

*April 8, 2011*

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### Federal Issues

**Federal Reserve Board Proposes Repeal of Regulation Q.** On April 6, the Federal Reserve Board (Board) requested comment on a proposed rule to repeal the Board's Regulation Q, which prohibits banks from paying interest on demand deposits. The repeal, which is mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, would become effective on July 21, 2011 and would allow financial institutions to begin offering interest-bearing checking accounts. The Board specifically seeks comments regarding the effect of the repeal on bank balance sheets and income, the impact on short term funding markets, the expected demand for interest-bearing checking accounts, and the potential competitive burden on smaller depository institutions. For a copy of the Federal Reserve Board's press release, see <http://www.federalreserve.gov/newsevents/press/bcreg/20110406a.htm>.

### Courts

**D.C. Circuit Dissolves Temporary Administrative Stay and Denies Motion to Stay Implementation of Loan Originator Compensation Rule Pending Appeal.** On April 5, the United States Court of Appeals for the District of Columbia dissolved its March 31, 2011 administrative stay of the Federal Reserve Board's Loan Originator Compensation rule. In general, that rule prohibits compensation of a mortgage loan originator based on any loan terms other than amount, and payment of any compensation where the originator is paid by the borrower. The court issued the administrative stay in order to consider the merits of the National Association of Mortgage Brokers' (NAMB's) challenge to the portion of the rule prohibiting mortgage brokers from paying loan officers a commission on specified loan transactions (as reported in [InfoBytes, April 1, 2010](#)). The court also denied NAMB's emergency motions for expedited relief and to stay implementation of the rule pending appeal, because NAMB had "not satisfied the stringent standards required for a stay pending appeal." As a result, the Loan Originator Compensation rule is now in effect. [Click here for a copy of the Court of Appeal's April 5 order.](#)

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that its advertisements were not e-mails and did not come within the meaning of electronic mail messages under the CAN-SPAM Act. The court, in rejecting this argument, stated that the Act should be interpreted expansively and in accordance with its broad legislative purpose of making it unlawful to initiate the transmission of commercial electronic mail messages with "header information that is materially false or materially misleading." 15 U.S.C. § 7704(a)(1). The court further held that MaxBounty's communications were "electronic messages" under the Act, and noted that its holding "is consistent with the intent of Congress to mitigate the number of misleading commercial communications that overburden infrastructure of the internet." In allowing Facebook to proceed with its claim under the CFAA, the court rejected MaxBounty arguments that Facebook had failed to plead with particularity the alleged fraudulent conduct, noting that the CFAA requires only a showing of unlawful access without a need to plead the elements of common law fraud. [Click here for a copy of the opinion.](#)

## Firm News

BuckleySandler LLP will host its West Coast Mortgage Lending and Servicing Today Conference on Monday, April 11 at the Balboa Bay Club and Resort in Newport Beach, CA. The conference will focus on compliance, regulatory, and litigation issues in today's changing mortgage lending and servicing environment. For more information, please visit <http://fairlendingtoday.com/>. To register for the conference, please email Anne McKenzie at [amckenzie@buckleysandler.com](mailto:amckenzie@buckleysandler.com).

Join Us! 2011 Fair Lending Today Conference on Compliance, Regulatory & Litigation Issues in Today's Changing Enforcement Environment, hosted by BuckleySandler LLP.

2011 Panel Topics Include:

- Fair and Responsible Lending Enforcement and Litigation Overview
- Fair Mortgage Servicing: The Foreclosure Affidavit Crisis and More Challenges for Servicers
- The New Wave of SCRA Enforcement
- Dodd-Frank and the Consumer Financial Protection Bureau: Implementation, Preemption, State Regulation, and UDAP
- The New Enforcement Environment and Financial Services Regulation
- Privacy, Data Security, and Data Breach Litigation Nationally and Internationally
- Community Reinvestment Act: A Revitalized Statute?
- Key Trends in Fair Lending Risk Management Programs
- Fair Lending Issues Impact on Bank Merger & Acquisition Activity

When: Monday, May 2

Where: The Fairmont Hotel in Washington, DC

Register or Learn More: Visit <http://fairlendingtoday.com> or email [fairlending@buckleysandler.com](mailto:fairlending@buckleysandler.com).

[James Parkinson](#) will speak on a panel session entitled "Compliance & Ethics Programs - Refreshed in Light of the UK's Bribery Act of 2010 and the Dodd-Frank Act," at the ABA Business Law Section meeting in Boston on April 16.

[Donna Wilson](#) will be presenting at a CLE webinar on "FCRA and FACTA Class Actions: Leveraging New Developments in Certification, Damages and Preemption" on Tuesday, April 26 at 1pm EDT/10am PDT. This seminar will discuss recent developments in FCRA and FACTA class action litigation, particularly the issue of proportionality of damages at the class certification stage and state law preemption, and litigation strategies for plaintiffs and defendants bringing or defending these claims. The webinar is sponsored by the legal publishing group of Strafford Publications.

[James Parkinson](#) will participate on a panel entitled "The Role of the Lawyer in Preventing Corruption," at the International Bar Association's Bar Leaders Conference in Miami, on May 4.

[Warren Traiger](#) will be speaking about potential changes to the CRA regulations and the current regulatory environment during a webinar hosted by the CRA Qualified Investment Fund, on Thursday, May 19 at 2pm.

[Donna Wilson](#) will be presenting at a CLE webinar on "Emerging Class Action Threat: Consumer Personal Identification Data Strategies to Minimize Litigation Risks and Maximize Insurance Coverage" on Tuesday, May 24. This seminar will analyze the Song-Beverly Act and its impact of ruling on class action litigation under other state privacy statutes. The Webinar is sponsored by the Legal Publishing Group of Strafford Publications.

[James Parkinson](#) will be speaking at the ACI's "FCPA Compliance in Emerging Markets" program in Washington, D.C., on June 15 -16.

[Andrew Sandler](#) will be speaking at CBA Live 2011 and presenting an Annual Fair Lending Report on Tuesday, June 14 at 3:30 pm in Orlando, Florida. Mr. Sandler will be giving an overview of current regulatory and enforcement developments and discussing the most significant fair lending risks confronting consumer lenders in the next twelve months.

[Andrew Sandler](#) will be participating on a panel at the Florida Bar Annual Convention on Friday, June 24 as part of the "Presidential Showcase". On the panel with Mr. Sandler is Paul Bland, Public Justice. The Moderator is Justice R. Fred Lewis, a Justice of the Florida Supreme Court, a former Chief Justice and founder of Justice Teaching.

## Miscellany

**U.K. Ministry of Justice Publishes Guidance on "Adequate Procedures" Defense Under U.K. Bribery Act.** On March 30, the U.K. Ministry of Justice published long-awaited Guidance on the implementation of Section 7 of the U.K. Bribery Act of 2010, which made it a criminal offense for a company to fail to prevent persons associated with the company from paying bribes on the company's behalf, but provided a full defense if the company had "adequate procedures" to prevent

such bribery. The Guidance states that whether or not a company had adequate procedures in place to prevent bribery is a fact-specific inquiry for a court, but that procedures put in place by companies should be informed by six principles. Under these principles a company should: (i) establish procedures proportionate to the bribery risk faced by the company and the company's nature, scale, and complexity, (ii) ensure top-level management is committed to preventing bribery, (iii) periodically assess the nature and extent of exposure to bribery risks, (iv) apply due diligence procedures to individuals who perform services on behalf of the company, (v) ensure that anti-bribery policies are understood throughout the company, including through training, and (vi) monitor and review anti-bribery procedures and make improvements where necessary. The Guidance clarified that departures from the principles suggested in the Guidance will not create a presumption of a lack of adequate procedures. The Bribery Act will go into effect on July 1, 2011. For a copy of the Guidance, please see <http://www.justice.gov.uk/guidance/bribery.htm>.

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

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