Buckley Sandler LLP

InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

April 5, 2013

TOPICS COVERED THIS WEEK (CLICK TO VIEW)

FEDERAL ISSUES

CFPB Announces First RESPA Enforcement Actions. On April 4, the CFPB announced enforcement actions against four mortgage insurers against which it filed complaints alleging that their captive reinsurance arrangements with mortgage lenders violated Section 8 of the Real Estate Settlement Procedures Act (RESPA). The actions are the first public actions the CFPB has taken to enforce RESPA, and follow investigations started by HUD and transferred to the CFPB in July 2011. The insurers did not admit the allegations but agreed to pay a combined $15.4 million to end the investigations. The consent orders also (i) prohibit the insurers from entering into any new captive mortgage reinsurance arrangements with mortgage lenders or their affiliates, and from obtaining captive reinsurance on any new mortgages, for a period of ten years, (ii) require the insurers to forfeit any right to the funds not directly related to collecting on reinsurance claims in connection with pre-existing reinsurance arrangements, and (iii) subject the insurers to compliance monitoring and reporting. The orders must be approved by the U.S. District Court for the Southern District of Florida before taking effect.

CFPB Announces Collection of Money Transfer Complaints. On April 4, the CFPB announced that it is collecting money transfer complaints. Although the CFPB previously was accepting some complaints about money transfers under the "bank account" topic in its complaint system, it now has a complaint portal dedicated to money transfer complaints. The system categorizes complaints as relating to: (i) money was not available when promised; (ii) wrong amount charged or received (transfer amounts, fees, exchange rates, taxes, etc.); (iii) incorrect/missing disclosures or information; (iv) other transaction issues (unauthorized transaction, cancellation, refund, etc.); (v) other service issues (advertising or marketing, pricing, privacy, etc.); or (vi) fraud or scam. The announcement does not indicate whether the money transfer complaints will be published in the recently expanded public database at this time.

CFPB Partners with New York City to Build Local Consumer Protection Capacity Nationwide. On April 2, the CFPB and New York City Mayor Michael Bloomberg announced a partnership between those entities and the Mayor's Cities for Financial Empowerment Fund (CFE Fund) to help cities around the country "enhance their local consumer protection and financial empowerment abilities." The CFE Fund provides technical assistance and funding for the Cities for Financial Empowerment Coalition, a group of municipal governments dedicated to using municipal powers and opportunities to help their residents with low incomes achieve financial stability. The CFE Fund assists local leaders to identify, develop, fund, and implement pilots and programs designed to help families build assets and maximize their financial resources. In addition to New York City, the Coalition includes San Francisco, Chicago, Hawai'i County, Los Angeles, Louisville, Miami, Newark, Providence, San Antonio, Savannah, and Seattle. The partnership with the CFPB also is intended to leverage New York City's Department of Consumer Affairs, which enforces local consumer protection laws through licensing and other regulatory powers, and empowers consumers with low incomes through professional financial counseling, safe banking, and asset building programming.

CFPB Issues Third Semiannual Report. On March 29, the CFPB released its third semiannual report, which covers the Bureau's activities from July 1, 2012 through December 31, 2012. The report reviews, among other things, the CFPB's supervision, enforcement, and rulemaking activities over the subject period. With regard to fair lending, the report confirms that the CFPB is developing a fair-lending focused component of its Compliance Analysis Solution system that collects, validates, and analyzes loan portfolio data, and highlights previously reported fair lending activities, including those in its December 2012 fair lending report. The report also touches on many other familiar topics - it again reviews the CFPB's complaint handling process and summarizes complaints received to date, discusses challenges consumers have reported with regard to student loan obligations, and highlights "shopping challenges" allegedly present in small dollar lending. Finally, the report provides vague timeframes for rulemakings, including the CFPB's plan to (i) "accelerate work on" amendments to HMDA to require creditors to collect and report additional lending data, and (ii) propose a prepaid card rule in 2013.

CFPB Updates Status of Standard for Assessing Diversity at Supervised Institutions. On March 29, the CFPB's Office of Minority and Women Inclusion (OWMI) published its annual report about the CFPB's diversity and inclusion efforts from January 1, 2012 until December 31, 2012. The Dodd-Frank Act created the CFPB OWMI and similar offices at other federal financial regulatory agencies and tasked each office with advising its agency head on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses, and developing standards for (i) equal employment opportunity and the racial, ethnic, and gender diversity of the agency workforce and senior management; (ii) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency; and (iii) assessing the diversity policies and practices of entities regulated by the agency. With regard to regulated entities, the report notes that in February 2013 the CFPB entered into a Memorandum of Understanding with the Equal Employment Opportunity Commission to access employment demographic survey data, which will provide a starting point to analyze the composition of regulated entities. The CFPB also reports that the various OWMIs are developing a common standard for assessing the diversity policies and practices of regulated entities and plan to publish draft standards for comment sometime in 2013.

Federal Reserve Board, New York DFS Issue Joint Enforcement Action against U.S. Branch of Foreign Bank. On April 4, the Federal Reserve Board released a March 25, 2013 written agreement between the Federal Reserve Board, the New York Department of Financial Services, and a German bank and its U.S. branch regarding certain BSA/AML deficiencies at the U.S. branch. The agreement requires that the bank and the branch retain within 30 days an independent consultant to conduct a comprehensive review of the branch's compliance with BSA/AML rules and state regulations, and subsequently prepare a report of the findings. The agreement further requires that within 60 days of the compliance report prepared by the consultant, the bank and the branch (i) submit a written enhanced BSA/AML compliance program for the branch, (ii) submit a written plan to improve and enhance management oversight of the branch's compliance program, (iii) submit a written program to improve customer due diligence and a written program to ensure timely and accurate SAR reporting, and (iv) engage a different independent testing consultant to develop a risk-based BSA/AML audit program and conduct an independent compliance test. In addition, the agreement requires the bank and the branch to submit within 60 days of the agreement a written plan to enhance compliance with OFAC requirements.

DOJ Announces Payments Under 2011 SCRA Settlements. On April 4, the DOJ announced that two mortgage servicers will pay a combined $39 million to 316 servicemembers pursuant to SCRA settlements from 2011. Those settlement agreements resolved allegations that the mortgage servicers unlawfully foreclosed upon servicemembers between 2006 and 2010. One of the servicers also is subject to the national mortgage servicing settlement, which required an audit to identify violations of SCRA's foreclosure provisions between January 1, 2006 and April 4, 2012 and its 6 percent interest rate cap provision between January 1, 2008 and April 4, 2012. DOJ stated that the payment is separate from the national servicing settlement review and represents only the non-judicial foreclosures conducted by the bank during the relevant time period. As the national settlement audits progress, the DOJ will require the servicer to make additional payments for alleged judicial foreclosure and interest rate violations uncovered in the audit.

Federal Reserve Board Responds to SCRA Compliance Questions. On March 29, the Federal Reserve Board published its quarterly Consumer Compliance Outlook, which includes the Board's response to questions raised during a September 2012 interagency webinar on servicemember protection issues and SCRA compliance. Because that event had limited time for questions, the Board responded in writing to the most common questions received. The publication includes answers to questions related to (i) notification of active duty, (ii) maximum rate of interest on debts incurred prior to military service, (iii) foreclosure protection, (iv) the Homeownership Counseling Act, (v) permanent change of station orders, (vi) the Defense Manpower Data Center, and (vii) other miscellaneous issues.

House Democrats Urge Banks to Limit Online Payday Lender Access to Accounts. On April 2, Representatives Suzanne Bonamici (D-OR) and Elijah Cummings (D-MD) sent letters to the CEOs of five large retail banks urging those institutions to voluntarily adopt certain consumer protections related to online payday lending. Those members and several others recently introduced the SAFE Lending Act, which the letter states would (i) allow consumers to prevent lenders form making automatic withdrawals and debits from their accounts, (ii) require all lenders to abide by state small-dollar lending rules, (iii) ban lead generators and anonymous payday lending, and (iv) increase enforcement authority to address offshore small-dollar lenders. Pending congressional action, the legislators asked the banks to "take every available step to prevent online payday lenders from accessing funds from consumer accounts when they are clearly operating in violation of state law."

NCUA Announces Pre-Litigation MBS Settlement. On April 2, the NCUA announced that a financial institution agreed to settle allegations related to mortgage-backed securities issued to certain corporate credit unions. The NCUA has alleged on behalf of failed corporate credit unions that certain MBS issuers made numerous misrepresentations and omissions in MBS offering documents regarding adherence to the originators' underwriting guidelines, which supposedly concealed the true risk associated with the securities and routinely overvalued them. When the allegedly risky securities lost value, the NCUA claims, the credit unions were forced into conservatorship and liquidated as a result of the losses sustained. In this settlement, the institution did not admit fault but agreed to pay $165 million to avoid threatened litigation. The settlement adds to the $170.75 million the NCUA already has obtained from four other institutions, and the agency continues to pursue additional institutions in 10 pending lawsuits.

SEC Approves Use of Social Media for Company Announcements. On April 2, the SEC issued a report that allows companies to use social media outlets to announce key information in compliance with Regulation Fair Disclosure (Regulation FD), provided investors have been alerted about which social media will be used to disseminate such information. The report reviews 2008 SEC guidance that clarified that websites can serve as an effective means for disseminating information to investors if the investors have been made aware in advance. The report determined that the policy is equally applicable to current and evolving social media communication channels. The report states that disclosure of material, nonpublic information on the personal social media site of an individual corporate officer, without advance notice to investors that the site may be used for this purpose, is unlikely to comply with existing regulations, even if the individual in question has a large number of subscribers, friends, or other social media contacts, such that the information is likely to reach a broader audience over time.

Federal Reserve Board Approves Final Rule Related to Systemically Important Financial Institutions. On April 3, the Federal Reserve Board approved a final rule that establishes the requirements for determining when a company is "predominantly engaged in financial activities." The requirements will be used by the Financial Stability Oversight Council when considering whether to designate a nonbank financial company as systemically important and subject to supervision by the Federal Reserve Board. Pursuant to the rule, a company is considered to be predominantly engaged in financial activities if 85 percent or more of the company's consolidated revenues or assets are derived from or related to activities that are defined as financial in nature under the Bank Holding Company Act. In addition, the FSOC may issue recommendations for primary financial regulatory agencies to apply new or heightened standards to a financial activity or practice conducted by companies that are predominantly engaged in financial activities. The final rule largely mirrors the rule as proposed, but includes some changes. For example, final rule states that engaging in physically settled derivatives transactions generally will not be considered a financial activity. The final rule also defines the terms "significant nonbank financial company" and "significant bank holding company." The rule will become effective on May 6, 2013.

FDIC Releases Technical Assistance Videos For Bank Officers and Directors. On April 3, the FDIC released the first in a series of videos to provide technical assistance to bank directors, officers, and employees on areas of supervisory focus and proposed regulatory changes.The initial set of videos cover (i) director responsibilities, (ii) fiduciary duties, (iii) acting in the best interest of the bank, (iv) the FDIC examination process, (v) risk management examinations, and (vi) compliance and community reinvestment act examinations. The FDIC plans to release by June 30, 2013 a second set of videos that will consist of six modules covering (i) interest rate risk, (ii) third party relationships, (iii) corporate governance, (iv) the Community Reinvestment Act, (v) information technology, and (vi) the Bank Secrecy Act. A third installment will follow later in the year and will provide technical assistance regarding (i) fair lending, (ii) appraisals and evaluations, (iii) interest rate risk, (iv) troubled debt restructurings, (v) the allowance for loan and lease losses, (vi) evaluation of municipal securities, and (vii) flood insurance. The FDIC also plans to continue the model introduced as part of prior rulemaking processes and provide overviews and instructions on more complex rulemakings.

Federal Reserve Board and OCC Publish White Paper on CRE Concentration Guidance. On April 3, the Federal Reserve Board and the OCC jointly published a white paper on the regulators' study of bank performance in the context of 2006 interagency guidance regarding commercial real estate lending that established supervisory criteria for banks that exceeded 100 percent of capital in construction lending and 300 percent of capital in total commercial real estate (CRE) lending. According to the paper, banks with high concentrations of construction and total commercial real estate lending that exceeded supervisory criteria failed at higher rates than banks with lower concentrations. Specifically key findings include: (i) 13 percent of banks that exceeded only the 100 percent construction criterion failed, (ii) among banks that exceeded both the construction and total CRE lending supervisory criteria, 23 percent failed during the three-year economic downturn from 2008 through 2011, compared with 0.5 percent of banks for which neither of the criteria was exceeded, (iii) construction lending was a key driver in many failures, and (iv) banks that were public stock companies and exceeded the supervisory criteria on CRE concentrations tended to experience greater deterioration in condition than banks below the criteria, and banks with CRE concentrations higher than the guidance criteria experienced larger declines in their market capital ratio during the recent economic downturn.

Fannie Mae Announces Numerous Servicing Policy Changes. On April 3, Fannie Mae issued Servicing Guide Announcement SVC-2013-07, which outlines policy updates regarding (i) lender-placed property insurance requirements, (ii) military indulgence reporting and reimbursement processes, and (iii) scheduled/schedule remittance payoffs. Effective immediately, the announcement retracts the lender-placed insurance requirements introduced in Announcement SVC-2012-04, but the hazard insurance claims processing requirements in that 2012 announcement remain in effect. Fannie Mae also replaced in its entirety the sections of Part III, Chapter 1, Exhibit 1: Military Indulgence, that relate to reporting to Fannie Mae and requesting reimbursement for advances. The announcement includes an attachment with the new section, and notes that servicers also must retain the servicemember's orders and the completed Request for Military Indulgence (Form 180) in the individual mortgage loan file as long as the military indulgence remains in effect. Finally, also effective immediately, the announcement allows a subservicer greater flexibility in deciding whether it will consider any full payoff received on the first business day of a month as though it was received in the prior calendar month. Subservicers may either select one option for all loans serviced on behalf of Fannie Mae or elect the option based on its individual agreement with the servicer for which is it subservicing Fannie Mae mortgage loans.

Comptroller Curry Named FFIEC Chairman. On April 1, the Federal Financial Institutions Examination Council (FFIEC) announced that Comptroller of the Currency Thomas Curry will serve a two-year term as FFIEC Chairman. The FFIEC also selected Federal Reserve Board Member Daniel Tarullo as Vice Chairman, and announced three new State Liaison Committee members: Michael Mach, Division of Banking Administrator for the Wisconsin Department of Financial Institutions; Lauren Kingry, Superintendent of the Arizona Department of Financial Institutions; and Thomas Candon, Deputy Commissioner of Banking and Securities of the Vermont Department of Financial Regulation. The FFIEC is responsible for prescribing uniform principles, standards, and report forms for the federal examination of financial institutions, and for recommending changes to promote uniformity in the supervision of financial institutions. The FFIEC also conducts schools for federal examiners.

Federal Regulators Clarify Effective Dates for Flood Insurance Amendments. On March 29, the Federal Reserve Board, the FDIC, the OCC, the NCUA, and the Farm Credit Administration issued an interagency statement to clarify the effective dates for changes to the Flood Disaster Protection Act enacted last year in the Biggert-Water Flood Insurance Reform Act (the Act). The statement informs financial institutions that the force-placed aspects of the Act became effective upon enactment, which was July, 6, 2012, while provisions related to private flood insurance and escrow of flood insurance payments do not take effect until the agencies issue regulations. The statement reiterates the OCC's prior statement that the new flood insurance penalty provisions in the Act took effect immediately and apply to violations that occurred on or after July 6, 2012.

STATE ISSUES

CSBS Urges CFPB to Adopt Rural Designation Petition Process. On April 2, the CSBS released a letter it sent to encourage the CFPB to adopt an additional procedural mechanism for the CFPB to utilize when determining whether an area should be defined as "rural." The CSBS explains that the Dodd-Frank Act confers "qualified mortgage" benefits on balloon loans if they are made in rural or underserved areas, and that the CFPB has elected to utilize the USDA Economic Research Service's Urban Influence Codes as the basis of their definition of "rural." The letter identifies inconsistencies with the existing rural classification systems, and suggests that the CFPB adopt a petition process whereby institutions can seek a determination that a specific area be considered rural for purposes of certain Truth in Lending rural requirements.

Arkansas Amends Uniform Money Services Act. On March 28, Arkansas enacted SB 786, which amends the Uniform Money Services Act to define and include as a money service "prepaid access." The bill also removes obsolete statutory language related to transition licenses for 2012. By state rule, the bill takes effect 91 days after the General Assembly adjourns.

Iowa Updates Banking Code, Amends Various Licensing Provisions. On March 28, Iowa enacted SF 181 to update the Banking Division's authorities and revise various finance licensing provisions. The bill removes the prohibition on paying interest on deposits of public funds. It also amends the state debt management, money services, and delayed deposit services licensing provisions to allow for transition of licensees to the NMLS. The bill also clarifies that materials relating to the supervision of mortgage licensees are not public records subject to disclosure. By state rule, the changes will take effect July 1, 2013.

COURTS

Federal Government Civil Fraud Suit Targets Mortgage Lender and Its President. On April 4, the U.S. Attorney for the Southern District of New York and HUD officials announced a civil fraud suit alleging FCA and FIRREA claims against a mortgage lender and its president for falsely certifying loans and other actions under the FHA's Direct Endorsement Lender Program. Many of the allegations mirror those in prior mortgage fraud cases brought by the government, including claims that the lender failed to maintain adequate quality control processes, incentivized employees to expedite loan approval, failed to disclose to HUD all loans containing evidence of fraud or other serious underwriting problems, and made repeated false certifications to HUD. However, this is only the second time the government has brought claims based on the FHA's annual certification process, as opposed claims based on certifications of individual loans. The complaint also alleges that the firm's president and owner personally performed underwriting and provided false certifications to HUD in a number of instances. The government's decision to name an individual also may evidence a new trend in its mortgage fraud enforcement practices. The government claims that to date HUD has paid more than $12 million in insurance claims on loans underwritten by the lender. The complaint does not specify total damages, but does seek more than $40 million in treble damages and penalties on the FCA claims.

New York Appellate Division Holds Bond Insurer Can Pursue Repurchase Obligations on Performing Loans. On April 2, the Supreme Court of New York, Appellate Division, held that loans underlying mortgage-backed securities need not be in default to trigger the lender's repurchase obligations. *MBIA Ins. Corp. v. Countrywide Home Loans Inc.*, No. 602825/2008, 2013 WL 1296525 (N.Y. Sup. Ct. App. Div. Apr. 2, 2013). The trial court granted partial summary judgment in favor of a bond insurer who alleges that a lender (i) fraudulently induced the insurer to insure securitized loans and (ii) breached representations and warranties in the transaction documents. On appeal, the court held that the contract at issue does not require a loan to be in default to trigger the defendant's repurchase obligation. The court found that the relevant clause requires only that the inaccuracy underlying the repurchase request materially and adversely affect the interest of the insurer. If the insurer can prove that a loan which continues to perform materially and adversely affected its interests, it is entitled to have the lender repurchase the loan. The Appellate Division also (i) affirmed the trial court's holding that causation is not required under New York insurance law to prevail on a fraud and breach of contract claim, and (ii) determined that the trial court erred in granting summary judgment on the issue of rescissory damages, holding instead that rescission is not warranted in this case.

Supreme Court Agrees to Review Standard for Enforcement of Forum Selection Clauses. On April 1, the U.S. Supreme Court agreed to review a decision from the U.S. Court of Appeals for the Fifth Circuit that denied a mandamus petition against a district court that held that when a forum-selection clause designates a specific federal forum or allows the parties to select the federal courts of a different forum, the federal change of venue statute, 28 U.S.C. § 1404(a),-as opposed to Rule 12(b)(3) and 28 USC § 1406-is the proper procedural mechanism for the clause's enforcement. *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Ct. for the W. Dist. of Tex.*, No. 12-929, 2013 WL 1285318 (cert. granted Apr. 1, 2013). This issue is significant because § 1404(a) applies when venue is proper but a transfer is sought, whereas Rule 12(b)(3) and § 1406 provide for dismissal or transfer of an action that has been brought in an improper venue. Thus, this question turns on whether private parties can, through a forum-selection clause, render venue improper in a court in which it is otherwise proper. The grant of certiorari notes that the majority of federal circuit courts hold that a valid forum-selection clause renders venue "improper" in a forum other than the one designated by the contract and that, in those circuits, the clauses are routinely enforced by motions to dismiss or transfer venue under Rule 12(b)(3) and § 1406. In addition to the Fifth Circuit, the Third and Sixth Circuits follow a contrary rule. The Supreme Court has requested that the parties address two issues in their briefs: (i) whether the Courts decision in *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22 (1988), changed the standard for enforcement of clauses that designate an alternative federal forum, limiting review of such clauses to a discretionary, balancing-of-conveniences analysis under 28 U.S.C. § 1404(a); and (ii) if so, how should district courts allocate the burdens of proof among parties seeking to enforce or to avoid a forum-selection clause?

Banks Shed Libor Antitrust Claims. On March 29, the U.S. District Court for the Southern District of New York dismissed the antitrust claims brought by plaintiffs in numerous consolidated actions against 23 financial institutions over their alleged manipulation of the London Interbank Offered Rate (Libor). *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-2262, 2013 WL 1285338 (S.D.N.Y. Mar. 29, 2013). Libor is a global benchmark rate used in financial products and transactions, which was set using data from the banks under the auspices of the British Bankers' Association. The various consolidated suits have been brought by investors and bondholders who claim that the institutions colluded to deliberately depress Libor, which caused the plaintiffs various economic injuries. The court determined that the process by which Libor data was provided by the banks was not anticompetitive, and held that, even if the institutions' conducthadconstituted a violation of antitrust laws, the plaintiffs may only pursue antitrust claims for "antitrust injuries," i.e. injuries resulting from any harm to competition. The court also (i) dismissed as time-barred certain commodities manipulation claims, (ii) dismissed a RICO claim because RICO only applies to domestic enterprises, and (iii) dismissed all state-law claims, some (e.g., those related to antitrust claims) with prejudice.

California Appeals Court Enforces Retail Installment Sales Contract Arbitration Agreement. On March 27, the California Court of Appeal, First Appellate District, enforced an arbitration agreement in a retail installment sales contract. *Vasquez v. Greene Motors, Inc.*, No. A134829, 2013 WL 1232343 (Cal. Ct. App. Mar. 27, 2013). While the court held that the agreement was "procedurally unconscionable" because the agreement "was imposed on [the Defendant] without the opportunity for negotiation, and was therefore adhesive," it reversed the lower court's denial of a motion to compel arbitration. In so holding, the court reasoned that the level of procedural unconscionability was "minimal" and that there was no significant substantive unconscionability. The court held "the only suggestion of substantive unconscionability . . . was the failure of the clause to permit an 'appeal' arbitration in the event a buyer sought and was denied injunctive relief," but that "this asymmetry is mitigated by the provision permitting a second arbitration if a buyer is denied a monetary recovery." Finding "minimal unconscionability," the court reversed the trial court order denying the petition to compel arbitration and directed the trial court to order arbitration.

MISCELLANY

Housing Counselor Survey Alleges Banks Fail to Comply with National Mortgage Settlement. On April 3, a California borrower advocacy organization published the results of its survey of housing counselors, which the organization claims reveals that problems persist with the implementation of the national servicing settlement's servicing standards, including with regard to single points of contact, dual tracking, timelines, and documentation. The report also claims that borrowers of color and other groups face additional challenges to obtaining relief under the settlement. The report recommends that (i) the National Mortgage Settlement Monitor and state attorneys general collect, analyze and report the race, ethnicity, gender, and census tract of those who have received assistance and those who have not; (ii) the OCC and the Federal Reserve Board collect, analyze and make public the same data beyond the national settlement, and include all loss mitigation activity; (iii) the CFPB promptly issue a rule to establish new HMDA categories; (iv) the Monitor impose penalties on outliers; (v) the Monitor, the CFPB, and state AGs tighten rules around "complete loan mod app", servicing transfers, and widows; (vi) regulators prioritize in the revamped Independent Foreclosure Review process principal reduction relief, keeping people in their homes, and restoring wrongful foreclosure victims to their homes by forcing servicers to go back through their files, rescind improper foreclosure sales, and fix mistakes; (vii) authorities provide more financial support for housing counseling and legal services; and (viii) regulators ensure that servicers have sufficient capacity and training to work with homeowners at risk of foreclosure.

FIRM NEWS

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.

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

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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Orange County: 3121 Michelson Drive, Suite 210, Irvine, CA 92612, (949)398-1360

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

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MORTGAGES

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Federal Reserve Board Responds to SCRA Compliance Questions. On March 29, the Federal Reserve Board published its quarterly Consumer Compliance Outlook, which includes the Board's response to questions raised during a September 2012 interagency webinar on servicemember protection issues and SCRA compliance. Because that event had limited time for questions, the Board responded in writing to the most common questions received. The publication includes answers to questions related to (i) notification of active duty, (ii) maximum rate of interest on debts incurred prior to military service, (iii) foreclosure protection, (iv) the Homeownership Counseling Act, (v) permanent change of station orders, (vi) the Defense Manpower Data Center, and (vii) other miscellaneous issues.

Fannie Mae Announces Numerous Servicing Policy Changes. On April 3, Fannie Mae issued Servicing Guide Announcement SVC-2013-07, which outlines policy updates regarding (i) lender-placed property insurance requirements, (ii) military indulgence reporting and reimbursement processes, and (iii) scheduled/schedule remittance payoffs. Effective immediately, the announcement retracts the lender-placed insurance requirements introduced in Announcement SVC-2012-04, but the hazard insurance claims processing requirements in that 2012 announcement remain in effect. Fannie Mae also replaced in its entirety the sections of Part III, Chapter 1, Exhibit 1: Military Indulgence, that relate to reporting to Fannie Mae and requesting reimbursement for advances. The announcement includes an attachment with the new section, and notes that servicers also must retain the servicemember's orders and the completed Request for Military Indulgence (Form 180) in the individual mortgage loan file as long as the military indulgence remains in effect. Finally, also effective immediately, the announcement allows a subservicer greater flexibility in deciding whether it will consider any full payoff received on the first business day of a month as though it was received in the prior calendar month. Subservicers may either select one option for all loans serviced on behalf of Fannie Mae or elect the option based on its individual agreement with the servicer for which is it subservicing Fannie Mae mortgage loans.

Federal Regulators Clarify Effective Dates for Flood Insurance Amendments. On March 29, the Federal Reserve Board, the FDIC, the OCC, the NCUA, and the Farm Credit Administration issued an interagency statement to clarify the effective dates for changes to the Flood Disaster Protection Act enacted last year in the Biggert-Water Flood Insurance Reform Act (the Act). The statement informs financial institutions that the force-placed aspects of the Act became effective upon enactment, which was July, 6, 2012, while provisions related to private flood insurance and escrow of flood insurance payments do not take effect until the agencies issue regulations. The statement reiterates the OCC's prior statement that the new flood insurance penalty provisions in the Act took effect immediately and apply to violations that occurred on or after July 6, 2012.

CSBS Urges CFPB to Adopt Rural Designation Petition Process. On April 2, the CSBS released a letter it sent to encourage the CFPB to adopt an additional procedural mechanism for the CFPB to utilize when determining whether an area should be defined as "rural." The CSBS explains that the Dodd-Frank Act confers "qualified mortgage" benefits on balloon loans if they are made in rural or underserved areas, and that the CFPB has elected to utilize the USDA Economic Research Service's Urban Influence Codes as the basis of their definition of "rural." The letter identifies inconsistencies with the existing rural classification systems, and suggests that the CFPB adopt a petition process whereby institutions can seek a determination that a specific area be considered rural for purposes of certain Truth in Lending rural requirements.

Federal Government Civil Fraud Suit Targets Mortgage Lender and Its President. On April 4, the U.S. Attorney for the Southern District of New York and HUD officials announced a civil fraud suit alleging FCA and FIRREA claims against a mortgage lender and its president for falsely certifying loans and other actions under the FHA's Direct Endorsement Lender Program. Many of the allegations mirror those in prior mortgage fraud cases brought by the government, including claims that the lender failed to maintain adequate quality control processes, incentivized employees to expedite loan approval, failed to disclose to HUD all loans containing evidence of fraud or other serious underwriting problems, and made repeated false certifications to HUD. However, this is only the second time the government has brought claims based on the FHA's annual certification process, as opposed claims based on certifications of individual loans. The complaint also alleges that the firm's president and owner personally performed underwriting and provided false certifications to HUD in a number of instances. The government's decision to name an individual also may evidence a new trend in its mortgage fraud enforcement practices. The government claims that to date HUD has paid more than $12 million in insurance claims on loans underwritten by the lender. The complaint does not specify total damages, but does seek more than $40 million in treble damages and penalties on the FCA claims.

New York Appellate Division Holds Bond Insurer Can Pursue Repurchase Obligations on Performing Loans. On April 2, the Supreme Court of New York, Appellate Division, held that loans underlying mortgage-backed securities need not be in default to trigger the lender's repurchase obligations. *MBIA Ins. Corp. v. Countrywide Home Loans Inc.*, No. 602825/2008, 2013 WL 1296525 (N.Y. Sup. Ct. App. Div. Apr. 2, 2013). The trial court granted partial summary judgment in favor of a bond insurer who alleges that a lender (i) fraudulently induced the insurer to insure securitized loans and (ii) breached representations and warranties in the transaction documents. On appeal, the court held that the contract at issue does not require a loan to be in default to trigger the defendant's repurchase obligation. The court found that the relevant clause requires only that the inaccuracy underlying the repurchase request materially and adversely affect the interest of the insurer. If the insurer can prove that a loan which continues to perform materially and adversely affected its interests, it is entitled to have the lender repurchase the loan. The Appellate Division also (i) affirmed the trial court's holding that causation is not required under New York insurance law to prevail on a fraud and breach of contract claim, and (ii) determined that the trial court erred in granting summary judgment on the issue of rescissory damages, holding instead that rescission is not warranted in this case.

Housing Counselor Survey Alleges Banks Fail to Comply with National Mortgage Settlement. On April 3, a California borrower advocacy organization published the results of its survey of housing counselors, which the organization claims reveals that problems persist with the implementation of the national servicing settlement's servicing standards, including with regard to single points of contact, dual tracking, timelines, and documentation. The report also claims that borrowers of color and other groups face additional challenges to obtaining relief under the settlement. The report recommends that (i) the National Mortgage Settlement Monitor and state attorneys general collect, analyze and report the race, ethnicity, gender, and census tract of those who have received assistance and those who have not; (ii) the OCC and the Federal Reserve Board collect, analyze and make public the same data beyond the national settlement, and include all loss mitigation activity; (iii) the CFPB promptly issue a rule to establish new HMDA categories; (iv) the Monitor impose penalties on outliers; (v) the Monitor, the CFPB, and state AGs tighten rules around "complete loan mod app", servicing transfers, and widows; (vi) regulators prioritize in the revamped Independent Foreclosure Review process principal reduction relief, keeping people in their homes, and restoring wrongful foreclosure victims to their homes by forcing servicers to go back through their files, rescind improper foreclosure sales, and fix mistakes; (vii) authorities provide more financial support for housing counseling and legal services; and (viii) regulators ensure that servicers have sufficient capacity and training to work with homeowners at risk of foreclosure.

BANKING

Federal Reserve Board, New York DFS Issue Joint Enforcement Action against U.S. Branch of Foreign Bank. On April 4, the Federal Reserve Board released a March 25, 2013 written agreement between the Federal Reserve Board, the New York Department of Financial Services, and a German bank and its U.S. branch regarding certain BSA/AML deficiencies at the U.S. branch. The agreement requires that the bank and the branch retain within 30 days an independent consultant to conduct a comprehensive review of the branch's compliance with BSA/AML rules and state regulations, and subsequently prepare a report of the findings. The agreement further requires that within 60 days of the compliance report prepared by the consultant, the bank and the branch (i) submit a written enhanced BSA/AML compliance program for the branch, (ii) submit a written plan to improve and enhance management oversight of the branch's compliance program, (iii) submit a written program to improve customer due diligence and a written program to ensure timely and accurate SAR reporting, and (iv) engage a different independent testing consultant to develop a risk-based BSA/AML audit program and conduct an independent compliance test. In addition, the agreement requires the bank and the branch to submit within 60 days of the agreement a written plan to enhance compliance with OFAC requirements.

House Democrats Urge Banks to Limit Online Payday Lender Access to Accounts. On April 2, Representatives Suzanne Bonamici (D-OR) and Elijah Cummings (D-MD) sent letters to the CEOs of five large retail banks urging those institutions to voluntarily adopt certain consumer protections related to online payday lending. Those members and several others recently introduced the SAFE Lending Act, which the letter states would (i) allow consumers to prevent lenders form making automatic withdrawals and debits from their accounts, (ii) require all lenders to abide by state small-dollar lending rules, (iii) ban lead generators and anonymous payday lending, and (iv) increase enforcement authority to address offshore small-dollar lenders. Pending congressional action, the legislators asked the banks to "take every available step to prevent online payday lenders from accessing funds from consumer accounts when they are clearly operating in violation of state law."

FDIC Releases Technical Assistance Videos For Bank Officers and Directors. On April 3, the FDIC released the first in a series of videos to provide technical assistance to bank directors, officers, and employees on areas of supervisory focus and proposed regulatory changes.The initial set of videos cover (i) director responsibilities, (ii) fiduciary duties, (iii) acting in the best interest of the bank, (iv) the FDIC examination process, (v) risk management examinations, and (vi) compliance and community reinvestment act examinations. The FDIC plans to release by June 30, 2013 a second set of videos that will consist of six modules covering (i) interest rate risk, (ii) third party relationships, (iii) corporate governance, (iv) the Community Reinvestment Act, (v) information technology, and (vi) the Bank Secrecy Act. A third installment will follow later in the year and will provide technical assistance regarding (i) fair lending, (ii) appraisals and evaluations, (iii) interest rate risk, (iv) troubled debt restructurings, (v) the allowance for loan and lease losses, (vi) evaluation of municipal securities, and (vii) flood insurance. The FDIC also plans to continue the model introduced as part of prior rulemaking processes and provide overviews and instructions on more complex rulemakings.

Federal Reserve Board and OCC Publish White Paper on CRE Concentration Guidance. On April 3, the Federal Reserve Board and the OCC jointly published a white paper on the regulators' study of bank performance in the context of 2006 interagency guidance regarding commercial real estate lending that established supervisory criteria for banks that exceeded 100 percent of capital in construction lending and 300 percent of capital in total commercial real estate (CRE) lending. According to the paper, banks with high concentrations of construction and total commercial real estate lending that exceeded supervisory criteria failed at higher rates than banks with lower concentrations. Specifically key findings include: (i) 13 percent of banks that exceeded only the 100 percent construction criterion failed, (ii) among banks that exceeded both the construction and total CRE lending supervisory criteria, 23 percent failed during the three-year economic downturn from 2008 through 2011, compared with 0.5 percent of banks for which neither of the criteria was exceeded, (iii) construction lending was a key driver in many failures, and (iv) banks that were public stock companies and exceeded the supervisory criteria on CRE concentrations tended to experience greater deterioration in condition than banks below the criteria, and banks with CRE concentrations higher than the guidance criteria experienced larger declines in their market capital ratio during the recent economic downturn.

Federal Reserve Board Approves Final Rule Related to Systemically Important Financial Institutions. On April 3, the Federal Reserve Board approved a final rule that establishes the requirements for determining when a company is "predominantly engaged in financial activities." The requirements will be used by the Financial Stability Oversight Council when considering whether to designate a nonbank financial company as systemically important and subject to supervision by the Federal Reserve Board. Pursuant to the rule, a company is considered to be predominantly engaged in financial activities if 85 percent or more of the company's consolidated revenues or assets are derived from or related to activities that are defined as financial in nature under the Bank Holding Company Act. In addition, the FSOC may issue recommendations for primary financial regulatory agencies to apply new or heightened standards to a financial activity or practice conducted by companies that are predominantly engaged in financial activities. The final rule largely mirrors the rule as proposed, but includes some changes. For example, final rule states that engaging in physically settled derivatives transactions generally will not be considered a financial activity. The final rule also defines the terms "significant nonbank financial company" and "significant bank holding company." The rule will become effective on May 6, 2013.

Comptroller Curry Named FFIEC Chairman. On April 1, the Federal Financial Institutions Examination Council (FFIEC) announced that Comptroller of the Currency Thomas Curry will serve a two-year term as FFIEC Chairman. The FFIEC also selected Federal Reserve Board Member Daniel Tarullo as Vice Chairman, and announced three new State Liaison Committee members: Michael Mach, Division of Banking Administrator for the Wisconsin Department of Financial Institutions; Lauren Kingry, Superintendent of the Arizona Department of Financial Institutions; and Thomas Candon, Deputy Commissioner of Banking and Securities of the Vermont Department of Financial Regulation. The FFIEC is responsible for prescribing uniform principles, standards, and report forms for the federal examination of financial institutions, and for recommending changes to promote uniformity in the supervision of financial institutions. The FFIEC also conducts schools for federal examiners.

Federal Regulators Clarify Effective Dates for Flood Insurance Amendments. On March 29, the Federal Reserve Board, the FDIC, the OCC, the NCUA, and the Farm Credit Administration issued an interagency statement to clarify the effective dates for changes to the Flood Disaster Protection Act enacted last year in the Biggert-Water Flood Insurance Reform Act (the Act). The statement informs financial institutions that the force-placed aspects of the Act became effective upon enactment, which was July, 6, 2012, while provisions related to private flood insurance and escrow of flood insurance payments do not take effect until the agencies issue regulations. The statement reiterates the OCC's prior statement that the new flood insurance penalty provisions in the Act took effect immediately and apply to violations that occurred on or after July 6, 2012.

Banks Shed Libor Antitrust Claims. On March 29, the U.S. District Court for the Southern District of New York dismissed the antitrust claims brought by plaintiffs in numerous consolidated actions against 23 financial institutions over their alleged manipulation of the London Interbank Offered Rate (Libor). *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-2262, 2013 WL 1285338 (S.D.N.Y. Mar. 29, 2013). Libor is a global benchmark rate used in financial products and transactions, which was set using data from the banks under the auspices of the British Bankers' Association. The various consolidated suits have been brought by investors and bondholders who claim that the institutions colluded to deliberately depress Libor, which caused the plaintiffs various economic injuries. The court determined that the process by which Libor data was provided by the banks was not anticompetitive, and held that, even if the institutions' conducthadconstituted a violation of antitrust laws, the plaintiffs may only pursue antitrust claims for "antitrust injuries," i.e. injuries resulting from any harm to competition. The court also (i) dismissed as time-barred certain commodities manipulation claims, (ii) dismissed a RICO claim because RICO only applies to domestic enterprises, and (iii) dismissed all state-law claims, some (e.g., those related to antitrust claims) with prejudice.

CONSUMER FINANCE

CFPB Partners with New York City to Build Local Consumer Protection Capacity Nationwide. On April 2, the CFPB and New York City Mayor Michael Bloomberg announced a partnership between those entities and the Mayor's Cities for Financial Empowerment Fund (CFE Fund) to help cities around the country "enhance their local consumer protection and financial empowerment abilities." The CFE Fund provides technical assistance and funding for the Cities for Financial Empowerment Coalition, a group of municipal governments dedicated to using municipal powers and opportunities to help their residents with low incomes achieve financial stability. The CFE Fund assists local leaders to identify, develop, fund, and implement pilots and programs designed to help families build assets and maximize their financial resources. In addition to New York City, the Coalition includes San Francisco, Chicago, Hawai'i County, Los Angeles, Louisville, Miami, Newark, Providence, San Antonio, Savannah, and Seattle. The partnership with the CFPB also is intended to leverage New York City's Department of Consumer Affairs, which enforces local consumer protection laws through licensing and other regulatory powers, and empowers consumers with low incomes through professional financial counseling, safe banking, and asset building programming.

CFPB Issues Third Semiannual Report. On March 29, the CFPB released its third semiannual report, which covers the Bureau's activities from July 1, 2012 through December 31, 2012. The report reviews, among other things, the CFPB's supervision, enforcement, and rulemaking activities over the subject period. With regard to fair lending, the report confirms that the CFPB is developing a fair-lending focused component of its Compliance Analysis Solution system that collects, validates, and analyzes loan portfolio data, and highlights previously reported fair lending activities, including those in its December 2012 fair lending report. The report also touches on many other familiar topics - it again reviews the CFPB's complaint handling process and summarizes complaints received to date, discusses challenges consumers have reported with regard to student loan obligations, and highlights "shopping challenges" allegedly present in small dollar lending. Finally, the report provides vague timeframes for rulemakings, including the CFPB's plan to (i) "accelerate work on" amendments to HMDA to require creditors to collect and report additional lending data, and (ii) propose a prepaid card rule in 2013.

CFPB Updates Status of Standard for Assessing Diversity at Supervised Institutions. On March 29, the CFPB's Office of Minority and Women Inclusion (OWMI) published its annual report about the CFPB's diversity and inclusion efforts from January 1, 2012 until December 31, 2012. The Dodd-Frank Act created the CFPB OWMI and similar offices at other federal financial regulatory agencies and tasked each office with advising its agency head on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses, and developing standards for (i) equal employment opportunity and the racial, ethnic, and gender diversity of the agency workforce and senior management; (ii) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency; and (iii) assessing the diversity policies and practices of entities regulated by the agency. With regard to regulated entities, the report notes that in February 2013 the CFPB entered into a Memorandum of Understanding with the Equal Employment Opportunity Commission to access employment demographic survey data, which will provide a starting point to analyze the composition of regulated entities. The CFPB also reports that the various OWMIs are developing a common standard for assessing the diversity policies and practices of regulated entities and plan to publish draft standards for comment sometime in 2013.

Iowa Updates Banking Code, Amends Various Licensing Provisions. On March 28, Iowa enacted SF 181 to update the Banking Division's authorities and revise various finance licensing provisions. The bill removes the prohibition on paying interest on deposits of public funds. It also amends the state debt management, money services, and delayed deposit services licensing provisions to allow for transition of licensees to the NMLS. The bill also clarifies that materials relating to the supervision of mortgage licensees are not public records subject to disclosure. By state rule, the changes will take effect July 1, 2013.

California Appeals Court Enforces Retail Installment Sales Contract Arbitration Agreement. On March 27, the California Court of Appeal, First Appellate District, enforced an arbitration agreement in a retail installment sales contract. *Vasquez v. Greene Motors, Inc.*, No. A134829, 2013 WL 1232343 (Cal. Ct. App. Mar. 27, 2013). While the court held that the agreement was "procedurally unconscionable" because the agreement "was imposed on [the Defendant] without the opportunity for negotiation, and was therefore adhesive," it reversed the lower court's denial of a motion to compel arbitration. In so holding, the court reasoned that the level of procedural unconscionability was "minimal" and that there was no significant substantive unconscionability. The court held "the only suggestion of substantive unconscionability . . . was the failure of the clause to permit an 'appeal' arbitration in the event a buyer sought and was denied injunctive relief," but that "this asymmetry is mitigated by the provision permitting a second arbitration if a buyer is denied a monetary recovery." Finding "minimal unconscionability," the court reversed the trial court order denying the petition to compel arbitration and directed the trial court to order arbitration.

SECURITIES

SEC Approves Use of Social Media for Company Announcements. On April 2, the SEC issued a report that allows companies to use social media outlets to announce key information in compliance with Regulation Fair Disclosure (Regulation FD), provided investors have been alerted about which social media will be used to disseminate such information. The report reviews 2008 SEC guidance that clarified that websites can serve as an effective means for disseminating information to investors if the investors have been made aware in advance. The report determined that the policy is equally applicable to current and evolving social media communication channels. The report states that disclosure of material, nonpublic information on the personal social media site of an individual corporate officer, without advance notice to investors that the site may be used for this purpose, is unlikely to comply with existing regulations, even if the individual in question has a large number of subscribers, friends, or other social media contacts, such that the information is likely to reach a broader audience over time.

NCUA Announces Pre-Litigation MBS Settlement. On April 2, the NCUA announced that a financial institution agreed to settle allegations related to mortgage-backed securities issued to certain corporate credit unions. The NCUA has alleged on behalf of failed corporate credit unions that certain MBS issuers made numerous misrepresentations and omissions in MBS offering documents regarding adherence to the originators' underwriting guidelines, which supposedly concealed the true risk associated with the securities and routinely overvalued them. When the allegedly risky securities lost value, the NCUA claims, the credit unions were forced into conservatorship and liquidated as a result of the losses sustained. In this settlement, the institution did not admit fault but agreed to pay $165 million to avoid threatened litigation. The settlement adds to the $170.75 million the NCUA already has obtained from four other institutions, and the agency continues to pursue additional institutions in 10 pending lawsuits.

PAYMENTS

CFPB Announces Collection of Money Transfer Complaints. On April 4, the CFPB announced that it is collecting money transfer complaints. Although the CFPB previously was accepting some complaints about money transfers under the "bank account" topic in its complaint system, it now has a complaint portal dedicated to money transfer complaints. The system categorizes complaints as relating to: (i) money was not available when promised; (ii) wrong amount charged or received (transfer amounts, fees, exchange rates, taxes, etc.); (iii) incorrect/missing disclosures or information; (iv) other transaction issues (unauthorized transaction, cancellation, refund, etc.); (v) other service issues (advertising or marketing, pricing, privacy, etc.); or (vi) fraud or scam. The announcement does not indicate whether the money transfer complaints will be published in the recently expanded public database at this time.

Arkansas Amends Uniform Money Services Act. On March 28, Arkansas enacted SB 786, which amends the Uniform Money Services Act to define and include as a money service "prepaid access." The bill also removes obsolete statutory language related to transition licenses for 2012. By state rule, the bill takes effect 91 days after the General Assembly adjourns.