

December 9, 2012

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CFPB and DOJ Announce MOU to Coordinate Fair Lending Enforcement; CFPB Issues First Annual Report to Congress on Fair Lending Activities. On December 6, the CFPB and the DOJ announced a [Memorandum of Understanding](#) to coordinate enforcement of the federal fair lending laws, including the Equal Credit Opportunity Act. Simultaneously, the CFPB issued its first annual Fair Lending Report to Congress as required by the Dodd-Frank Act, which describes the Bureau's efforts to build its Office of Fair Lending and Equal Opportunity and reviews its fair lending accomplishments. Together, these initiatives demonstrate that the CFPB and DOJ are continuing to work together closely to aggressively enforce the federal fair lending laws. For additional information about these developments, please see our [Special Alert](#).

CFPB Announces First Partnership with a City Government, Highlights Chicago's Consumer Financial Protection Efforts. On December 5, CFPB Director Richard Cordray and Chicago, IL Mayor Rahm Emanuel announced an agreement to share consumer financial protection information and resources. [According to Director Cordray](#), the partnership will allow the CFPB to learn from and expand on the ways Chicago protects its consumers, and help the CFPB determine where it should be focusing its attention by allowing the CFPB to better understand consumer protection challenges that arise locally. The partnership also will allow the city to leverage new resources and information developed by the CFPB. In his statement regarding the partnership, Mayor Emanuel [highlighted](#) the city's recent consumer financial protection initiatives, including (i) the planned introduction of a new City Council ordinance to regulate and license debt collectors, (ii) information gathering on predatory and deceptive acts associated with home repair loans, payday loans, small dollar loans, reverse mortgage products, and mortgage origination and servicing, (iii) new zoning regulations to limit the proliferation of payday lenders, auto-title loan stores, and other predatory financial services,

and (iv) the planned introduction of a new ordinance to enhance the Department of Business Affairs & Consumer Protection's ability to take action against businesses convicted of violating state and federal consumer protection acts.

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President, Congress Extend Cross-Border Fraud Enforcement Law. On December 4, President Obama [signed](#) a bill, [H.R. 6131](#), that extends through December 2020, a law that [enhances the FTC's ability](#) to address cross-border fraud, and particularly to fight spam, spyware, and Internet fraud and deception. Originally passed in December 2006 and set to expire in December 2013, [the U.S. SAFE WEB Act](#) amended the FTC Act to include within the definition of "unfair or deceptive acts or practices" certain acts or practices involving foreign commerce. Further, the law authorizes the FTC to (i) disclose certain privileged or confidential information to foreign law enforcement agencies, and (ii) provide investigative assistance to a foreign law enforcement agency pursuing violations of laws prohibiting fraudulent or deceptive commercial practices or other practices substantially similar to practices prohibited by laws administered by the FTC without requiring that the conduct identified constitute a violation of U.S. laws.

IRS Ready to Accept Electronic Signatures on the 4506-T. Recently, the Internal Revenue Service issued [Electronic Signature Requirements](#) that will allow applicants to electronically sign and submit IRS Forms 4506-T and 4506T-EZ (4506-T) beginning January 7, 2013. IRS regulations permit taxpayers to order a tax transcript using a form 4506-T through the IRS Income Verification Express Services (IVES). Under the Requirements, IVES participants may accept and submit an electronically signed 4506-T if the electronic signature process includes: (i) a structure that places creation of the signature under the signer's sole control; (ii) a signature technology that permits the signature to be verified, either through the use of software algorithms or forensic analysis; (iii) the ability to establish that the signature was created by a specific individual; (iv) a signature block on the document with a symbol, logically associated with the 4506-T, that allows validation of the signer's name against the name listed on the 4506-T; (v) a process flow or communication with the signer establishing the intent to sign and the purpose of the signature; and (vi) application of the signature in a tamper-evident manner. In addition, the process used to present and sign the 4506-T must include each of the following: (i) authentication, (ii) consent, (iii) tamper-proofing, and (iv) an audit log. Each IVES participant accepting electronically signed 4506-Ts must determine that the electronic signature process adheres to the Requirements, and must also retain a copy of each signed 4506-T and accompanying audit log for at least two years. Such participants also must implement a third-party audit program and comply with specific monthly and annual third-party audit and reporting requirements. BuckleySandler's [Electronic Signatures and Records Team](#) has substantial experience assisting entities seeking to comply with electronic signature requirements.

Multiple SEC Senior Staff Announce Departure Plans. This week, multiple senior staff at the SEC announced plans to leave the agency. These departures follow the decision [announced](#) last week by SEC Chairman Mary Schapiro that she will leave the agency on December 14. On December 4, SEC Director of the Division of Corporate Finance, Meredith Cross, [announced](#) that she will leave the agency at the end of 2012. On December 5, SEC General Counsel, [Mark Cahn](#), and Director of Trading and Markets, [Robert Cook](#), also announced their departures.

Federal Reserve Board Announces Regional Chairs and Deputy Chairs. On December 3, the Federal Reserve Board [announced](#) the names of the chairs and deputy chairs designated to lead the nine-member boards of directors for each of the 12 Federal Reserve Banks.

STATE ISSUES

California AG Files First Mobile Application Privacy Suit. On December 6, California Attorney General Kamala Harris (AG) [announced](#) an enforcement action against Delta Airlines for allegedly failing to comply with the state's Online Privacy Protection Act. This is the first action brought by the AG's office under this law and follows other [efforts](#) by the AG's office to require enhanced mobile privacy disclosures. In October, the AG's office [sent letters](#) to 30 companies, including Delta, advising those entities that their mobile applications failed to comply with the state privacy law and providing them 30 days to remedy the alleged failure. The complaint alleges that since at least 2010, Delta has operated a mobile application that may be used to, for example, check-in online for an airplane flight, view reservations for air travel, or rebook cancelled or missed flights. The AG claims that the Delta application collections substantial personally identifiable information but does not have a privacy policy. The suit seeks to enjoin Delta from distributing its application without a privacy policy and penalties of up to \$2,500 for each violation.

New York DFS Requires Mortgage Servicer to Retain an Independent Monitor. On December 5, the New York Department of Financial Services (DFS) [announced](#) that it is requiring a major mortgage servicer to retain, within 20 days, an independent monitor to conduct a comprehensive review of the firm's servicing operations and make recommendations for improvements. The servicer is required to develop written action plans to address the monitor's findings, subject to approval by the DFS. The DFS claims that the monitor is needed to address "preliminary evidence of non-compliance" with state regulations and an earlier agreement from the servicer to alter certain servicing practices. The [prior agreement](#) generally required the servicer to: (i) establish and maintain sufficient capacity to properly board and manage its significant portfolio of distressed loans, (ii) engage in sound document execution and retention practices to ensure that mortgage files were accurate, complete, and reliable, and (iii) implement a system of robust internal controls and oversight with respect to mortgage servicing practices performed by its staff and third-party vendors. The DFS obtained that prior agreement as a condition to approving the servicer's acquisition of another mortgage servicing entity, due to the DFS's "concerns regarding [the servicers'] rapid growth."

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COURTS

Sixth Circuit Affirms Dismissal of Suit Challenging MBS Ratings by Major Credit Reporting Agencies. On December 3, the U.S. Court of Appeals for the Sixth Circuit [affirmed](#) the dismissal of claims brought by Ohio public employee pension funds against major credit-rating agencies related to the sale of mortgage-backed securities. *Ohio Police & Fire Pension Fund v. Standard & Poor's Financial Services LLC*, No. 11-4203, 2012 WL 5990337 (6th Cir. Dec. 3, 2012). The pension funds claim to have suffered estimated losses of \$457 million from investments in MBS made between 2005 and 2008 allegedly caused by their reasonable reliance on the agencies' false and misleading MBS ratings. The court affirmed the district court's dismissal and held that the funds' allegations lacked the requisite specificity to establish either a violation of Ohio's "blue sky" laws or common-law negligent misrepresentation. Because the agencies' fees were fixed rather than contingent on the success or proceeds of the sale, the court held that the agencies did not profit from the sale of MBS under the plain language of the statute. The court also rejected the claim that the Agencies either aided or participated in securities fraud because (i) the pension funds offered no facts from which it was possible to conclude that an entity other than the Agencies engaged in securities fraud, and (ii) the pension funds did not adequately plead that the Agencies themselves made affirmative misrepresentations as to the MBS. In addition, the court affirmed the dismissal of the funds' common-law negligent misrepresentation claims, determining that under both New York and Ohio law the agencies did not have a relationship with the funds that would establish a duty of care. Finally, the court found that the agencies' MBS ratings were predictive opinions rather than affirmative false statements, and that the funds failed to adequately allege, beyond general criticism of their business practices, that the agencies did not believe the correctness of their ratings.

District Court Declines to Find Implied Contract to Adhere to Payment Industry Standards. On November 20, the U.S. District Court for the Northern District of California [dismissed](#) a putative class action that claimed, among other allegations, that Google violated an implied contract to handle certain users' credit card information in accordance with the Payment Card Industry Security Standards. *Frezza v. Google, Inc.*, Case No. 12-CV-00237-RMW, 2012 WL 5877587 (N.D. Ca. Nov. 20, 2012). The named plaintiffs alleged that they submitted credit card information when they bought Google Tags, which display advertisements in search results as part of a promotion. The plaintiffs claim that entering their credit card information into Google's billing system established an implied contract requiring that Google handle such information responsibly, which the plaintiffs allege is in accordance with the Data Security Standards promulgated by the Payment Card Industry Security Standards Council. The court found that Google did not make any indication that it adopted the DSS recommendations when dealing with plaintiffs, and that Google had not violated any implied contract to handle its customers' credit card information responsibly when it retained credit card data after the plaintiffs cancelled their subscriptions to Google Tags. The court also dismissed the plaintiffs' breach of contract claims and other claims made under California statutes.

MISCELLANY

UN Commission Publishes Report of Working Group on Electronic Commerce. Recently, the

United Nations Commission on International Trade Law (UNCITRAL) published the [Report of Working Group IV \(Electronic Commerce\)](#), reflecting the group's work during its forty-sixth session, held in late October and early November. The report describes the Working Group's continued efforts to explore issues related to electronic transferable records and to address the need for an international regime to facilitate the cross-border use of such records. During this most recent session, the Working Group considered in detail the legal issues relating to the use of electronic transferrable records, and developed parameters for a set of rules to address those issues. Working Group members expressed broad support for a draft model law that would incorporate the parameters identified, while allowing for flexibility when addressing differences in national substantive laws. Some members also expressed support for the preparation of guidance texts, such as a legislative guide, and Working Group members discussed the possible consideration of a binding instrument, such as a treaty, to establish a legal framework for the cross-border transfer of electronic records. The Working Group will follow up on these issues during its forty-seventh session to be held in New York from May 13-17, 2013.

FIRM NEWS

[Thomas Sporkin](#) appeared on [Bloomberg Television's "Money Moves"](#) to discuss the SEC's scrutiny of the disclosure of potentially material information on Facebook by Netflix Inc.'s Chief Executive Officer, as well as the adequacy of SEC's disclosure rules with regard to social media.

[Jonice Gray Tucker](#) will speak at the American Bar Association's [Consumer Financial Services Committee Winter Meeting](#) on January 6, 2013 in Naples, FL. The panel on which she is participating will address CFPB examinations and enforcement actions.

[Joseph Reilly](#) will speak at the American Bar Association's [Consumer Financial Services Committee Winter Meeting](#) on January 8, 2013 in Naples, FL. Mr. Reilly will participate on a panel entitled "The Ability-to-Repay / Qualified Mortgage Rule: The Saga Continues."

[David Krakoff](#) will be an instructor for the [Second Annual NACDL White Collar Criminal Defense College at Stetson](#). He will participate in a panel presentation entitled "Overview of Handling a White Collar Case" on January 10, 2013.

[David Krakoff](#) will speak at ACI's [Inaugural Summit on White Collar Litigation](#) being held January 22-23, 2013, in New York, NY. Mr. Krakoff will participate in the January 22 session entitled "The FCPA Year In Review: Assessing the Biggest Cases of the Year and What Litigators Need to Take Away to Best Protect Their Clients."

[Andrew Sandler](#) will participate in the "Fair Lending Forum" at [CBA Live 2013](#), the Consumer Bankers Association's annual conference for retail banking leaders, to be held March 11-13, 2013, in Phoenix, AZ.

[Andrew Schilling](#) will be a panelist for "[False Claims Act: Enforcement and Compliance Issues Explored](#)," a Knowledge Congress CLE webcast, on March 13, 2013. This event will present an overview of the False Claims Act and address regulatory updates and enforcement developments, key takeaways from related cases, identifying risks for potential FCA violations, and developing a robust compliance program.

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

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

FIRM PUBLICATIONS

[Elizabeth McGinn](#) and [Kristopher Knabe](#) wrote "[Ethical Issues in the Digital Age: Navigating E-Discovery Challenges](#)" on November 1, 2012 for the American Bar Association.

[Benjamin Klubes](#), [Matthew Previn](#), [Michelle Rogers](#), and [Ann Wiles](#) published "[How the DOJ is Adapting in the War on Financial Fraud](#)" in the November 9, 2012 issue of Law360.

[Clinton Rockwell](#) and [Daniel Ladd](#) published "[SAFE, or Out? Who's In, Who's Not under the SAFE Act](#)" in the November 20, 2012 issue of Consumer Financial Services Law Report.

About BuckleySandler LLP (www.buckleysandler.com)

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

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Los Angeles: 100 Wilshire Boulevard, Suite 1000, Santa Monica, CA 90401, (310) 424-3900

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

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

In addition, please feel free to email our attorneys. [A list of attorneys can be found here.](#)

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

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CFPB Announces First Partnership with a City Government, Highlights Chicago's Consumer Financial Protection Efforts. On December 5, CFPB Director Richard Cordray and Chicago, IL Mayor Rahm Emanuel announced an agreement to share consumer financial protection information and resources. [According to Director Cordray](#), the partnership will allow the CFPB to learn from and expand on the ways Chicago protects its consumers, and help the CFPB determine where it should be focusing its attention by allowing the CFPB to better understand consumer protection challenges that arise locally. The partnership also will allow the city to leverage new resources and information developed by the CFPB. In his statement regarding the partnership, Mayor Emanuel [highlighted](#) the city's recent consumer financial protection initiatives, including (i) the planned introduction of a new City Council ordinance to regulate and license debt collectors, (ii) information gathering on predatory and deceptive acts associated with home repair loans, payday loans, small dollar loans, reverse mortgage products, and mortgage origination and servicing, (iii) new zoning regulations to limit the proliferation of payday lenders, auto-title loan stores, and other predatory financial services, and (iv) the planned introduction of a new ordinance to enhance the Department of Business Affairs & Consumer Protection's ability to take action against businesses convicted of violating state and federal consumer protection acts.

CFPB Ombudsman Issues First Annual Report, Makes Recommendation Regarding CFPB Supervisory Examination Process. On November 30, the [CFPB Ombudsman's Office](#) submitted its [first annual report](#) to the Director of the CFPB. It describes the establishment of the office and highlights the office's activities from July 2011 through September 30, 2012. The report also

identifies two "systemic issues" that the Ombudsman reviewed: (i) consumer understanding of the CFPB complaint process and (ii) the presence of enforcement attorneys at supervisory examinations. Almost 40 percent of the questions the Ombudsman received from consumers related to the CFPB complaint process, so the Ombudsman recommended that the CFPB provide more information to the public about the complaint process using multiple methods to communicate that information. The Ombudsman also heard concerns regarding the CFPB's policy that enforcement attorneys participate in supervisory examinations. After conducting her own review, the Ombudsman recommended that the CFPB review its implementation of the policy, and until that review is complete, establish ways to clarify the enforcement attorney role at the supervisory examination.

California Cautions Lenders Regarding Vendor Vetting and Management. On December 5, the California Department of Corporations issued [Bulletin No: 001-12](#) to caution lenders and other institutions about the vetting and management of third-party service providers. The bulletin explains that in response to [guidance from the CFPB](#) earlier this year regarding supervision of vendors, third-party risk management companies have emerged to pre-screen potential vendors for bank and nonbank financial service providers. The bulletin generally advises lenders to be cautious about delegating vendor vetting to third-parties and mindful of their ultimate responsibilities for such vendors. The bulletin specifically (i) reminds escrow agents of the prohibition in California Financial Code section 17420 against the payment of referral fees for soliciting escrow accounts, (ii) advises lenders that mandating the use of a particular service provider on a third-party risk management company's list, or prohibiting the use of a service provider not appearing on such list, may be violating the California Buyer's Choice Act, and (iii) highlights potential RESPA violations and unfair business practices.

SECURITIES

Multiple SEC Senior Staff Announce Departure Plans. This week, multiple senior staff at the SEC announced plans to leave the agency. These departures follow the decision [announced](#) last week by SEC Chairman Mary Schapiro that she will leave the agency on December 14. On December 4, SEC Director of the Division of Corporate Finance, Meredith Cross, [announced](#) that she will leave the agency at the end of 2012. On December 5, SEC General Counsel, [Mark Cahn](#), and Director of Trading and Markets, [Robert Cook](#), also announced their departures.

Sixth Circuit Affirms Dismissal of Suit Challenging MBS Ratings by Major Credit Reporting Agencies. On December 3, the U.S. Court of Appeals for the Sixth Circuit [affirmed](#) the dismissal of claims brought by Ohio public employee pension funds against major credit-rating agencies related to the sale of mortgage-backed securities. *Ohio Police & Fire Pension Fund v. Standard & Poor's Financial Services LLC*, No. 11-4203, 2012 WL 5990337 (6th Cir. Dec. 3, 2012). The pension funds claim to have suffered estimated losses of \$457 million from investments in MBS made between 2005 and 2008 allegedly caused by their reasonable reliance on the agencies' false and misleading MBS ratings. The court affirmed the district court's dismissal and held that the funds' allegations lacked the requisite specificity to establish either a violation of Ohio's "blue sky" laws or common-law negligent misrepresentation. Because the agencies' fees were fixed rather than contingent on the success or proceeds of the sale, the court held that the agencies did not profit from the sale of MBS under the plain language of the statute. The court also rejected the claim that the Agencies either aided or participated in securities fraud because (i) the pension funds offered no facts from which it was possible to conclude that an entity other than the Agencies engaged in securities fraud, and (ii) the pension funds did not adequately plead that the Agencies themselves made affirmative misrepresentations as to the MBS. In addition, the court affirmed the dismissal of the funds' common-law negligent misrepresentation claims, determining that under both New York and Ohio law the agencies did not have a relationship with the funds that would establish a duty of care.

Finally, the court found that the agencies' MBS ratings were predictive opinions rather than affirmative false statements, and that the funds failed to adequately allege, beyond general criticism of their business practices, that the agencies did not believe the correctness of their ratings.

E-COMMERCE

President, Congress Extend Cross-Border Fraud Enforcement Law. On December 4, President Obama [signed](#) a bill, [H.R. 6131](#), that extends through December 2020, a law that [enhances the FTC's ability](#) to address cross-border fraud, and particularly to fight spam, spyware, and Internet fraud and deception. Originally passed in December 2006 and set to expire in December 2013, [the U.S. SAFE WEB Act](#) amended the FTC Act to include within the definition of "unfair or deceptive acts or practices" certain acts or practices involving foreign commerce. Further, the law authorizes the FTC to (i) disclose certain privileged or confidential information to foreign law enforcement agencies, and (ii) provide investigative assistance to a foreign law enforcement agency pursuing violations of laws prohibiting fraudulent or deceptive commercial practices or other practices substantially similar to practices prohibited by laws administered by the FTC without requiring that the conduct identified constitute a violation of U.S. laws.

IRS Ready to Accept Electronic Signatures on the 4506-T. Recently, the Internal Revenue Service issued [Electronic Signature Requirements](#) that will allow applicants to electronically sign and submit IRS Forms 4506-T and 4506T-EZ (4506-T) beginning January 7, 2013. IRS regulations permit taxpayers to order a tax transcript using a form 4506-T through the IRS Income Verification Express Services (IVES). Under the Requirements, IVES participants may accept and submit an electronically signed 4506-T if the electronic signature process includes: (i) a structure that places creation of the signature under the signer's sole control; (ii) a signature technology that permits the signature to be verified, either through the use of software algorithms or forensic analysis; (iii) the ability to establish that the signature was created by a specific individual; (iv) a signature block on the document with a symbol, logically associated with the 4506-T, that allows validation of the signer's name against the name listed on the 4506-T; (v) a process flow or communication with the signer establishing the intent to sign and the purpose of the signature; and (vi) application of the signature in a tamper-evident manner. In addition, the process used to present and sign the 4506-T must include each of the following: (i) authentication, (ii) consent, (iii) tamper-proofing, and (iv) an audit log. Each IVES participant accepting electronically signed 4506-Ts must determine that the electronic signature process adheres to the Requirements, and must also retain a copy of each signed 4506-T and accompanying audit log for at least two years. Such participants also must implement a third-party audit program and comply with specific monthly and annual third-party audit and reporting requirements. BuckleySandler's [Electronic Signatures and Records Team](#) has substantial experience assisting entities seeking to comply with electronic signature requirements.

California AG Files First Mobile Application Privacy Suit. On December 6, California Attorney General Kamala Harris (AG) [announced](#) an enforcement action against Delta Airlines for allegedly failing to comply with the state's Online Privacy Protection Act. This is the first action brought by the AG's office under this law and follows other [efforts](#) by the AG's office to require enhanced mobile privacy disclosures. In October, the AG's office [sent letters](#) to 30 companies, including Delta, advising those entities that their mobile applications failed to comply with the state privacy law and providing them 30 days to remedy the alleged failure. The complaint alleges that since at least 2010, Delta has operated a mobile application that may be used to, for example, check-in online for an airplane flight, view reservations for air travel, or rebook cancelled or missed flights. The AG claims that the Delta application collections substantial personally identifiable information but does not have a privacy policy. The suit seeks to enjoin Delta from distributing its application without a privacy policy and penalties of up to \$2,500 for each violation.

District Court Declines to Find Implied Contract to Adhere to Payment Industry Standards.

On November 20, the U.S. District Court for the Northern District of California [dismissed](#) a putative class action that claimed, among other allegations, that Google violated an implied contract to handle certain users' credit card information in accordance with the Payment Card Industry Security Standards. *Frezza v. Google, Inc.*, Case No. 12-CV-00237-RMW, 2012 WL 5877587 (N.D. Ca. Nov. 20, 2012). The named plaintiffs alleged that they submitted credit card information when they bought Google Tags, which display advertisements in search results as part of a promotion. The plaintiffs claim that entering their credit card information into Google's billing system established an implied contract requiring that Google handle such information responsibly, which the plaintiffs allege is in accordance with the Data Security Standards promulgated by the Payment Card Industry Security Standards Council. The court found that Google did not make any indication that it adopted the DSS recommendations when dealing with plaintiffs, and that Google had not violated any implied contract to handle its customers' credit card information responsibly when it retained credit card data after the plaintiffs cancelled their subscriptions to Google Tags. The court also dismissed the plaintiffs' breach of contract claims and other claims made under California statutes.

UN Commission Publishes Report of Working Group on Electronic Commerce. Recently, the United Nations Commission on International Trade Law (UNCITRAL) published the [Report of Working Group IV \(Electronic Commerce\)](#), reflecting the group's work during its forty-sixth session, held in late October and early November. The report describes the Working Group's continued efforts to explore issues related to electronic transferable records and to address the need for an international regime to facilitate the cross-border use of such records. During this most recent session, the Working Group considered in detail the legal issues relating to the use of electronic transferrable records, and developed parameters for a set of rules to address those issues. Working Group members expressed broad support for a draft model law that would incorporate the parameters identified, while allowing for flexibility when addressing differences in national substantive laws. Some members also expressed support for the preparation of guidance texts, such as a legislative guide, and Working Group members discussed the possible consideration of a binding instrument, such as a treaty, to establish a legal framework for the cross-border transfer of electronic records. The Working Group will follow up on these issues during its forty-seventh session to be held in New York from May 13-17, 2013.

PRIVACY/DATA SECURITY

California AG Files First Mobile Application Privacy Suit. On December 6, California Attorney General Kamala Harris (AG) [announced](#) an enforcement action against Delta Airlines for allegedly failing to comply with the state's Online Privacy Protection Act. This is the first action brought by the AG's office under this law and follows other [efforts](#) by the AG's office to require enhanced mobile privacy disclosures. In October, the AG's office [sent letters](#) to 30 companies, including Delta, advising those entities that their mobile applications failed to comply with the state privacy law and providing them 30 days to remedy the alleged failure. The complaint alleges that since at least 2010, Delta has operated a mobile application that may be used to, for example, check-in online for an airplane flight, view reservations for air travel, or rebook cancelled or missed flights. The AG claims that the Delta application collections substantial personally identifiable information but does not have a privacy policy. The suit seeks to enjoin Delta from distributing its application without a privacy policy and penalties of up to \$2,500 for each violation.

CRIMINAL ENFORCEMENT

FinCEN Issues Advisories Regarding Anti-Money Laundering and Counter-Terrorist Financing Risks Identified by FATF. Recently, FinCEN published Advisory [FIN-2012-A012](#), which

informs financial institutions operating in the United States about certain money laundering and terrorist financing risks identified by the intergovernmental Financial Action Task Force (FATF). On October 19, 2012, the FATF called on its members to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing risks emanating from Iran and the Democratic People's Republic of Korea. The FATF announcement also detailed anti-money laundering and counter-terrorist financing deficiencies in 17 jurisdictions that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan to address the deficiencies. The FATF called for enhanced due diligence to address risks arising from the deficiencies associated with each jurisdiction. FinCEN separately published Advisory [FIN-2012-A011](#) to advise institutions of an FATF statement regarding 22 jurisdictions with strategic deficiencies in their anti-money laundering and counter-terrorist financing, but for which each jurisdiction has provided a high-level political commitment to address the strategic AML/CFT deficiencies.

FinCEN Releases Summaries of Customer Due Diligence Roundtable Meetings. This week, FinCEN published summaries of a series of roundtable meetings held to obtain stakeholder feedback on the agency's [proposed rulemaking on customer due diligence](#). The meetings, held in September and October in [Los Angeles](#), [New York](#), and [Chicago](#), provided a forum to discuss key issues regarding the proposed rulemaking, including (i) the definition of "beneficial ownership," (ii) practices to obtain and verify beneficial ownership, and (iii) challenges associated with specific products, services, and relationships.

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