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InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

March 29, 2013

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FEDERAL ISSUES

CFPB Announces Major Update to Consumer Complaint Database. On March 28, the CFPB released tens of thousands of consumer complaints related to mortgages, student loans, bank accounts and services, other consumer loans, and credit cards. Credit reporting complaints will be released in the near future. The expanded database is a live database that is updated daily. It includes one million data points, covering approximately 450 companies, and allows users to track, sort, search, and download information. The CFPB has made the data available in formats that allow developers to build applications, conduct analyses, and perform research, and the database includes functionality to let users build their own visualizations, charts and graphs, and embed the data on other websites or share it through social media. The CFPB is encouraging consumers, analysts, developers, data scientists, civic hackers, and companies that serve consumers, to analyze, augment, and build on the public database to develop ways for consumers to access the complaint data or "mash it up" with other public data sets. The CFPB also released a fact sheet about the database, which provides some summary analysis of the data, as well as a "snapshot" report that provides information about the CFPB's complaint handling process and additional summary presentation of the data. The CFPB also held a field hearing to review the complaint database and solicit public feedback. Consumer groups participating in the event repeatedly stressed the need for more specific data, including the full narrative description of complaints submitted by consumers, while industry representatives continued to caution the regulator about risks associated with unverified data.

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Federal Reserve Board Announces BSA/AML Enforcement Action against Bank Holding Company. On March 26, the Federal Reserve Board released a recent enforcement action against a bank holding company related to deficiencies in certain of its bank subsidiaries' Bank Secrecy Act and anti-money laundering (BSA/AML) compliance programs, as reflected in 2012 orders from the OCC and the FDIC requiring the subsidiary banks to remedy certain BSA/AML compliance deficiencies. Nearly a year later, the Federal Reserve Board order charges that the holding company lacked effective systems of governance and internal controls to adequately oversee the activities of the banks with respect to legal, compliance, and reputational risk related to the banks' respective BSA/AML compliance programs. The order requires the holding company to (i) submit a plan to continue to improve the governance, structure, and operations of its BSA/AML and OFAC regulations compliance risk management program; and (ii) complete a review of the effectiveness of its firmwide BSA/AML compliance program and prepare a report. In addition, the company's board must (i) submit a written plan to continue ongoing enhancements to its oversight of the company's firmwide BSA/AML compliance risk management program; (ii) review the above-referenced BSA/AML compliance program report and submit a plan with specific actions the company will take to continue to strengthen the management and oversight of its firmwide compliance program; and (iii) submit quarterly progress reports. The Federal Reserve Board order does not include a civil money penalty.

Federal Reserve Board Report Reviews Consumer Use of Mobile Financial Services. On March 27, the Federal Reserve Board presented the findings of a November 2012 online survey of consumers' use of mobile technology to access financial services and make financial decisions. The report follows a related March 2012 Federal Reserve Board report, and includes the Board's general findings that (i) mobile phones and mobile Internet access are in widespread use, (ii) the ubiquity of mobile phones is changing the way consumers access financial services, (iii) mobile phones are also changing the way consumers make payments, (iv) security and usefulness concerns continue to be the main impediments to the adoption of mobile financial services, (v) smartphones are changing the way people shop, and (vi) mobile phones are prevalent among unbanked and underbanked consumers. The report points out that the use of mobile phones to make payments at the point of sale has increased more rapidly than the use of mobile phones for banking, and that there is "substantial growth potential" for mobile payments as the ability to make them becomes more widespread.

Democratic Lawmakers Push Regulators for Independent Foreclosure Review Details. On March 25, Senator Elizabeth Warren (D-MA) and Representative Elijah Cummings (D-MD) sent a letter to Federal Reserve Chairman Ben Bernanke and Comptroller of the Currency Thomas Curry challenging the regulators' response to the lawmakers request for documents and information regarding the regulators' decision to amend a group of April 2011 consent orders with mortgage servicers and cease the Independent Foreclosure Review originally required by those orders. The lawmakers detail the responses and state that the majority of their 14 requests went unanswered. The letter notes recent reports that the foreclosure reviews revealed wrongful foreclosures of military members and borrowers who ever missed a payment, and suggests the regulators are shielding the servicers' "criminal activity."

CFPB Narrows Application of Credit Card Fee Limit. On March 28, the CFPB published a final rule to remove from Regulation Z a limitation on fees charged prior to credit card account opening. Effective immediately, the rule amends a restriction adopted by the Federal Reserve Board in April

2011, which expanded the 2009 Credit CARD Act fee limitation on certain fees charged during the first year after the account is opened to include fees charged prior to account opening. The CFPB rule eliminates the limitations on fees charged prior to account opening, and covers only those fees charged during the first year after account opening. The rule responds to a legal challenge to restricting the amount of fees charged prior to account opening, which resulted in a court issuing a preliminary injunction to halt the implementation of the Federal Reserve Board's broader application of the fee limit.

CFPB Implements Change to ATM Fee Notice Requirements. On March 26, the CFPB published a final rule to conform Regulation E to an amendment to the Electronic Fund Transfer Act enacted by Congress in December 2012 that removed the requirement that ATMs have an attached placard disclosing fees. The final rule removes the corresponding regulatory language and official commentary, and retains the remaining statutory requirement that fees be disclosed only on the ATM screen.

STATE ISSUES

Nebraska Enacts Money Transmitters Act. On March 20, Nebraska enacted LB 616, the Nebraska Money Transmitters Act. Based on a model legislative outline drafted by a trade group of money transmitter state regulators, the new law repeals and replaces the Sale of Checks and Funds Transmission Act, while incorporating the license and renewal fees, a net worth standard, surety bond requirements, change of control notices, and material changes notices of the prior Act. The bill covers the receiving of money or monetary value for transmission to another location by any means, prepaid cards, stored value cards, certain bill payment services, payment instruments, money orders, and traveler's checks. It establishes licensing standards and continuing duties, and sets up transition of the state's licensing process to the NMLS starting July 1, 2014. The law defines and provides a system of conduct for authorized delegates and grants enforcement authority to the Department of Finance over authorized delegates. Finally, the law provides administrative and criminal sanctions for violations of the Act. By state rule, the new law will take effect three months after the end of the state's legislative session, which is scheduled to conclude May 30, 2013.

Utah Alters Supervision of Money Services Businesses. On March 22, Utah enacted SB 150, a bill that modifies the Financial Institutions Act and Financial Institution Mortgage Financing Regulation Act. The bill adds a definition for money services business - to include check cashers, deferred deposit lenders, issuers or sellers of traveler's checks or money orders, and money transmitters - and adds a supervisor of money services businesses within the Department of Financial Institutions. The bill also adds additional filing requirements for check cashers and deferred deposit lenders, and changes from April 30 to December 31 the annual registration expiration date. The bill makes numerous other technical changes. Most provisions of the bill take effect on May 14, 2013.

California Considers Revisions to its Money Transmission Act. On March 11, the California State Assembly Standing Committee on Banking and Finance held a hearing entitled "Emerging Technology and the California Money Transmission Act." The hearing's purpose was to discuss the MTA's interactions with emerging technology and mobile payments and "bring common sense reforms to money transmission laws" to "account for the changes in technology." This is especially significant since the MTA has been a source of concern for many businesses because of its broad scope and limited exemptions. These concerns have been especially amplified for emerging technologies in recent years given that many new technologies and apps, in particular, are beginning to combine service and third-party payment functions into a single interface; a feature which they fear could require licensing under the MTA. The Commissioner of the California

Department of Financial Institutions noted during her testimony that the Department had received many inquiries from technology-related services since the MTA's enactment and that the Department intends to clarify the matter in the near future.

COURTS

Federal Grand Jury Returns Indictment for Alleged Servicemembers Civil Relief Act Violations. On March 28, the U.S. Attorney for the Northern District of Alabama announced that a federal grand jury had returned a two-count indictment against a used car dealer for violating the Servicemembers Civil Relief Act (SCRA). *United States v. Nuss*, No. 13-102 (N.D. Ala. Filed March, 28, 2013). According to the announcement, the indictment charged the car dealer with failing to follow the SCRA when asked to do so by an Alabama National Guard member who had been called to active duty in Afghanistan. The guardsman allegedly had sent a letter from his deployed location, in which he asked that his interest rate be reduced to six percent as required by the SCRA. According to the indictment, the dealer refused to reduce the interest rate, and hired two individuals to repossess the guardsman's vehicle without first obtaining a SCRA-required court order. The maximum penalty for each SCRA violation is one year in prison, and a $100,000 fine.

Second Circuit Revives Class Action over Frozen Bank Accounts. On March 27, the U.S. Court of Appeals for the Second Circuit certified questions to New York's highest court related to its review of a district court's holding in two cases that New York's Exempt Income Protection Act (EIPA) does not support a private right of action. *Cruz v. TD Bank, N.A.*, No 12-1200; *Martinez v. Capital One Bank, N.A.*, No. 12-1342, 2013 WL 1223320 (2nd Cir. Mar. 27, 2013). Two groups of judgment debtor plaintiffs allege that their banks failed to provide them and other members of putative classes with the notices and exemptions forms as required by the EIPA, and assert that the banks unlawfully froze their accounts and charged them various fees in violation of the statute. The district court held that the EIPA, which provides a special exemption from satisfaction of money judgments for certain amounts and types of a debtor's income, permits judgment debtors and creditors to bring claims against each other but provides no private right of action against the banks. On appeal, the court held (i) there is no controlling precedent in New York that governs the cases, (ii) the questions presented involve important issues of New York state law and policy that are likely to recur, and (iii) the questions are more appropriately resolved in New York. The Second Circuit certified to the New York State Court of Appeals two questions: (i) whether the judgment debtors have a private right of action for money damages and injunctive relief against banks that violate EIPA's procedural requirements, and (ii) whether judgment debtors can seek money damages and injunctive relief against banks that violate EIPA in special proceedings and, if so, whether those special proceedings are the exclusive mechanism for such relief or whether judgment debtors may also seek relief in a plenary action. The circuit court retained jurisdiction to resolve the issues that remain following the state court's decision.

Ohio Appeals Court Affirms Dismissal of City's Public Nuisance Suit against Financial Institutions. On March 21, the Court of Appeals of Ohio, Eighth Appellate District, affirmed a trial court's dismissal of a suit by the city of Cleveland, which sought damages from several financial institutions involved in the creation of mortgage-backed securities using subprime mortgages from Cleveland, Ohio, real estate. *Cleveland v. JP Morgan Chase Bank, N.A.*, No. 98656, 2013 WL 1183332 (Oh. Ct. App. Mar. 21, 2013). The City alleged that the institutions engaged in a practice of encouraging subprime lending in order to package mortgages together and sell the MBS to investors, and that these practices caused a foreclosure crisis in Cleveland that damaged the City and created a public nuisance. The City also brought an Ohio Corrupt Practices Act (OCPA) cause of action alleging that one institution systematically filed false or misleading paperwork in foreclosure cases. On appeal, the court held that the causal connection between the securitizing

institutions and the foreclosure crisis is too far removed, and, even under the most lenient of pleading requirements, the City's complaint fails to state a valid claim under public nuisance or the OCPA.

New York Federal Court Holds Dodd-Frank Rule Does Not Bar Late SEC Suits. On March 24, the U.S. District Court for the Eastern District of New York held that a Dodd-Frank Act rule requiring the SEC, within 180 days of notifying a target of the pendency of an investigation, to file an action or obtain an extension of time from an SEC director, does not provide for the dismissal of an enforcement action that does not comply with the rule. *SEC v. NIR Group, LLC*, No. 11-4723, slip op. (E.D.N.Y. Mar. 24, 2013). In deciding a motion in which the SEC sought to halt discovery into its compliance with the rule, the court explained that the statute does not explicitly provide for dismissal of an enforcement action that does not comply with the 180-day requirement, but that the absence of such a remedy does not render the provision superfluous. The court determined that evidence concerning compliance with the internal deadline is not relevant to the action. For that and other reasons, the court held that the evidence sought was not discoverable.

Fourth Circuit Holds FCA Statute of Limitations Tolled by Wartime Suspension of Limitations Act. The U.S. Court of Appeals for the Fourth Circuit recently held that the False Claims Act's (FCA) statute of limitations can be tolled by the Wartime Suspension of Limitations Act (WSLA) in civil *qui tam* actions in which the government does not intervene. *United States v. Halliburton ex rel. Carter*, No. 12-1011, 2013 WL 1092732 (4th Cir. Mar. 18, 2013). A former employee of a defense contractor alleged that his employer fraudulently billed the United States for water purification services in Iraq that were never actually performed, and that the practice was consistent with a scheme to routinely bill the government set hours, regardless of actual hours worked. The government declined to intervene in the case, and the district court subsequently dismissed the complaint with prejudice, finding in part that the relator's complaint was untimely filed after the FCA's statute of limitations had expired. On appeal, the Fourth Circuit held that the WSLA applies to both civil and criminal fraud claims against the United States, regardless of whether the United States has intervened, and even without a formal declaration of war. Based on those factors, the Fourth Circuit held that the relator's FCA claims were not time-barred. The court reversed the district court's decision, and remanded the case for further consideration.

MISCELLANY

New Research Suggests Need to Expand Incentives-Based View of Housing Crisis. Recently, researchers from Princeton and the University of Michigan published a paper that examines the role played in the financial crisis by distorted beliefs about house prices, as opposed to the role of poorly designed incentives that may have led institutions to take excessive risks in the housing market. The study tests whether mid-level managers in the mortgage securitization business were fully aware during the boom that housing markets were overvalued and that a large-scale crisis was likely and imminent. Looking at the house transaction activities of mortgage securitization agents, as compared to activities of certain control groups, the researchers found little systematic evidence that the average securitization agent exhibited awareness of problems in overall housing markets and anticipated a broad-based crash. The researchers believe the results suggest that securitization agents may have been subject to sources of belief distortion, such as job environments that foster group think, cognitive dissonance, or other sources of over-optimism. The researchers explain that their study potentially has implications for public policy because, they argue, policy responses to date have derived from an incentive-based view of the problem, and that fixing incentives, e.g. changing the compensation contracts of securitization agents, may be insufficient to prevent another crisis.

FIRM NEWS

Complimentary Webinar - Legal Actions by the FDIC to Recover Losses of Failed Banks: The Potential Liability of Officers and Directors.
Andrew Sandler will participate in an American Association of Bank Directors webinar on April 2, 2013, 2:00-3:15 PM ET. The webinar will the review FDIC's professional liability program, including the FDIC's program to investigate potential claims against certain directors and officers of failed banks and savings institutions, strategies to avoid or defend such suits, and strategies for ensuring that your bank's board and officers comply with their duties and mitigate the potential for personal liability from FDIC suits. For registration and other information, please click here.

Complimentary Webinar - Whistleblowers 101: DOJ, SEC, and CFPB Enforcement Trends.
Please join BuckleySandler LLP attorneys Andrew Schilling, Thomas Sporkin, and Michelle Rogers on April 11, 2013 at 2:00-3:00 PM ET, for a complimentary webinar that will provide an overview of whistleblower and recovery programs under the FCA, FIRREA, Dodd-Frank, SOX, and by the CFPB; a discussion of recent enforcement trends; and tips for preventing or mitigating whistleblower risk. For registration and other information, please click here.

Jonice Gray Tucker will speak at the American Bar Association's Business Law Section Spring Meeting on April 4, 2013 in Washington, D.C. The panel on which she is participating will focus on CFPB enforcement actions.

Jonice Gray Tucker and Valerie Hletko will moderate a panel entitled "Extreme Makeover: Consumer Protection Edition" at the American Bar Association's Business Law Section Spring Meeting on April 4, 2013 in Washington, D.C. The panel will focus on the CFPB's new regulations and related compliance expectations.

Andrew Sandler will speak at the 39th Annual Bankers Legal Conference which will be held April 4-5, 2013 at The Westin Austin at the Domain.

Andrea Mitchell and Lori Sommerfield will present a session titled "Fair & Responsible Lending in the Regulatory Crosshairs" at the 2013 Minnesota Banking Law Institute, on April 5, 2013 in Minneapolis, MN.

Jeremiah Buckley and Andrea Lee Negroni will be inducted into the American College of Consumer Financial Services Lawyers at the Mayflower Hotel in Washington, on April 6, 2013. Mr. Buckley and Ms. Negroni will jointly teach a class on American legal process to students at the China Foreign Affairs University in Beijing, China on April 21, 2013.

David Baris will speak on lessons to be learned from FDIC suits against bank directors on April 11, 2013 at the NACD/AABD Bank Directors Conference in Ft. Lauderdale.

David Whitaker will speak at Silanis' Regional E-Banking Forums for Banking Executives in Chicago, IL on April 16, 2013 and San Francisco, CA on April 18, 2013. David will discuss recent judicial and regulatory developments affecting electronic financial services.

David Baris will speak at the American Bankers Association Risk Management Forum on April 26, 2013 at the Baltimore Marriott Waterfront Hotel in Baltimore, MD. His session is entitled "Developing Effective Board Risk Management Committees".

Benjamin Klubes and Jonice Gray Tucker will speak to the Financial Services Roundtable on May 1, 2013 on the topic of Managing Fair Lending and Jonice Gray Tucker also will speak on May 2, 2013

on the topic of Litigation Trends.

James Parkinson will speak at ACI's Conference for FCPA and Anti-Corruption in the Life Sciences Industry on May 15, 2013, on a panel titled, "Managing Corruption Risks in a Transactional Setting: How to Prevent FCPA Pitfalls in Life Science Joint Ventures, Mergers & Acquisitions and Collaborations."

Andrea Mitchell will speak at an American Bankers Association Fair Lending Workshop on June 8, 2013 in Chicago, IL, offered in connection with the ABA Regulatory Compliance Conference. The Fair Lending Workshop will review current fair lending hot topics and how institutions can manage or mitigate fair lending obstacles and demonstrate compliance with fair lending laws and regulations.

FIRM PUBLICATIONS

Ben Saul, Aaron Mahler, and Jared Kelly published "Know the Standard of FDIC Liability for Community Banks" in Law360 on February 5, 2013.

David Baris and Jared Kelly recently published a book entitled "FDIC Director Suits - Lessons Learned." The authors reviewed all of the FDIC's current civil suits against directors of failed banks and savings institutions -34 cases as of the book's printing, involving over 250 directors-and extracted key points for consideration. The book is available for purchase here.

Jonice Gray Tucker and Kendra Kinnaird wrote "Mortgage Crisis Triggers Stronger Focus on Vendors," published by the National Notary Association on March 8, 2013.

Andrew Schilling, Ross Morrison, and Michelle Rogers published in Law360, "Finally, 8 Factors Governing FIRREA Civil Penalty Awards," on March 12, 2013, and "FCA Allows Treble Damages - 'But Treble What?'", on March 26, 2013.

About BuckleySandler LLP (www.buckleysandler.com)

With more than 150 lawyers in Washington, New York, Los Angeles, and Orange County, BuckleySandler provides best-in-class legal counsel to meet the challenges of its financial services industry and other corporate and individual clients across the full range of government enforcement actions, complex and class action litigation, and transactional, regulatory, and public policy issues. The Firm represents many of the nation's leading financial services institutions. "The best at what they do in the country." (Chambers USA).

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Los Angeles: 100 Wilshire Boulevard, Suite 1000, Santa Monica, CA 90401, (310) 424-3900
Orange County: 3121 Michelson Drive, Suite 210, Irvine, CA 92612, (949)398-1360

We welcome reader comments and suggestions regarding issues or items of interest to be covered in future editions of InfoBytes. Email infobytes@buckleysandler.com.

In addition, please feel free to email our attorneys. A list of attorneys can be found here.

For back issues of InfoBytes, please see: http://www.buckleysandler.com/infobytes/infobytes.

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Ohio Appeals Court Affirms Dismissal of City's Public Nuisance Suit against Financial Institutions. On March 21, the Court of Appeals of Ohio, Eighth Appellate District, affirmed a trial court's dismissal of a suit by the city of Cleveland, which sought damages from several financial

institutions involved in the creation of mortgage-backed securities using subprime mortgages from Cleveland, Ohio, real estate. *Cleveland v. JP Morgan Chase Bank, N.A.*, No. 98656, 2013 WL 1183332 (Oh. Ct. App. Mar. 21, 2013). The City alleged that the institutions engaged in a practice of encouraging subprime lending in order to package mortgages together and sell the MBS to investors, and that these practices caused a foreclosure crisis in Cleveland that damaged the City and created a public nuisance. The City also brought an Ohio Corrupt Practices Act (OCPA) cause of action alleging that one institution systematically filed false or misleading paperwork in foreclosure cases. On appeal, the court held that the causal connection between the securitizing institutions and the foreclosure crisis is too far removed, and, even under the most lenient of pleading requirements, the City's complaint fails to state a valid claim under public nuisance or the OCPA.

Fourth Circuit Holds FCA Statute of Limitations Tolled by Wartime Suspension of Limitations Act. The U.S. Court of Appeals for the Fourth Circuit recently held that the False Claims Act's (FCA) statute of limitations can be tolled by the Wartime Suspension of Limitations Act (WSLA) in civil *qui tam* actions in which the government does not intervene. *United States v. Halliburton ex rel. Carter*, No. 12-1011, 2013 WL 1092732 (4th Cir. Mar. 18, 2013). A former employee of a defense contractor alleged that his employer fraudulently billed the United States for water purification services in Iraq that were never actually performed, and that the practice was consistent with a scheme to routinely bill the government set hours, regardless of actual hours worked. The government declined to intervene in the case, and the district court subsequently dismissed the complaint with prejudice, finding in part that the relator's complaint was untimely filed after the FCA's statute of limitations had expired. On appeal, the Fourth Circuit held that the WSLA applies to both civil and criminal fraud claims against the United States, regardless of whether the United States has intervened, and even without a formal declaration of war. Based on those factors, the Fourth Circuit held that the relator's FCA claims were not time-barred. The court reversed the district court's decision, and remanded the case for further consideration.

New Research Suggests Need to Expand Incentives-Based View of Housing Crisis. Recently, researchers from Princeton and the University of Michigan published a paper that examines the role played in the financial crisis by distorted beliefs about house prices, as opposed to the role of poorly designed incentives that may have led institutions to take excessive risks in the housing market. The study tests whether mid-level managers in the mortgage securitization business were fully aware during the boom that housing markets were overvalued and that a large-scale crisis was likely and imminent. Looking at the house transaction activities of mortgage securitization agents, as compared to activities of certain control groups, the researchers found little systematic evidence that the average securitization agent exhibited awareness of problems in overall housing markets and anticipated a broad-based crash. The researchers believe the results suggest that securitization agents may have been subject to sources of belief distortion, such as job environments that foster group think, cognitive dissonance, or other sources of over-optimism. The researchers explain that their study potentially has implications for public policy because, they argue, policy responses to date have derived from an incentive-based view of the problem, and that fixing incentives, e.g. changing the compensation contracts of securitization agents, may be insufficient to prevent another crisis.

BANKING

Federal Reserve Board Announces BSA/AML Enforcement Action against Bank Holding Company. On March 26, the Federal Reserve Board released a recent enforcement action against a bank holding company related to deficiencies in certain of its bank subsidiaries' Bank Secrecy Act and anti-money laundering (BSA/AML) compliance programs, as reflected in 2012 orders from the

OCC and the FDIC requiring the subsidiary banks to remedy certain BSA/AML compliance deficiencies. Nearly a year later, the Federal Reserve Board order charges that the holding company lacked effective systems of governance and internal controls to adequately oversee the activities of the banks with respect to legal, compliance, and reputational risk related to the banks' respective BSA/AML compliance programs. The order requires the holding company to (i) submit a plan to continue to improve the governance, structure, and operations of its BSA/AML and OFAC regulations compliance risk management program; and (ii) complete a review of the effectiveness of its firmwide BSA/AML compliance program and prepare a report. In addition, the company's board must (i) submit a written plan to continue ongoing enhancements to its oversight of the company's firmwide BSA/AML compliance risk management program; (ii) review the above-referenced BSA/AML compliance program report and submit a plan with specific actions the company will take to continue to strengthen the management and oversight of its firmwide compliance program; and (iii) submit quarterly progress reports. The Federal Reserve Board order does not include a civil money penalty.

Federal Reserve Board Report Reviews Consumer Use of Mobile Financial Services. On March 27, the Federal Reserve Board presented the findings of a November 2012 online survey of consumers' use of mobile technology to access financial services and make financial decisions. The report follows a related March 2012 Federal Reserve Board report, and includes the Board's general findings that (i) mobile phones and mobile Internet access are in widespread use, (ii) the ubiquity of mobile phones is changing the way consumers access financial services, (iii) mobile phones are also changing the way consumers make payments, (iv) security and usefulness concerns continue to be the main impediments to the adoption of mobile financial services, (v) smartphones are changing the way people shop, and (vi) mobile phones are prevalent among unbanked and underbanked consumers. The report points out that the use of mobile phones to make payments at the point of sale has increased more rapidly than the use of mobile phones for banking, and that there is "substantial growth potential" for mobile payments as the ability to make them becomes more widespread.

CFPB Implements Change to ATM Fee Notice Requirements. On March 26, the CFPB published a final rule to conform Regulation E to an amendment to the Electronic Fund Transfer Act enacted by Congress in December 2012 that removed the requirement that ATMs have an attached placard disclosing fees. The final rule removes the corresponding regulatory language and official commentary, and retains the remaining statutory requirement that fees be disclosed only on the ATM screen.

Second Circuit Revives Class Action over Frozen Bank Accounts. On March 27, the U.S. Court of Appeals for the Second Circuit certified questions to New York's highest court related to its review of a district court's holding in two cases that New York's Exempt Income Protection Act (EIPA) does not support a private right of action. *Cruz v. TD Bank, N.A.*, No 12-1200; *Martinez v. Capital One Bank, N.A.*, No. 12-1342, 2013 WL 1223320 (2nd Cir. Mar. 27, 2013). Two groups of judgment debtor plaintiffs allege that their banks failed to provide them and other members of putative classes with the notices and exemptions forms as required by the EIPA, and assert that the banks unlawfully froze their accounts and charged them various fees in violation of the statute. The district court held that the EIPA, which provides a special exemption from satisfaction of money judgments for certain amounts and types of a debtor's income, permits judgment debtors and creditors to bring claims against each other but provides no private right of action against the banks. On appeal, the court held (i) there is no controlling precedent in New York that governs the cases, (ii) the questions presented involve important issues of New York state law and policy that are likely to recur, and (iii) the questions are more appropriately resolved in New York. The Second Circuit certified to the New York State Court of Appeals two questions: (i) whether the judgment debtors have a private right of action for money damages and injunctive relief against banks that violate

EIPA's procedural requirements, and (ii) whether judgment debtors can seek money damages and injunctive relief against banks that violate EIPA in special proceedings and, if so, whether those special proceedings are the exclusive mechanism for such relief or whether judgment debtors may also seek relief in a plenary action. The circuit court retained jurisdiction to resolve the issues that remain following the state court's decision.

CONSUMER FINANCE

CFPB Announces Major Update to Consumer Complaint Database. On March 28, the CFPB released tens of thousands of consumer complaints related to mortgages, student loans, bank accounts and services, other consumer loans, and credit cards. Credit reporting complaints, will be released in the near future. The expanded database is a live database that is updated daily. It includes one million data points, covering approximately 450 companies, and allows users to track, sort, search, and download information. The CFPB has made the data available in formats that allow developers to build applications, conduct analyses, and perform research, and the database includes functionality to let users build their own visualizations, charts and graphs, and embed the data on other websites or share it through social media. The CFPB is encouraging consumers, analysts, developers, data scientists, civic hackers, and companies that serve consumers, to analyze, augment, and build on the public database to develop ways for consumers to access the complaint data or "mash it up" with other public data sets. The CFPB also released a fact sheet about the database, which provides some summary analysis of the data, as well as a "snapshot" report that provides information about the CFPB's complaint handling process and additional summary presentation of the data. The CFPB also held a field hearing to review the complaint database and solicit public feedback. Consumer groups participating in the event repeatedly stressed the need for more specific data, including the full narrative description of complaints submitted by consumers, while industry representatives continued to caution the regulator about risks associated with unverified data.

Federal Grand Jury Returns Indictment for Alleged Servicemembers Civil Relief Act Violations. On March 28, the U.S. Attorney for the Northern District of Alabama announced that a federal grand jury had returned a two-count indictment against a used car dealer for violating the Servicemembers Civil Relief Act (SCRA). *United States v. Nuss*, No. 13-102 (N.D. Ala. Filed March, 28, 2013). According to the announcement, the indictment charged the car dealer with failing to follow the SCRA when asked to do so by an Alabama National Guard member who had been called to active duty in Afghanistan. The guardsman allegedly had sent a letter from his deployed location, in which he asked that his interest rate be reduced to six percent as required by the SCRA. According to the indictment, the dealer refused to reduce the interest rate, and hired two individuals to repossess the guardsman's vehicle without first obtaining a SCRA-required court order. The maximum penalty for each SCRA violation is one year in prison, and a $100,000 fine.

SECURITIES

New York Federal Court Holds Dodd-Frank Rule Does Not Bar Late SEC Suits. On March 24, the U.S. District Court for the Eastern District of New York held that a Dodd-Frank Act rule requiring the SEC, within 180 days of notifying a target of the pendency of an investigation, to file an action or obtain an extension of time from an SEC director, does not provide for the dismissal of an enforcement action that does not comply with the rule. *SEC v. NIR Group, LLC*, No. 11-4723, slip op. (E.D.N.Y. Mar. 24, 2013). In deciding a motion in which the SEC sought to halt discovery into its compliance with the rule, the court explained that the statute does not explicitly provide for dismissal of an enforcement action that does not comply with the 180-day requirement, but that the absence

of such a remedy does not render the provision superfluous. The court determined that evidence concerning compliance with the internal deadline is not relevant to the action. For that and other reasons, the court held that the evidence sought was not discoverable.

CREDIT CARDS

CFPB Narrows Application of Credit Card Fee Limit. On March 28, the CFPB published a final rule to remove from Regulation Z a limitation on fees charged prior to credit card account opening. Effective immediately, the rule amends a restriction adopted by the Federal Reserve Board in April 2011, which expanded the 2009 Credit CARD Act fee limitation on certain fees charged during the first year after the account is opened to include fees charged prior to account opening. The CFPB rule eliminates the limitations on fees charged prior to account opening, and covers only those fees charged during the first year after account opening. The rule responds to a legal challenge to restricting the amount of fees charged prior to account opening, which resulted in a court issuing a preliminary injunction to halt the implementation of the Federal Reserve Board's broader application of the fee limit.

PAYMENTS

Federal Reserve Board Report Reviews Consumer Use of Mobile Financial Services. On March 27, the Federal Reserve Board presented the findings of a November 2012 online survey of consumers' use of mobile technology to access financial services and make financial decisions. The report follows a related March 2012 Federal Reserve Board report, and includes the Board's general findings that (i) mobile phones and mobile Internet access are in widespread use, (ii) the ubiquity of mobile phones is changing the way consumers access financial services, (iii) mobile phones are also changing the way consumers make payments, (iv) security and usefulness concerns continue to be the main impediments to the adoption of mobile financial services, (v) smartphones are changing the way people shop, and (vi) mobile phones are prevalent among unbanked and underbanked consumers. The report points out that the use of mobile phones to make payments at the point of sale has increased more rapidly than the use of mobile phones for banking, and that there is "substantial growth potential" for mobile payments as the ability to make them becomes more widespread.

Nebraska Enacts Money Transmitters Act. On March 20, Nebraska enacted LB 616, the Nebraska Money Transmitters Act. Based on a model legislative outline drafted by a trade group of money transmitter state regulators, the new law repeals and replaces the Sale of Checks and Funds Transmission Act, while incorporating the license and renewal fees, a net worth standard, surety bond requirements, change of control notices, and material changes notices of the prior Act. The bill covers the receiving of money or monetary value for transmission to another location by any means, prepaid cards, stored value cards, certain bill payment services, payment instruments, money orders, and traveler's checks. It establishes licensing standards and continuing duties, and sets up transition of the state's licensing process to the NMLS starting July 1, 2014. The law defines and provides a system of conduct for authorized delegates and grants enforcement authority to the Department of Finance over authorized delegates. Finally, the law provides administrative and criminal sanctions for violations of the Act. By state rule, the new law will take effect three months after the end of the state's legislative session, which is scheduled to conclude May 30, 2013.

Utah Alters Supervision of Money Services Businesses. On March 22, Utah enacted SB 150, a bill that modifies the Financial Institutions Act and Financial Institution Mortgage Financing Regulation Act. The bill adds a definition for money services business - to include check cashers,

deferred deposit lenders, issuers or sellers of traveler's checks or money orders, and money transmitters - and adds a supervisor of money services businesses within the Department of Financial Institutions. The bill also adds additional filing requirements for check cashers and deferred deposit lenders, and changes from April 30 to December 31 the annual registration expiration date. The bill makes numerous other technical changes. Most provisions of the bill take effect on May 14, 2013.

California Considers Revisions to its Money Transmission Act. On March 11, the California State Assembly Standing Committee on Banking and Finance held a hearing entitled "Emerging Technology and the California Money Transmission Act." The hearing's purpose was to discuss the MTA's interactions with emerging technology and mobile payments and "bring common sense reforms to money transmission laws" to "account for the changes in technology." This is especially significant since the MTA has been a source of concern for many businesses because of its broad scope and limited exemptions. These concerns have been especially amplified for emerging technologies in recent years given that many new technologies and apps, in particular, are beginning to combine service and third-party payment functions into a single interface; a feature which they fear could require licensing under the MTA. The Commissioner of the California Department of Financial Institutions noted during her testimony that the Department had received many inquiries from technology-related services since the MTA's enactment and that the Department intends to clarify the matter in the near future.

CRIMINAL ENFORCEMENT

Federal Grand Jury Returns Indictment for Alleged Servicemembers Civil Relief Act Violations. On March 28, the U.S. Attorney for the Northern District of Alabama announced that a federal grand jury had returned a two-count indictment against a used car dealer for violating the Servicemembers Civil Relief Act (SCRA). *United States v. Nuss*, No. 13-102 (N.D. Ala. Filed March, 28, 2013). According to the announcement, the indictment charged the car dealer with failing to follow the SCRA when asked to do so by an Alabama National Guard member who had been called to active duty in Afghanistan. The guardsman allegedly had sent a letter from his deployed location, in which he asked that his interest rate be reduced to six percent as required by the SCRA. According to the indictment, the dealer refused to reduce the interest rate, and hired two individuals to repossess the guardsman's vehicle without first obtaining a SCRA-required court order. The maximum penalty for each SCRA violation is one year in prison, and a $100,000 fine.