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What to Look for in 2014 – CFPB Regulatory Outlook

What now? That's a question that consumer financial products and services providers, their advertisers and marketers, and related vendors have been eagerly asking about the Consumer Financial Protection Bureau (CFPB). Since its inception, the CFPB has been engineering transformational change through rulemaking, enforcement, supervision, and use of its bully pulpit.

Venable recently presented a live, complimentary webinar titled **"CFPB 2014 Regulatory Outlook: Nonbanks"** to provide insight into what the CFPB may do next and some general suggestions on how to be better prepared. Members of Venable's **CFPB Task Force** reviewed the current state of federal consumer financial protection law and policy and outlined what companies and organizations need to know about what's ahead. Throughout the ninety-minute webinar, the panelists shared their experiences from the front lines, presented an analysis on recent trends, and offered strategies to help companies navigate the evolving legal landscape.

Below are some excerpts from a post-webinar recap discussion among our panelists about some of the trends they have identified and which are likely to shape the CFPB's activities this year.

Q: Have you seen notable changes in how the CFPB acted in 2013, and how the marketplace reacted?

Jonathan Pompan: Overall, the CFPB has never lacked confidence, but once Richard Cordray secured a full five-year term to run the Bureau, we started to see an upswing in the Bureau taking on more complicated legal issues and factual situations through enforcement. Also, over the last twelve months, companies that fall under the CFPB's jurisdiction continued to hunker down and focus on internal compliance management systems and testing those systems, especially now that the complaint portal can place a company's procedures under a microscope.

Suzanne Garwood: As has been heavily reported on, a big focus of the CFPB in 2013 was the implementation of the mortgage rulemaking; but we also started to see the impact of supervision and examinations in such markets as mortgage, consumer reporting, debt collection, and student loans. The heightened focus on compliance management systems for nonbanks has created a lot more work for in-house legal, audit and risk, and quality assurance teams.

Q: There are numerous items that the CFPB (and consumer groups) has put on the Bureau agenda for 2014. What do you see as potentially being overlooked, and are there particular trends that you anticipate in 2014?

Allyson Baker: The Bureau has said it will be doing a lot this year such as debt collection rulemaking, arbitration, prepaid cards, overdraft, and more. The CFPB will continue to partner with the Department of Justice and other regulators, resulting in an increase in the number of jointly prosecuted enforcement actions. The relationship between the Office of Enforcement and the Office of Supervision will continue to grow stronger, and we can expect to see more enforcement actions stem in some way from supervisory examinations. In addition, the CFPB has already stated its intention to bring more enforcement actions against specific individuals, under the CFPB's "related person jurisdiction." Finally, if the end of 2013 is any indication, in 2014 we will see an increase in the number of matters with large dollar figures.

JP: There is a substantial CFPB enforcement focus on central "chokepoints" that allegedly make fraud possible. Also, the Bureau is aggressively using its authority to regulate unfair, deceptive, and abusive acts and practices. These strategies are pages taken right out of the Federal Trade Commission's playbook, but raise important questions of fairness and due process that may result in litigation. The CFPB also has started a slew of nonpublic investigations; there is no doubt a backlog from which we will see more regulation through enforcement. Lastly, there's the CFPB and law enforcement agencies putting pressure on banks to act as a policeman over service providers such as payment processors.

As a result, there is going to be a premium on being able to efficiently demonstrate compliance with the law.

Q: How does Congress fit in now that the CFPB is up and running?

Andrew Olmem: For one, both the House and the Senate will continue to hold oversight hearings, and there are proposals to reform the CFPB that are still pending. They may not gain traction in the near term, but as the first few years of the CFPB play out, some of the reform proposals may be revisited, especially if there is a change in control of the Senate or, down the line, the political affiliation of the next Presidential administration. Second, there continue to be legislative proposals to amend various federal consumer financial laws, such as those dealing with prepaid cards, mortgages, and debt collection, and those proposals will continue to be considered and added to the debate.

Q: What are some concrete steps a company can take now to avoid being behind the curve when it comes to the CFPB?

SG: Compliance management systems and testing compliance can make a huge difference. But, importantly, the CFPB looks at both the big picture and the details, whether it's through its enforcement lens or an exam.

AB: If the CFPB knocks at the door, understand why the information is being requested and what the Bureau may do with that information.

AO: Companies should watch the CFPB very carefully to understand its regulatory priorities and how it approaches enforcement. As with any new agency, it is still developing its own unique approach to regulation. Companies should not assume that the Bureau will approach issues the same way other financial regulators did in the past.

JP: Develop a culture around being a "regulated" entity at all levels and for all activities. Also, to avoid liability for downstream activity, know your customer (KYC), and know your customer's customer (KYCC), if applicable.

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To listen to a recording of the program and view the corresponding slides, please **click here**. This session was geared towards nondepository consumer financial products and services providers as well as their service providers, including advertisers, in such markets as student loans, mortgage servicing, auto lending, small dollar lending, consumer reporting, consumer credit and related services, money transmission and check cashing, prepaid cards, debt collection, and debt relief services.

*If you have any questions about what lies ahead for the CFPB, please contact **Jonathan L. Pompan** at 202.344.4383 or **jlpompan@Venable.com**, **Suzanne Fay Garwood** at 202.344.8046 or **sfgarwood@Venable.com**, **Allyson B. Baker** at 202.344.4708 or **abbaker@Venable.com**, or **Andrew Olmem** at 202.344.4717 or **aolmem@Venable.com**.*