC must manage the process of reviewing the target's compliance and legal disclosures, must also assess the various risk associated with the business, analyze redundancies, and then of course,

negotiate and opine on the various deal documents, including the disclosures of the primary purchase agreement.

So the role of the GC here shifts Chris from one that is responding and explaining many things about his or her own company, to actually looking into the target and determining what some of the risks are associated with the target.

Chris Willis:

Got it. And we've covered a huge amount of responsibilities that a general counsel can have in a financial services company, but there's more. And so one of the things that I also wanted to ask you about is government relations. Legislatures can pass statutes that can be incredibly impactful to financial services companies. Where does the GC in a consumer finance company typically fit in with respect to government relations?

Vin Thomas:

Oftentimes, the GC manages the government relations and legislative affairs of the business. There are organizations that have a dedicated government relations expert on staff. Sometimes that person is the GC himself. But this is a critical function given the highly regulated environment at the state and federal level. It entails working with internal and external lobbyists, industry trade associations, external legal counsel like Troutman and other businesses in the space to ensure that the industry's voice and position on legislation and regulation is being heard.

Sometimes companies in the space align themselves on certain issues. Sometime because the businesses throughout the industry are somewhat nuanced, you will have companies that take different positions on potential legislation, which creates additional complications trying to get the industry in alignment. But in my experience, boards of directors are oftentimes very interested in this part of the business and support active engagement and management by the general counsel and their team.

Chris Willis:

Okay. Well, there is one more elephant in the room with us Vin, and that's consumer litigation, which is incredibly common in our industry. I imagine the general counsel has a significant role to play in both trying to prevent litigation, and then managing it once it happens. So can you speak to that for a few minutes?

Vin Thomas:

Yeah, I think to your point, litigation is a big part of the general counsel's job description. Many general counsels I've met, it's the least fun part of their job because it's not building something. However, trying to prevent and mitigate litigation in my opinion, starts with having best in class customer consumer disclosures, and it's incumbent on the general counsel and legal department at regular intervals to ensure documents and disclosures are up-to-date and in compliance with the ever-changing legal environment and regulatory environment. And whether this means completing an internal audit, bringing in external compliance and legal counsel to

perform the audit or some regular combination of both, it's a key part of mitigating future litigation in my experience.

And then certainly it goes without saying that having a robust consumer arbitration and class action waiver provision and customer applications and contracts is important. The legal validity of these provisions can oftentimes hang on just a few words. So it's important to have external review of these periodically by a highly specialized and competent law firm that has expertise with these provisions. And oftentimes, these are expensive investments for a GC and for a company. But certainly, again, in my experience and opinion, well worth it as compared to the ongoing and ultimate cost of protracted consumer litigation.

Chris Willis:

Yeah, that makes sense, of course. And that's where we strive to assist clients as well to try to avoid it rather than actually being in it. And I know, Vin, that there's probably a grab bag of other things in addition to everything we've talked about so far that a general counsel has to be concerned with. Can you just mention a few of those to round out what a GC's responsibilities would include?

Vin Thomas:

Certainly, there's the general corporate work. Of course, whether you're a private company or a public company, you will have a board of directors, and the general counsel typically serves as the corporate secretary. So things as simple as drafting bylaws or articles of incorporation for a new entity that would be transacting business in a new state or a new jurisdiction or offering a new product in an existing state or jurisdiction, all of those things are managed by the team and by the GC. In addition, certainly there's just the management, the leadership aspect of the position. And as these departments grow, the investment in legal and compliance talent must grow. And the GC has the pressure point of bringing in the right individuals to help navigate through all of those matters and add value, not only to the GC, but to the various business partners and the clients that the legal department supports. And that is the marketing department, the technology department, the real estate department, you name it. Operations, management leadership is a key part of what a GC is responsible for.

Chris Willis:

Vin, thanks for that. And I really appreciate you being on the podcast today to help us take a step back and look at the entire breadth of responsibilities that a financial services general counsel has to deal with. It's been very informative to me, and I know to our audience too. And let me just say to the audience, this is one of the really special things about us having Vin on board as a member of our team, and that is we have clients who may need support in any of these areas or may even need support in all of them because maybe they are without a general counsel and they may need someone to serve in an interim capacity, or the general counsel just needs help with managing some of these things. And we pride ourselves here at our firm of having the ability to meet really any need of a financial services company. And Vin's presence here allows us to offer the full breadth of the kind of management of these issues that a financial services company might need. And we're really proud to have Vin on board and to be able to

offer that capability to our clients. So Vin, thanks again for being on the podcast and thanks of course to our audience for listening in as well.

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