

# **Banking and Financial Services Law**

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# **Banking and Financial Services Law**

**Cases, Materials, and Problems**

Second Edition

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This book is dedicated to my son  
Nicholas Charles Malloy



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## PREFACE TO THE SECOND EDITION

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In the five years since the first edition of this casebook appeared, the regulation of financial services has grown in importance and complexity. A wide range of significant legal and financial developments have had a marked impact on the financial services industry. The implications of the collapse of the savings and loan industry in the late 1980s continue to unfold. U.S. banks and bank holding companies have been granted broader authority to participate in activities that are “financial in nature,” including securities and insurance activities. Virtual banks and e-banking are becoming a quotidian reality. The federal regulators—particularly the Comptroller of the Currency and the Office of Thrift Supervision—are increasingly aggressive in their efforts to preempt the regulatory authority of individual states. International markets and regulatory developments are ever more significant to the U.S. markets. The terrorist attacks on the United States that occurred in September 2001 have prompted a renewal of U.S. statutory and regulatory interest in both offensive and defensive supervision of the banking system to combat terrorism, and an emerging international consensus has focused on antiterrorism and anti-money laundering in response to international terrorism.

These and other major developments join an even wider variety of traditional regulatory concerns in a complex mix of issues. As with the previous edition, the problem-oriented approach of this new edition focuses on the interactions and crossovers within the financial services industry today. It tries to give students an opportunity to explore the issues that are redefining financial services regulation in a way that will present them coherently and practically.

Special thanks are due to many persons for their assistance and encouragement of the completion of this new edition. Dean Elizabeth Rindskopf Parker and Associate Dean John Sprankling have been generous in their support and understanding of the burdens that preparation of even a second edition of a casebook places on an author. Many friends and colleagues at other schools have offered useful advice and observations about the previous edition that helped me to rework or replace material in this edition. I must also acknowledge Ms. Sally Snyder, Supervisor of the Faculty Secretaries’ Office, and Ms. Denai Burbank and the rest of the Faculty Secretaries for their singular efforts in keeping administrative burdens from my door while I worked on this project. My student research assistants, Ms. Suzanne Uzelac of the University of the Pacific Class of 1998 and Mr. David Richards of the University of the Pacific Class of 2004, provided invaluable and invariably reliable assistance.

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and devoted editorial assistance of my wife, Susie A. Malloy. She makes all things seem possible.

Michael P Malloy  
Dublin  
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## PREFACE TO THE FIRST EDITION

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This casebook on banking and financial services regulation covers a dynamic, evolving area of law and policy that is still experiencing the kind of dramatic transformation which occurred in securities regulation during 1933 to 1940. Indeed, it is characteristic of banking regulation that it has essentially reinvented or reformulated itself repeatedly in the past 150 years.

By some strange regulatory law of conservation of energy, however, past legal approaches seem to be preserved within each new, fundamental change. The result is that contemporary banking and financial services regulation is remarkably complex, operating in the shadow of its own history. Consider, for example, the fact that the statute that authorizes federal chartering of banks—the National Bank Act—retains many of its original 1864 provisions, but must be reconciled with major statutory developments layered on top of the Act in almost every decade of this century.

This is an area of law and policy that requires an understanding of statutory, regulatory and traditional case law sources of authority. The casebook is based on the belief that the best way to achieve this understanding is to confront directly the practical problems of banking and financial services law. Consequently, in addition to the typical cases and materials found in a traditional course on financial services law, the book includes a wide variety of concrete problems and questions. This problem-oriented approach to the subject, and its focus on the interactions and crossovers within the financial services industry today, are intended to give students an opportunity to explore the issues that are redefining regulation in this area.

Special thanks are due to several persons for their assistance and encouragement of the completion of this book. Dean Gerald Caplan and Associate Dean Kathleen M. Kelly of McGeorge School of Law, University of the Pacific, have provided both moral and material support for this project. My colleague Claude Rohwer has on more than one occasion lifted burdens so that I could concentrate on the work at hand. My student research assistant Ms. Suzanne Uzelac, of the University of the Pacific Class of 1998, has provided invaluable, and invariably thorough, assistance. Finally, this project would have been impossible to finish and of little personal interest without the devoted assistance and encouragement of my wife, Susie A. Malloy.

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