November 23, 2012

TOPICS COVERED THIS WEEK

FEDERAL ISSUES

CFPB and FTC Warn Mortgage Companies about Potentially Misleading Advertisements. On November 19, the CFPB announced that it issued warning letters to about a dozen nonbank mortgage lenders and brokers regarding advertisements targeted towards older Americans and veterans that may violate the Mortgage Acts and Practices Advertising Rule (MAP Rule). The CFPB claims that certain companies' ads may (i) make misrepresentations about government affiliation, (ii) provide inaccurate information about interest rates, (iii) make misleading statements about the costs of reverse mortgages, or (iv) misrepresent the amount of cash or credit available to a consumer. The letters do not make any determinations as to whether the ads at issue violate the law, and the letters provide the companies an opportunity to review and remedy any potential violations. However, the CFPB announcement also notes that the Bureau has initiated formal investigations of six companies for "serious violations of the law." At the same time, the FTC announced that it sent letters to twenty real estate agents, home builders, and lead generators warning that certain advertisements may similarly violate the MAP Rule or section 5 of the FTC Act. The FTC also acknowledged that it has opened nonpublic investigations of other advertisers that may have violated federal law. This coordinated CFPB/FTC action resulted from a review of about 800 randomly selected mortgage-related ads from across the country, including ads for mortgage loans, refinancing, and reverse mortgages. BuckleySandler is representing one of the companies being investigated by the FTC in connection with this review.

CFPB and Federal Reserve Board Increase Thresholds for Exempt Consumer Credit and Lease Transactions. On November 20, the CFPB and the Federal Reserve Board announced that, effective January 1, 2013, dollar thresholds in Regulation Z (TILA) and Regulation M (Consumer Leasing Act) for exempt consumer credit and lease transactions will increase to reflect the annual percentage increase in the consumer price index as of June 1, 2012. Transactions at or below the thresholds are subject to the protections of the regulations. Based on the adjustments, the TILA and Consumer Leasing Act protections generally will apply to consumer credit transactions and consumer leases of $53,000 or less in 2013. Mortgage transactions and private student loans remain subject to TILA regardless of the amount of the loan. While the CFPB has rulemaking authority under TILA and the Consumer Leasing Act, the Federal Reserve Board retains authority to issue rules for certain motor vehicle dealers. In addition to the joint adjustment, the CFPB separately adjusted the dollar amount that triggers additional protections for certain home mortgages under the Home Ownership and Equity Protection Act (HOEPA). Consistent with the increase in the consumer price index, the 2013 dollar amount of the HOEPA fee trigger will be $625.

FinCEN, FDIC, and DOJ Announce Coordinated Anti-Money Laundering Enforcement Action and Settlement. On November 19, FinCEN and the FDIC announced that a state bank agreed to pay a $15 million civil money penalty to resolve the bank's "history of noncompliance" with Bank Secrecy Act (BSA) and anti-money laundering (AML) requirements, including recent allegations that the bank failed to implement an effective BSA/AML Compliance Program with reasonable internal controls. Specifically, the federal agencies alleged that the bank failed to adequately oversee third-party payment processor relationships and related products and services. The payment also resolves parallel civil claims by the DOJ that the bank violated the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by originating withdrawal transactions on behalf of fraudulent merchants and causing money to be taken from the bank accounts of consumer victims. Concurrent with the federal action, the Delaware Office of State Bank Commissioner terminated the bank's state charter.

Residential Mortgage-Backed Securities Working Group Announces Several New Cases. On November 20, New York Attorney General Eric Schneiderman, one of the Co-Chairs of the federal-state Residential Mortgage-Backed Securities (RMBS) Working Group, announced a new case filed in the New York State Supreme Court alleging Martin Act violations by a securities firm and several of its affiliates in connection with the offering of RMBS. The complaint charges that the firms made fraudulent misrepresentations and omissions to promote the sale of RMBS to private investors and deceived investors regarding the care with which the firms evaluated the quality of loans included in certain RMBS offerings. The suit claims that investors suffered cumulative losses over $11 billion on RMBS sponsored and underwritten in 2006 and 2007. The DOJ's Financial Fraud Enforcement Task Force, of which the RMBS Working Group is a part, noted the significant federal-state coordination that led to the filing, including the "significant" contributions of the FHFA's Inspector General, as well as assistance from the SEC and Assistant U.S. Attorneys from across the country.

On November 16 the SEC announced that it had obtained more than $400 million from two firms alleged to have misled investors in RMBS. In cases coordinated with the RMBS Working Group, the SEC charged that both firms failed to fully disclose their bulk settlement practices, which involved retaining cash from the settlement of claims against mortgage loan originators for problem loans that the firms had sold into RMBS trusts, and which they no longer actually owned. The SEC also claimed, among other things, that one of the firms misstated information concerning the delinquency status of loans that served as collateral for an RMBS offering it had underwritten, while the second firm allegedly applied different quality review procedures for loans that it sought to put back to originators and instituted a practice of not repurchasing such loans from trusts unless the originators had agreed to repurchase them.

National Mortgage Settlement Monitor Issues Progress Report. On November 19, Joseph Smith, Jr., the Monitor of the national mortgage settlement, released a report on the consumer relief activities of the five banks that are parties to the settlement. Between March 1, 2012 and September 30, 2012, those banks extended more than $26 billion in relief to more than 300,000 borrowers. The relief provided by the banks, discussed in detail in the report includes (i) first and second lien modifications, (ii) enhanced borrower transitional funds, (iii) facilitation of short sales, (iv) deficiency waivers, (v) forbearance for unemployed borrowers, (vi) anti-blight activities, (vii) benefits for members of the armed services and (viii) refinancing programs. The report also provides an update regarding the status of implementation of the mortgage servicing standards required by the settlement, noting that as of September 25, 2012, the Monitor and the banks had agreed to a series of work plans that will guide reviews of each banks' compliance with the new standards.

Freddie Mac Announces Standard Deed-in-Lieu of Foreclosure. On November 15, Freddie Mac announced the new Freddie Mac Standard Deed-in-Lieu of Foreclosure (DIL), which is designed to serve as a workout option for borrowers for whom neither a home retention alternative to foreclosure nor a Freddie Mac Standard Short Sale is a workable solution. As described in Freddie Mac Bulletin 2012-27, effective for new DIL evaluations conducted on or after March 1, 2013, mortgage servicers will have delegated authority to approve a DIL that meets all Freddie Mac requirements for eligible borrowers who: (i) are 90 or more days delinquent, (ii) are current or less than 90 days delinquent but meet certain hardship criteria, or (iii) do not have an eligible hardship but were previously discharged from the debt obligations in a Chapter 7 bankruptcy. Also effective for new DIL evaluations conducted on or after March 1, 2013, Freddie Mac will offer mortgage servicers a $1,500 incentive for each DIL completed in accordance with Freddie Mac requirements, an increase from the current $275 incentive. Further, effective immediately, mortgage servicers have the authority to postpone any foreclosure sale for mortgages that are more than 12 months delinquent without obtaining Freddie Mac's prior approval, provided the servicers have determined that doing so will protect Freddie Mac's interests. The new Standard DIL was developed as part of the Servicing Alignment Initiative and completed under the direction of the Federal Housing Finance Agency.

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OCC Notifies Banks of Civil Money Penalty Inflation Adjustments and New Flood Insurance Penalties. On November 20, the OCC issued Bulletin 2012-38 to advise national banks and federal savings associations about a recent OCC rule that adjusted the maximum civil money penalties (CMPs) for inflation and implemented higher flood insurance CMPs. The OCC rulerevises the penalty tables that identify the statutes that provide the OCC with CMP authority, describe the different tiers of penalties provided in each statute, and set out the maximum penalty the OCC may impose pursuant to each statutory provision. The rule also implements the Biggert-Waters Flood Insurance Reform Act, which was signed into law on July 6, 2012 as part of a broad transportation bill. That Act increased the maximum CMP per flood insurance violation and removed the annual cap on flood insurance penalties assessed against a single lender in a calendar year. Effective December 6, 2012, any regulated lending institution that is found to have a pattern or practice of committing flood insurance violations will be assessed a civil penalty not to exceed $2,000 per violation, with no calendar year limit on such penalties.

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OCC Extends Compliance Date for Lending Limits Rule. On November 14, the OCC issued Bulletin 2012-36 to extend until April 1, 2013 the deadline for covered institutions to comply with the OCC's lending limit rule. In June 2012 the OCC implemented a Dodd-Frank Act requirement that the OCC's existing lending limit rule apply to certain credit exposures arising from derivative transactions and securities financing transactions, and originally allowed national banks and savings association until January 1, 2013 to comply.

Senate Confirms FDIC Chair and Vice Chair. On November 15, the Senate confirmed, by voice vote, Martin Gruenberg to serve as chairman of the Board of Directors of the FDIC. The Senate similarly confirmed Thomas Hoenig as vice chair. Both men were confirmed to serve six year terms as FDIC directors in March 2012, but the Senate delayed confirming their leadership positions until now, leaving the FDIC without official leadership in the interim.

SEC Names New Los Angeles Regional Enforcement Director. On November 20, the SEC announced that Lorraine Echavarria will lead the Los Angeles Regional Office's enforcement program as Associate Regional Director. Ms. Echavarria has served as Assistant Regional Director for more than five years and has been with the SEC since 2000. She replaces Michele Wein Layne who recently was promoted to Regional Director, the latest move in her 17 year career with the SEC.

STATE ISSUES

Massachusetts Proposes Loan Servicing and Debt Collection Rules, Announces Public Hearing. Recently, the Massachusetts Division of Banks issued proposed amendments to the state's rules governing the conduct of debt collectors and loan servicers. The proposed rule would (i) prohibit third-party mortgage servicers from initiating a foreclosure when an application for a loan modification is in process, (ii) require that servicers ensure that a creditor has the right to foreclose and that any foreclosure-related documents are properly prepared and executed based on personal knowledge, and (iii) mandate that third-party servicers provide a single point of contact for a borrower, follow detailed loan modification procedures, and communicate with borrowers in a timely manner under the new regulations. The amendments also would, amongst other changes, (i) amend the definition of "debt collector" to include active debt buyers, (ii) clarify the definition of net worth for debt collectors, (iii) expand the limitations on contact with a consumer by a debt collector to include cellular telephone and text messaging and (iv) expand the number of significant events of a debt collector and third party loan servicer which must be reported. The Division will host a public meeting about the proposed amendments on November 29, 2012, and will accept written comments through December 6, 2012.

COURTS

Federal District Court Dismisses Virginia State Law Claims in FHFA RMBS Suit. On November 19, the U.S. District Court for the Southern District of New York held that the FHFA's state-law claims against a financial institution with regard to the offering of certain residential mortgage-backed securities (RMBS) could not survive because, unlike federal law, the state law does not apply to the "offering" of securities. *Fed. Housing Fin. Agency v. Barclays Bank PLC*, No. 11-6190, slip op. (S.D.N.Y. Nov. 19, 2012). The case is one of sixteen in which the FHFA alleges as conservator for Fannie Mae and Freddie Mac that billions of dollars of RMBS purchased by Fannie Mae and Freddie Mac were based on offering documents that contained materially false statements and omissions. In prior rulings in this series of cases the court generally has denied the financial institutions' motions to dismiss, with the lead case currently pending on appeal to the Second Circuit. The instant case, however, presented a unique issue with regard to the FHFA's state law claims. As the court explained, the federal Securities Act's private liability provisions apply to any person who "offers or sells" a security and broadly defines "offer," while the Virginia Securities Act "omits the term 'offer' from its otherwise identical private liability provision." The court determined that through inaction, Virginia "has purposefully sought to ensure that the scope of private liability under its statutes is more limited than that under federal law" and its law does not apply to the offering of securities, only the sale. The court dismissed the FHFA's state law claims but allowed all other claims to proceed based on the reasoning presented in prior decisions.

Iowa Supreme Court Opens Door to Potential Servicer Liability for Flood Hazard Disclosure Failures. On November 16, the Iowa Supreme Court held that a mortgage servicer may be liable to borrowers for failing to disclose information it acquired about the borrowers' flood hazard risks. *Bagelmann v. First Nat'l Bank*, No. 11-1484, 2012 WL 5642039 (Iowa Nov. 16, 2012). After their home flooded, the borrowers sued their mortgage lender and servicer and alleged that at the time of origination and two years later during a refinance transaction, the lender incorrectly informed them that the property was not in a special flood hazard area and that no flood insurance was required. According to the borrowers, several years later the servicer was advised that the property was in a special flood hazard area and failed to inform the borrowers prior to their property flooding. The Iowa Supreme Court affirmed the district court's holdings that (i) the borrowers cannot use the requirements of the National Flood Insurance Act as a basis for a state-law claim, (ii) the lender and servicer did not breach a contract with the borrowers, and (iii) the borrowers do not have a viable negligent misrepresentation claim. However, the Supreme Court determined that the borrowers provided evidence from which a fact finder could infer that the servicer knew prior to the flood that the property was in a flood zone and that prior representations to the contrary were incorrect. Therefore, the court reversed the grant of summary judgment to the servicer and remanded the case for further consideration of a possible claim based on Restatement (Second) of Torts section 551(2) against their servicer. The court also affirmed the lower court's grant of summary judgment to the lender on the grounds that the lender no longer had a banking relationship with the borrowers.

FIRM NEWS

BuckleySandler LLP successfully defended Leanne G. Spencer, the former Controller of Fannie Mae, in the matter *In Re Fannie Mae Securities Litigation*, 4-cv-01639, U.S. District Court, District of Columbia. When the Ohio Teachers and Public Employee Retirement funds filed the lawsuit eight years ago seeking $6 billion in damages, the suit was the largest securities class action ever brought in the United States. On November 20, 2012 the court dismissed all claims against Ms. Spencer, exonerating her of any wrongdoing. Partners David Krakoff and Chris Regan led the defense team comprised of members of the firm's White Collar and Securities Litigation Teams.

Complimentary Webinar - The CFPB: Investigations and Enforcement Actions in Focus
BuckleySandler LLP will host a webinar on Thursday, December 6, 2012 from 2:00-3:15 PM ET, to discuss the CFPB's rules governing investigations, enforcement actions, and adjudications. BuckleySandler attorneys Jeff Naimon, Jonice Gray Tucker, and Lori Sommerfield also will discuss

themes prevalent in the first three public enforcement actions undertaken by the CFPB, all of which were predicated, in part, on allegations of unfair and deceptive practices.

This webinar will be of particular interest to in-house legal, compliance, and risk management personnel at banks and other financial services providers subject to CFPB oversight. Please no outside law firms, government agency personnel, consulting firms, or media. After registering and being approved, you will receive a confirmation email containing instructions for joining the webinar. **Click here to register.**

Andrew Sandler will participate in an American Bankers Association telephone briefing entitled "Fair Lending and HMDA Update" on November 28, 2012. The briefing, which also will feature representatives from the CFPB, the Federal Reserve Board, and the FDIC, will review the 2011 HMDA data, the CFPB's role in HMDA data collection, fair lending enforcement trends, and other fair lending topics.

James Shreve will speak at the American Conference Institute's Advanced Forum on International & Cross-Border Payments on November 28, 2012 in New York. The panel, "Managing Privacy and Data Security Risks on a Global Scale," will address US and international compliance issues relating to payment systems.

Valerie Hletko will participate in PLI's Banking Law Institute 2012, on December 5, 2012, in New York, NY. Ms. Hletko's panel is entitled "Major Non-Consumer Litigation/Enforcement and Consumer Financial Protection Supervision and Enforcement." Panelists, including Kent Markus of the CFPB, will review topics ranging from mortgage servicing enforcement to anti-money laundering enforcement.

Andrew Sandler will be a faculty member at the 6th Annual Leading Law Firms Conference on December 7, 2012. Mr. Sandler will join other lawyer leaders and senior business executives to discuss critical questions and leadership issues facing law firms in 2013.

David Krakoff will be an instructor for the Second Annual NACDL White Collar Criminal Defense College at Stetson. Mr. Krakoff 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.

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

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

Jonice Gray Tucker and Jeff Naimon wrote "Liability for Servicers: Localities Jump in the Game," which appears in *Mortgage Servicing News*' October 2012 issue.

Jonice Gray Tucker and Lori Sommerfield authored "Consumer Complaint Management: Meeting Regulatory Expectations," which was published in the October 2012 edition of *The Review of Banking & Financial Services*.

Andrea Mitchell and Lori Sommerfield authored "'Red Flags' For Fair Lending Risk - How Banks Can Identify and Resolve Them" for the American Association of Bank Directors.

Kirk Jensen, Donna Wilson, and Sasha Leonhardt published "'You Can't Handle the Truth' Fact, Fiction and the Servicemembers Civil Relief Act" in the October 22, 2012 issue of Westlaw Journal's Bank & Lender Liability.

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.

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).

Please visit us at the following locations:

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New York: 1133 Avenue of the Americas, Suite 3100, New York, NY 10036, (212) 600-2400
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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FinCEN, FDIC, and DOJ Announce Coordinated Anti-Money Laundering Enforcement Action and Settlement. On November 19, FinCEN and the FDIC announced that a state bank agreed to pay a $15 million civil money penalty to resolve the bank's "history of noncompliance" with Bank Secrecy Act (BSA) and anti-money laundering (AML) requirements, including recent allegations that the bank failed to implement an effective BSA/AML Compliance Program with reasonable internal controls. Specifically, the federal agencies alleged that the bank failed to adequately oversee third-party payment processor relationships and related products and services. The payment also resolves parallel civil claims by the DOJ that the bank violated the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by originating withdrawal transactions on behalf of fraudulent merchants and causing money to be taken from the bank accounts of consumer victims. Concurrent with the federal action, the Delaware Office of State Bank Commissioner terminated the bank's state charter.

OCC Notifies Banks of Civil Money Penalty Inflation Adjustments and New Flood Insurance Penalties. On November 20, the OCC issued Bulletin 2012-38 to advise national banks and federal savings associations about a recent OCC rule that adjusted the maximum civil money penalties (CMPs) for inflation and implemented higher flood insurance CMPs. The OCC ruler evises the penalty tables that identify the statutes that provide the OCC with CMP authority, describe the different tiers of penalties provided in each statute, and set out the maximum penalty the OCC may impose pursuant to each statutory provision. The rule also implements the Biggert-Waters Flood Insurance Reform Act, which was signed into law on July 6, 2012 as part of a broad transportation bill. That Act increased the maximum CMP per flood insurance violation and removed the annual cap on flood insurance penalties assessed against a single lender in a calendar year. Effective December 6, 2012, any regulated lending institution that is found to have a pattern or practice of committing flood insurance violations will be assessed a civil penalty not to exceed $2,000 per violation, with no calendar year limit on such penalties.

OCC Extends Compliance Date for Lending Limits Rule. On November 14, the OCC issued Bulletin 2012-36 to extend until April 1, 2013 the deadline for covered institutions to comply with the OCC's lending limit rule. In June 2012 the OCC implemented a Dodd-Frank Act requirement that the OCC's existing lending limit rule apply to certain credit exposures arising from derivative transactions and securities financing transactions, and originally allowed national banks and savings association until January 1, 2013 to comply.

Senate Confirms FDIC Chair and Vice Chair. On November 15, the Senate confirmed, by voice vote, Martin Gruenberg to serve as chairman of the Board of Directors of the FDIC. The Senate similarly confirmed Thomas Hoenig as vice chair. Both men were confirmed to serve six year terms as FDIC directors in March 2012, but the Senate delayed confirming their leadership positions until now, leaving the FDIC without official leadership in the interim.

CONSUMER FINANCE

CFPB and Federal Reserve Board Increase Thresholds for Exempt Consumer Credit and Lease Transactions. On November 20, the CFPB and the Federal Reserve Board announced that, effective January 1, 2013, dollar thresholds in Regulation Z (TILA) and Regulation M (Consumer Leasing Act) for exempt consumer credit and lease transactions will increase to reflect the annual percentage increase in the consumer price index as of June 1, 2012. Transactions at or below the thresholds are subject to the protections of the regulations. Based on the adjustments, the TILA and Consumer Leasing Act protections generally will apply to consumer credit transactions and consumer leases of $53,000 or less in 2013. Mortgage transactions and private student loans remain subject to TILA regardless of the amount of the loan. While the CFPB has rulemaking authority under TILA and the Consumer Leasing Act, the Federal Reserve Board retains authority to issue rules for certain motor vehicle dealers. In addition to the joint adjustment, the CFPB separately adjusted the dollar amount that triggers additional protections for certain home mortgages under the Home Ownership and Equity Protection Act (HOEPA). Consistent with the increase in the consumer price index, the 2013 dollar amount of the HOEPA fee trigger will be $625.

SECURITIES

Residential Mortgage-Backed Securities Working Group Announces Several New Cases. On November 20, New York Attorney General Eric Schneiderman, one of the Co-Chairs of the federal-state Residential Mortgage-Backed Securities (RMBS) Working Group, announced a new case filed in the New York State Supreme Court alleging Martin Act violations by a securities firm and several of its affiliates in connection with the offering of RMBS. The complaint charges that the firms made fraudulent misrepresentations and omissions to promote the sale of RMBS to private investors and deceived investors regarding the care with which the firms evaluated the quality of loans included in certain RMBS offerings. The suit claims that investors suffered cumulative losses over $11 billion on RMBS sponsored and underwritten in 2006 and 2007. The DOJ's Financial Fraud Enforcement Task Force, of which the RMBS Working Group is a part, noted the significant federal-state coordination that led to the filing, including the "significant" contributions of the FHFA's Inspector General, as well as assistance from the SEC and Assistant U.S. Attorneys from across the country.

On November 16 the SEC announced that it had obtained more than $400 million from two firms alleged to have misled investors in RMBS. In cases coordinated with the RMBS Working Group, the SEC charged that both firms failed to fully disclose their bulk settlement practices, which involved retaining cash from the settlement of claims against mortgage loan originators for problem loans that the firms had sold into RMBS trusts, and which they no longer actually owned. The SEC also claimed, among other things, that one of the firms misstated information concerning the delinquency status of loans that served as collateral for an RMBS offering it had underwritten, while the second firm allegedly applied different quality review procedures for loans that it sought to put back to originators and instituted a practice of not repurchasing such loans from trusts unless the originators had agreed to repurchase them.

Federal District Court Dismisses Virginia State Law Claims in FHFA RMBS Suit. On November 19, the U.S. District Court for the Southern District of New York held that the FHFA's state-law claims against a financial institution with regard to the offering of certain residential mortgage-backed securities (RMBS) could not survive because, unlike federal law, the state law does not apply to the "offering" of securities. *Fed. Housing Fin. Agency v. Barclays Bank PLC*, No. 11-6190, slip op. (S.D.N.Y. Nov. 19, 2012). The case is one of sixteen in which the FHFA alleges as conservator for Fannie Mae and Freddie Mac that billions of dollars of RMBS purchased by Fannie Mae and Freddie Mac were based on offering documents that contained materially false statements and omissions. In prior rulings in this series of cases the court generally has denied the financial institutions' motions to dismiss, with the lead case currently pending on appeal to the Second Circuit. The instant case, however, presented a unique issue with regard to the FHFA's state law claims. As the court explained, the federal Securities Act's private liability provisions apply to any person who "offers or sells" a security and broadly defines "offer," while the Virginia Securities Act "omits the term 'offer' from its otherwise identical private liability provision." The court determined that through inaction, Virginia "has purposefully sought to ensure that the scope of private liability under its statutes is more limited than that under federal law" and its law does not apply to the offering of securities, only the sale. The court dismissed the FHFA's state law claims but allowed all other claims to proceed based on the reasoning presented in prior decisions.

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