The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted as a measure to promote financial stability and protection for consumers through increased regulation of nearly every aspect of the consumer finance industry. In the two years since its enactment, the Dodd-Frank Act has led to significant industry reforms and the promulgation of numerous new laws and regulations. In an effort to stay apprised of these significant industry changes, Burr & Forman's Dodd-Frank Newsletter will serve as a periodic update of recent case law, news, and developments related to the Dodd-Frank Act.

- - RECENT CASES - -

CFPB Involvement in Litigation

Delgado v. Capital Management Services, LP, Case No. 13-2030 (7th Cir. Aug. 14, 2013).

The FTC and CFPB recently filed an amici curae brief supporting the U.S. District Court for the Central District of Illinois's decision denying defendants' motion to dismiss Plaintiff Juanita Delgado's Fair Debt Collection Practices Act ("FDCPA") claims.

Delgado filed a putative class action against a defendant debt collector and its affiliated companies alleging violations of the FDCPA after the debt collector sent her a dunning letter attempting to collect a debt upon which the statute of limitations had expired. Defendants moved to dismiss arguing that the dunning letter did not contain a threat to sue and, thus, Delgado's FDCPA claim failed as a matter of law. Defendants also argued that they were not required to disclose that the debt was time-barred.

Rejecting the defendants' argument, the district court relied on an FTC report, *The Structure and Practices of the Debt Buying Industry* (Jan. 2013), http://1.usa.gov/Z0EjxZ, which found that failing to disclose that a debt is time-barred may be deceiving and encourage consumers to make a payment, which would revive the debt. Based on its findings, the FTC determined that a debt collector who knows that a debt is time-barred must tell the consumer that the debt collector cannot sue to collect the debt and that making a partial payment would allow the collector to sue to collect the balance. Relying on the FTC report, the district court found that the failure to disclose that a debt is time-barred and that a partial payment would revive the debt collector's ability to sue may mislead consumers. Because the debt collector's dunning letter did not contain these disclosures and contained an offer for "settlement," the court denied the defendants' motions to dismiss.

The FTC and CFPB's amici curae brief argues that the district court properly denied the defendants' motion to dismiss. Specifically, the FTC and CFPB argue that the "settlement" offer has the potential for deception as it could lead the consumer to believe that litigation would follow after the expiration of the settlement offer.

Say-On-Pay Voting

Dennis v. Hart, --- F.3d ---, 2013 WL 397752 (9th Cir. 2013).

Plaintiffs Ronald Dennis and George Assad filed consolidated shareholder derivative suits against PICO Holdings, Inc. and its board members alleging violations of state law in connection with the board's approval of executive compensation after a negative say-on-pay vote. Defendants removed the case to federal court and moved to dismiss plaintiffs' claims. Plaintiffs moved to remand. The district court dismissed some of plaintiffs' claims and remanded the remaining claims to state court. Plaintiffs appealed the district court's dismissal of their claims, and defendants appealed the district court's decision to remand the cases to state court.

On appeal, defendants first argued that Section 27 of the Exchange Act conferred federal jurisdiction over plaintiff's claims. However, the court rejected this argument, finding that plaintiffs did not allege a violation of the Exchange Act or any of its regulations. In addition, the court noted that plaintiffs alleged only state law claims and admitted that defendants complied with the Exchange Act.

Defendants next argued that federal jurisdiction existed because there was a significant federal issue. Specifically, defendants claimed that the Dodd-Frank Act provided that say-on-pay votes were advisory and a negative say-on-pay vote would not result in liability. Thus, defendants argued that the Dodd-Frank Act's provision barring liability for a negative say-on-pay vote created a significant federal issue which conferred federal jurisdiction. The court, however, found that defendants' reliance on the Dodd-Frank Act was best characterized as a defense. Finding that a federal defense was inadequate to confer federal jurisdiction, the court rejected defendants' argument.

Finally, defendants argued that complete preemption applied to plaintiffs' claims creating federal question jurisdiction. The court found that complete preemption applied "only where a federal statutory scheme is so comprehensive that it entirely supplants state law causes of action" and held that the Exchange Act did not displace state law resulting in complete preemption. As a result, the court held that the cases were improperly removed and the district court lacked jurisdiction to dismiss any of plaintiffs' claims.

Constitutional Challenges to Dodd-Frank

State National Bank of Big Spring v. Lew, --- F. Supp. 2d ---, 2013 WL 3945027 (D.D.C. 2013).

State National Bank of Big Spring (the "Bank"), private plaintiffs, and the States of Alabama, Georgia, Kansas, Michigan, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, and West Virginia (the "States") filed suit against several government officials and entities challenging the constitutionality of Titles I, II, and X of the Dodd-Frank Act. Defendants moved to dismiss on the grounds that plaintiffs lacked standing and that their claims were not ripe.

As a preliminary matter, the court noted that none of the plaintiffs were regulated by Titles I or II, and only the Bank was regulated by Title X. To establish standing, the court said that plaintiffs must show: "(1) they . . . suffered an injury in fact that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical'; (2) the injury must be 'fairly traceable to the challenged action of the defendant'; and (3) 'it must be likely as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" 2013 WL 3945027, at *3 (citing *NB ex rel. Peacock v. Dist. of Columbia*, 682 F.3d 77, 81 (D.C. Cir. 2012)).

First, the Bank alleged it had standing to challenge the creation of the Financial Stability Oversight Council ("FSOC") because it violated the Constitution's separation of powers. The Bank claimed to have an injury-in-fact because the FSOC designated GE Capital as a "systematically important financial institution" ("SIFI"). The Bank argued that, due to this designation, GE Capital would appear to be more financially sound because of government backing and the Bank would be unfairly disadvantaged as a competitor of GE Capital. Dismissing this argument, the court noted that a SIFI designation does not result in government backing. Rather, it subjects the financial institution to more regulation and oversight. Additionally, the court said that it remains to be seen what effect a SIFI designation will have on financial institutions. Accordingly, the court dismissed the Bank's claim challenging the constitutionality of the FSOC.

Second, the States challenged Title II of the Dodd-Frank Act, which creates the Orderly Liquidation Authority ("OLA") and "provide[s] the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard." 12 U.S.C. § 5384(a). Under limited circumstances, the OLA can replace Chapters 7 and 11 of the Bankruptcy Code. The States argued that the Dodd-Frank Act abrogated their statutory rights of equal treatment under the Bankruptcy Code. However, the court rejected this argument, finding that the States did not have a property right in the Bankruptcy Code and any alleged injury was far too remote. Thus, the court dismissed the States' challenge to Title II of the Dodd-Frank Act.

Third, the Bank challenged Title X of the Dodd-Frank Act, which created the CFPB and granted the CFPB regulatory authority. Specifically, the Bank argued that it suffered and will continue to suffer an injury by incurring substantial compliance costs due to CFPB regulations. The Bank alleged that it incurred costs by tracking developments of the Dodd-Frank Act and its regulations. The court rejected this argument, stating that the Bank could not establish standing based on the costs of figuring out whether it suffered -- or would suffer -- an injury. The court found that such costs are better characterized as costs incurred during the normal course of business.

In further support of its Title X challenge, the Bank argued that it suffered injury based on Dodd-Frank's remittance rule, mortgage foreclosure rules, RESPA Servicing Rule, and ATR-QM Rule. The court dismissed the Bank's argument that the remittance rule caused injury, holding that the Bank fell within the rule's safe harbor provision. The court also dismissed the Bank's argument regarding the mortgage foreclosure rules because they had not been issued at the time the Bank filed suit and, thus, the Bank could not demonstrate an actual or imminent injury at the time suit was filed. Dismissing the Bank's argument regarding the RESPA Servicing Rule, which prevents a mortgage servicer from filing notice of foreclosure unless the loan is more than 120 days delinquent, the court said that the Bank holds a small, decreasing number of mortgages and had not initiated a foreclosure between 2008 and 2012. Because it was unlikely that the Bank or its loans would be subject to the RESPA Servicing Rule when it goes into effect in 2014, the court held that the Bank could not demonstrate injury to support standing. Finally, the court dismissed the Bank's ATR-QM Rule argument because the Rule was not enacted when the Bank filed suit. Additionally, the court found that the Bank failed to establish that it held loans which were subject to the ATR-QM Rule. Accordingly, the court granted defendants' motion to dismiss.

TILA Rescission

Hartman v. Smith, --- F.3d ---, 2013 WL 4407058 (8th Cir. 2013).

Plaintiffs Roger Hartman, Mavis Hartman, and Maul Lee Hartman filed suit against defendants alleging violations of the TILA and state law. The district court granted summary judgment in favor of defendants on plaintiffs' TILA rescission claim and various state law claims, and the jury found for defendants on the remaining claims. Plaintiffs appealed the lower court's decision granting summary judgment in favor of defendants. Defendant Prime Security Bank (the "Bank") cross-appealed the district court's decision finding that plaintiffs' notice was sufficient to trigger the TILA statutory right of rescission.

On appeal, the Bank argued that plaintiffs' rescission claim failed because they did not file suit prior to the foreclosure sale. The court found that to exercise the right to rescind "the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication. . . ." *See* 12 C.F.R. § 226.23(a)(2). The court noted the circuit split regarding whether a borrower must file suit within the repose period to exercise their right to rescind. *See Sherzer v. Homestar Mortg. Servs.*, 770 F.3d 255, 258-61 (3d Cir. 2013) (finding notice by itself sufficient to effectuate rescission); *Gilbert v. Residential Funding LLC*, 678 F.3d 271, 276 (4th Cir. 2012) (same). *But see McOmie-Gray v. Bank of Am. Home Loans*, 667 F.3d 1325, 1327-30 (9th Cir. 2012) (finding notice insufficient and borrower must file suit to exercise rescission); *Rosenfield v. HSBC Bank, USA*, 681 F.3d 1172, 1185 (10th Cir. 2012) (same). The court had recently joined the Ninth and Tenth Circuits and found that notice by itself, while necessary, was insufficient to exercise rescission. *See Keiran v. Home Capital, Inc.*, Nos. 11-3878. 12-1053, 2013 WL 3481366, at *5 (8th Cir. July 12, 2013). The court held that plaintiffs were required to file suit within three years and prior to the foreclosure of the loan. Accordingly, the court held that the lower court erred in finding that notice was sufficient and reversed its decision with respect to rescission.

In a concurring opinion, Judge Melloy agreed with the opinion only to the extent the court was bound by prior decisions. However, he agreed with the reasoning in the *Keiran* dissent and stated that sending notice within three years should be sufficient to effectuate rescission. He further noted that the CFPB had recently weighed in on this issue through amicus curae briefs and argued that a borrower properly exercises the right to rescind a loan transaction by sending notice. Judge Melloy suggested that deference should be granted to the CFPB's interpretation of the TILA.

Dodd-Frank Amendment to the Securities and Exchange Act

U.S. Securities & Exchange Commission v. A Chicago Convention Center, LLC¸ --- F. Supp. 2d ---, 2013 WL 4012638 (N.D. Ill. 2013).

The SEC filed suit against defendants alleging violations of the Securities Act of 1933, Section 10(b) of the Securities

Exchange Act of 1934, and the Exchange Act Rule 10b-5. Defendants filed a motion to dismiss the complaint.

In support of their motion, defendants argued that the "transactional test" articulated in *Morrison v. National Australia Bank Ltd.*, --- U.S. ---, 130 S. Ct. 2869 (2010) barred the SEC's claims because the transactions were not domestic. In response, the SEC argued that Section 929P(b) of Dodd-Frank Act set forth the "conducts and effects" test which superseded *Morrison*. The court first analyzed *Morrison* and said that there is a presumption against giving a statute extraterritorial effect unless Congress clearly intends to give it extraterritorial effect. In analyzing the extraterritorial effect, the Supreme Court set forth the "transactional test," which provides that "a plaintiff may bring a cause of action for securities fraud when 'the purchase or sale is made in the United States, or involves a security listed on a domestic exchange.'" 2013 WL 4012638, at *3 (citing *Morrison*, 130 S. Ct. at 2886).

The court then looked to Section 929P9(b) of the Dodd-Frank Act, which amended the Securities and Exchange Act and addressed the jurisdiction of securities fraud actions brought by the SEC and Department of Justice. The parties disagreed about whether the Section 929P(b) was jurisdictional or superseded *Morrison*. The court found that the plain language of Section 929P(b) suggested that it was merely jurisdictional. However, the court noted that interpreting Section 929P(b) as jurisdictional rather than substantive would render the statute superfluous because "federal courts already had the power to hear SEC enforcement cases involving foreign transactions." *Id.* at *6 (citing *Morrison*, 130 S. Ct. at 2877). The court declined to resolve the ambiguity in the statute and denied defendants' motion to dismiss because the SEC stated a claim under either the "transactional test" or the "conduct test."

Preemption

Thomas v. CitiMortgage, Inc., No. 12-40122-FDS, 2013 WL 4786060 (D. Mass. Sept. 5, 2013).

Plaintiff Kathleen Thomas filed an adversary proceeding against CitiMortgage, Inc. ("CitiMortgage"), Flagstar Bank, FSB ("Flagstar"), and Allied Mortgage Capital Corporation ("Allied Mortgage") alleging violations of Massachusetts General Laws Chapter 183C. The bankruptcy court granted the defendants' motion for summary judgment, and Thomas appealed.

On appeal, Thomas challenged the bankruptcy court's holding that the Home Owner's Loan Act ("HOLA") preempted Chapter 183C. Addressing Thomas's argument, the court found that Chapter 183C mandates additional disclosures than those required by state law for high-cost loans. The court also determined that the HOLA authorized the creation of the Office of Thrift Supervision ("OTS") which, in turn, was given "broad authority under HOLA to regulate and govern 'the powers and operations of every Federal savings and loan association. . . .'" 2013 WL 4786060, at *3 (quoting *Sovereign Bank v. Sturgis*, 863 F. Supp. 2d 75, 91 (D. Mass. 2012)). The court then found that the OTS occupied the field for federal savings associations. The court noted, however, that the Dodd-Frank Act limited the preemptive scope of the HOLA by limiting it to specific conflicts between state and federal law. Because Thomas's loan was consummated prior to Dodd-Frank's enactment, the court applied the HOLA preemption analysis that existed prior to Dodd-Frank's enactment.

Applying the preemption analysis applicable to Thomas's loan, the court said that it involved a two-step inquiry. First, the HOLA requires a determination of whether the challenged law falls within a category listed in 12 C.F.R. § 560.2(b). If it does not, the court must then determine whether the challenged law affects lending. The court found that Chapter 183C easily fell within subsection (b) because it purported to regulate loan related fees and purported to regulate loan disclosures. The court also rejected Thomas's argument that Chapter 183C was not preempted because Massachusetts was exempt from the TILA and, thus, the exemption should also apply to more general OTS regulations. Specifically, the court found that the exemption did not apply when the creditor was a federally-chartered institution. Because Flagstar, the creditor, was a federally-chartered institution, any exemption did not apply.

Defendants also argued that Thomas's loan was table-funded, thereby making Flagstar the original lender for the purposes of HOLA preemption. Addressing the issue for the first time, the court found that a bank which table-funds the loan should be considered the original lender for the purposes of the preemption analysis. Additionally, the court found it was irrelevant that the loan closed in the name of another entity. Finding that preemption extended to loans table-funded by a federal thrift, the court affirmed the bankruptcy court's decision.

Challenges to Delay in Issuance of Volcker Rule Regulations

Taylor v. Bernanke, No. 13-CV-1013, 2013 WL 4811222 (E.D.N.Y. Sept. 9, 2013).

Plaintiffs filed suit against Chairman of the Board of Governors of the Federal Reserve System, Ben Bernanke, and others, seeking declaratory, injunctive, and mandamus relief under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706 and challenging the delay in the issuance of Volcker Rule final regulations. Defendants moved to dismiss on the grounds that Plaintiffs lacked standing and failed to state a claim for relief.

In support of their claim, plaintiffs first argued that the agencies' delay in issuing final regulations caused risk to their deposits as banks were unable to comply with the Volcker Rule and continued to engage in speculative proprietary trading activities. Rejecting this argument, the court found that plaintiffs did not actually lose their deposited funds. Additionally, the court said that plaintiffs failed to show that FDIC insurance would not cover any purported losses. Because plaintiffs could not show concrete harm, the court dismissed plaintiffs' claims for lack of standing.

The court also found that plaintiffs failed to show causation. Specifically, the court concluded that plaintiffs failed to demonstrate that the lack of final regulations caused banks to continue to engage in proprietary trading. The court further noted that banks have until the end of the Conformance Period, which is in July 2014, to comply with Volcker Rule regulations.

Finally, plaintiffs argued that they had standing as activist members of Occupy the SEC ("OSEC") and the delay in final rulemaking frustrated their efforts to bring about financial reform. As a preliminary matter, the court noted that OSEC was not a party to the action and plaintiffs did not show that they had standing to sue on its behalf. Further, the court failed to find injury in fact. While the delay in rulemaking interfered with plaintiffs' preferred method of advocacy, the court said that the delay did not directly conflict with OSEC's mission and plaintiffs could not demonstrate standing based on mere interest in a problem. Accordingly, the court granted Defendants' motion to dismiss for lack of jurisdiction.

- - NEWS & DEVELOPMENTS - -

CFPB to Hold Field Hearing on Credit Cards

The CFPB recently announced that it will hold a field hearing on credit cards on Wednesday, October 2 at 11 a.m. CDT. CFPB Director Richard Cordray will give remarks at the field hearing. There will also be testimony from consumer groups, industry players, and the public.

To attend the field hearing, email your RSVP to cfpb.events@cfpb.gov, including your full name and your organizational affiliation, if any.

To read the CFPB's announcement, visit: http://www.consumerfinance.gov/blog/save-the-date-chicago-illinois/

CFPB Amends Mortgage Rules

On September 13, 2013, the CFPB issued a final rule amending certain of the final mortgage rules issued in January 2013 under the Dodd-Frank Act.

First, the amendments change certain requirements related to loss mitigation processing. Under the original rules, if a borrower's loss mitigation application was initially deemed incomplete by a servicer, the servicer was required to send the borrower a notice stating that the missing documents be returned by the earliest remaining of four dates specified in the regulation. The amended rules simply require servicers to specify a reasonable response deadline. However, the four dates previously specified are to be treated as milestones a servicer should consider in choosing a reasonable date.

Second, the amendments clarify how certain charges must be treated charges by third parties must be treated for purposes of qualified mortgage point and fee caps. The amendments also clarify what compensation must be counted by retailers of manufactured homes as "loan originator compensation" for purposes of these thresholds.

Third, the amendments extend certain exceptions to small creditors, including an exception to the general prohibition on balloon features for high-cost mortgages, regardless of whether such creditors operate predominately in rural or underserved areas, and an exemption to the escrow requirements for higher-priced mortgage loans.

Fourth, the amendments adopt certain revisions to the 2013 Loan Originator Compensation Final Rule, including revisions to the definition of "loan originator" in the regulations and commentary, clarifications regarding when employees of manufactured housing retailers may be deemed "loan originators," and clarifications to the commentary on prohibited payments to "loan originators."

Fifth, the amendments clarify certain provisions related to credit insurance premiums. Finally, the amendments change the effective date for certain provisions to January 1, 2014 instead of January 10, 2014.

To read the amendments, visit: http://files.consumerfinance.gov/f/201309_cfpb_titlexiv_updates.pdf

CFPB Warns Employers Who Use Payroll Cards

On September 12, 2013, the CFPB issued a bulletin warning employers that they are not permitted to require employees to receive wages via a payroll card of the employer's choosing. Regulation E states clearly that no "financial institution or other person" may mandate that an employee receive direct deposit into an account at any particular financial institution.

The CFPB emphasized its authority to enforce regulations related to payroll cards, including EFTA and Regulation E, against employers and issuers of payroll cards.

To read the bulletin, visit: http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf

CFPB Issues Bulletin Regarding Duties of Information Furnishers

On September 4, 2013, the CFPB issued a bulletin noting the responsibility of information furnishers to investigate consumer disputes forwarded by consumer reporting agencies ("CRAs").

Specifically, the CFPB emphasized that furnishers must review all relevant information sent by the CRA that forwarded the dispute, must report the results of the investigation to the CRA that forwarded the dispute, and must report the result of the investigation to other CRAs that received inaccurate information.

To read the bulletin, visit: http://files.consumerfinance. gov/f/201309_cfpb_bulletin_furnishers.pdf

Basel Committee Issues Derivatives Framework

The Basel Committee and the International Organization of Securities Commissions recently issued a final policy framework for margin requirements for non-centrally cleared derivatives.

Among other things, the framework requires financial firms and other covered entities who engage in non-centrally cleared derivatives to exchange initial and variation margins as appropriate in view of the counterparty risks posed by such transactions.

To read the final policy framework, visit: http://www.bis.org/publ/bcbs261.pdf

Six Federal Agencies Revise Proposed Rule on Securitization Transactions

The Federal Reserve Board, the Department of Housing and Urban Development, the FDIC, the Federal Housing Finance Agency, the OCC, and the SEC recently issued a notice revising a securitization transactions proposed rule.

The proposed rule would have required sponsors of securitization transactions to retain risk in those transactions. The revised propose rule would provide sponsors several options to satisfy the risk retention requirement, and would exempt qualified residential mortgages from risk retention.

Public comments must be submitted no later than October 30, 2013.

To read more, visit: http://www.federalreserve.gov/newsevents/press/bcreg/20130828a.htm

CFPB Issues Summer 2013 Supervisory Highlights

The CFPB issued the Summer 2013 issue of its Supervisory Highlights. In this issue, the CFPB highlights supervision work during the period of November 2012 to June 2013. The purpose of the report is to help the industry limit risks to consumers and improve compliance efforts.

Topics discussed in this issue of Supervisory Highlights include compliance management systems, mortgage servicing, and fair lending.

To read the report, visit: http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf

Federal Reserve Board Issues Final Rule on Annual Assessments

On August 16, 2013, the Federal Reserve Board issued a final rule which establishes annual assessment fees for its regulation of large financial companies. Under the Dodd-Frank Act, the Board is to collect such fees equal to the expenses it estimates are necessary to regulate large bank holding companies and savings and loan holding companies.

Payments for the 2012 assessment period will be due by December 15, 2013. The Board estimates that it will collect over $400 million in the 2012 assessment period.

To read the press release, visit: http://www.federalreserve.gov/newsevents/press/bcreg/20130816a.htm

FHA Issues Guidance Related to Borrower's Credit History

On August 15, 2013, the Federal Housing Administration ("FHA") issued guidance which requires lenders to consider a potential borrower's credit disputes and debt in collection prior to issuing a mortgage. According to the FHA, "collections and judgments may indicate a borrower's disregard for credit obligations and *must* be considered in the creditworthiness analysis."

The guidance requires a lender to determine whether the collection account or judgment was the result of the borrower's disregard for financial obligations, the borrower's inability to manage debt, or extenuating circumstances. The borrower is required to provide a letter of explanation for each such account or judgment.

For prospective borrowers with collection accounts having an aggregate balance greater than or equal to $2,000, a lender must perform a capacity analysis as detailed in the guidance. Medical collections and charge off accounts are excluded from the guidance. The guidance takes effect October 15, 2013.

To read the guidance, visit: http://www.aba.com/Tools/Ebulletins/Documents/FHA-13-24ml.pdf

CFPB Amends Regulation E

On August 7, 2013, the CFPB issued a final rule clarifying its May 22, 2013 remittance transfer rule, which provided that, if a sender provided incorrect or insufficient information, a provider was permitted to "deduct from the amount refunded or applied towards a new transfer any fees actually imposed on or, to the extent not prohibited by law, taxes actually collected on the remittance transfer as part of the first unsuccessful remittance transfer attempt."

Due to concerns that the rule might be misinterpreted as authorizing providers to deduct fees and taxes from just the principal amount provided by the sender to the provider, the CFPB amended the rule so that it now states as follows: "In the case of an error under paragraph (a)(1)(iv) of this section that occurred because the sender provided incorrect or insufficient information in connection with the remittance transfer, the remittance transfer provider shall provide the remedies required by paragraphs (c)(2)(ii)(A)(1) and (B) within three business days of providing the report required by paragraph (c)(1) or (d)(1) of this section except that the provider may agree to the sender's request, upon receiving the results of the error investigation, that the funds be applied towards a new remittance transfer, rather than be refunded, if the provider has not yet processed a refund."

To read more, visit: https://www.federalregister.gov/articles/2013/08/14/2013-19503/electronic-fund-transfers-regulation-e-correction

OCC Revises Lending Limits Rule

The OCC recently issued a final rule amending its rule on lending limits. The OCC had published an interim final rule on June 21, 2012, which created a temporary exception period through July 1, 2013 for derivative and securities financing transactions. The final rule extends this exception through October 1, 2013.

The final rule also reduces compliance burdens on small and midsized banks by providing different options such entities may use for measuring credit exposure. However, the OCC may specify the method a bank is to use for safety reasons.

For derivatives transactions, banks may choose between the Conversion Factor Matrix Method, the Current Exposure Method, and an OCC-approved internal model. For securities financing transactions, banks may choose between locking in the attributable exposure, the Basel Collateral Haircut Method, and an OCC-approved internal model.

To read the final rule, visit: http://www.occ.gov/news-issuances/federal-register/78fr37930.pdf

CFTC Issues Final Rule Exempting Cooperatives From Swaps Clearing Rules

The CFTC recently issued a final rule exempting cooperatives, such as Farm Credit System banks and credit unions, from the swaps-clearing rules.

Under the rule, cooperatives are exempt regardless of their asset size. Banks, on the other hand, are exempt only if their total assets are equal to or less than $10 billion.

To read more, visit: http://regreformtracker.aba.com/2013/08/cftc-exempts-fcs-banks-cus-from-swaps.html?utm_source=regreformtracker&utm_medium=ABA+Dodd-Frank+Tracker

CFPB Updates Exam Procedures

On August 15, 2013, the CFPB issued its second update to its exam procedures for the January 2013 mortgage regulations. Topics covered by the updates include the ability-to-repay rule, high-cost mortgage requirements, and updates to the escrow and credit card rules.

To view the updated RESPA exam procedures, visit: http://files.consumerfinance.gov/f/201308_cfpb_respa_narrative-exam-procedures.pdf

To view the updated TILA exam procedures, visit: http://files.consumerfinance.gov/f/201308_cfpb_tila-narrative-exam-procedures.pdf

CFPB Issues Small Business Guide to Remittance Transfer Rule

On August 8, 2013, the CFPB issued its small business guide to its remittance transfer rule. The guide highlights issues that small businesses may want to consider in implementing the rule.

To read the guide, visit: http://files.consumerfinance.gov/f/201308_cfpb_intl-money-transfer-entity-compliance-guide.pdf

Federal Reserve Board Releases Report on Prepaid Cards

In July 2013, the Federal Reserve Board released its annual report on the use of prepaid cards in federal, state, and local government-administered payment programs as mandated by the Dodd-Frank Act. The report noted that governments often use prepaid cards to disburse funds as a less expensive alternative to checks.

To read the report, visit: http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201307.pdf

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