Buckley Sandler LLP

InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

April 1, 2011

Topics In This Issue

Federal Issues

Agencies Publish Risk-Retention Proposal. On March 29, the Federal Reserve Board announced a proposed rule that would require sponsors of asset-backed securities (ABS) to retain at least five percent of the credit risk of the assets underlying the securities. The rule will be proposed jointly with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, the Federal Housing Finance Agency and the Department of Housing and Urban Development. In drafting the proposed rule, the agencies sought to provide options to sponsors for meeting the risk-retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) while at the same time ensuring that the amount of credit risk retained is meaningful. Exemptions to the proposed rule include U.S. government-guaranteed ABS and mortgage-backed securities that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages" (QRMs). The proposed rule would establish a definition of QRMs incorporating criteria designed to ensure that such QRMs are of very high credit quality. Such criteria would include borrower credit history, payment terms, down payment for purchased mortgages and loan-to-value ratio. In addition, under the rule Fannie Mae and Freddie Mac would be permitted to satisfy their risk-retention requirements as sponsors through their 100 percent guarantees of principal and interest for as long as they are in conservatorship or receivership with capital support from the U.S. government. Comments on the proposed rule must be received by June 10, 2011. For a copy of the press release, please see http://www.federalreserve.gov/newsevents/press/bcreg/20110329a.htm.

FDIC Board Approves Proposed Rule on Resolution Plans and Credit Exposure Reports. On March 29, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) approved a joint Notice of Proposed Rulemaking (NPR) for covered organizations to file and report resolution plans and credit exposure reports as required by Title 1, Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Covered companies would have to submit resolution plans within 180 days of the effective date of a final regulation, and file credit exposure reports within 30 days after the end of each calendar quarter. Dodd-Frank requires holding companies with assets of $50 billion or more and other covered non-bank financial companies

supervised by the Federal Reserve to report periodically their resolution plans and significant credit exposures. Under the NPR, covered companies would be required to identify and map their business lines to legal entities and provide integrated analyses of their corporate structure; credit and other exposures; funding, capital and cash flows; domestic and foreign jurisdictions in which they operate; their supporting information systems and other essential services; and, other key components of their business operations. Covered companies will be required to submit a quarterly credit exposure report that outlines the nature and extent of their credit exposures. Foreign-based companies are only required to submit reports on their U.S. operations. At a minimum, a covered company headquartered in the U.S. would need to provide information on both its domestic and foreign operations. A foreign-based company would be required to provide information on its U.S. operations and explain how the resolution planning for its U.S. operations is integrated into the foreign-based company's overall interconnections. The proposed rule will be out for comment 60 days after publication in the *Federal Register*. For a copy of the press release, please see http://www.fdic.gov/news/news/press/2011/pr11060.html.

Federal Reserve Board Increases Thresholds for Coverage Under Regulations M and Z. On March 25, the Federal Reserve Board (Board) adopted two rules that will increase the threshold amounts under Regulation M (Consumer Leasing) and Regulation Z (Truth in Lending) from $25,000 to $50,000, to implement a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Both new rules will become effective on July 21, 2011. Under the new rules, consumer credit transactions and consumer leases with values up to $50,000 will be covered by Regulations M and Z. In addition, beginning on or after December 31, 2011, the $50,000 threshold will be adjusted annually based upon the Consumer Price Index for Urban Wage Earners and Clerical Workers. These new rules will make Regulations M and Z consistent with the provisions of Dodd-Frank. For a copy of the Board's press release announcing the changes, please click here. For the Board's final action on Regulation M, please click here, and for the Board's final action on Regulation Z, please click here.

HUD Clarifies Warehouse Lending Guidance in Response to BuckleySandler Inquiry. In a letter dated March 29, 2011, Helen R. Kanovsky, the general counsel of the Department of Housing and Urban Development (HUD), clarified that the term "repurchase agreement" as utilized in her prior legal guidance on the subject of warehouse lending was not limited to "repurchase agreements" as defined in the United States Bankruptcy Code. In particular, Ms. Kanovsky wrote that "[t]he Department recognizes that in some instances a failure on the part of the mortgage lender to arrange for a secondary market sale shortly after financing a loan is described as a "default" under the warehouse financing arrangement, triggering a repurchase of the loan by the mortgage lender. So long as the mortgage lender has an unconditional obligation promptly to repurchase the loan if a secondary market sale does not occur, the Department will analyze the arrangement in the manner described for repurchase agreements and traditional warehouse lines of credit in the [legal guidance]." HUD also acknowledged that the "title" of the document is not as relevant as the substance--it does not matter if the document is called a "repurchase agreement," a "loan purchase and sale agreement" or is otherwise captioned by the parties so long as the agreement complies with the requirements of the legal guidance. Ms. Kanovsky's letter was written in response to a letter

from Jerry Buckley of BuckleySandler. For further information and copies of the letters, please see http://bit.ly/oJK6kI.

Google Agrees to Settle FTC Charges That its Buzz Social Network Used Deceptive Privacy Practices. On March 30, the Federal Trade Commission (FTC) announced that Google Inc. (Google) agreed to settle a complaint that it used deceptive tactics and violated privacy promises to consumers when it launched its social networking application Google Buzz in 2010. The proposed settlement would require Google to refrain from future privacy misrepresentations, implement a comprehensive privacy program, and consent to regular independent privacy audits over the next twenty years. According to the FTC's statement, this is the first time that a FTC settlement order has required a company to implement a comprehensive privacy program to protect the privacy of consumers' information. It is also the first time the FTC has alleged violations of the substantive privacy requirements of the U.S.-EU Safe Harbor Framework, which provides a method for U.S. companies to transfer personal data lawfully from the European Union to the United States. According to the FTC's complaint, deceptive acts or practices occurred at the time of Google's launch of Buzz when the company allegedly led Gmail users to believe that they could choose whether or not they wanted to join the network while at the same time making the options for declining or leaving the social network confusing and ineffective. The complaint further alleged that Google violated its own privacy policy, and in the process the Federal Trade Commission Act and the U.S.-EU Safe Harbor privacy framework, by using information provided for Gmail in social networking without first obtaining consumers' permission. The proposed settlement agreement is open for public comment through May 2, 2011. For a copy of the announcement, please see http://www.ftc.gov/opa/2011/03/google.shtm.

OCC and FinCEN Assess Civil Money Penalties Against Florida Bank. On March 24, the Office of the Comptroller of the Currency (OCC) and the Financial Crimes Enforcement Network (FinCEN) announced their concurrent assessment of a single $7 million civil money penalty against a Florida bank for violations of a prior OCC consent order, the Bank Secrecy Act (BSA) and the USA PATRIOT Act, in the case of the OCC penalty, and the BSA and its implementing regulations, in the case of the FinCEN penalty. Specifically, the OCC based its assessment on its findings that the bank failed to "(i) adequately identify, monitor, and report suspicious activities; (ii) adequately monitor its foreign correspondent bank accounts; (iii) conduct sufficient due diligence; and (iv) adequately audit its high risk areas and the transactions conducted in those areas." FinCEN determined that the Bank failed to implement adequate internal controls and independent testing at a level of consistency necessary to assure compliance with BSA anti-money laundering programs and suspicious activity reporting requirements. It also concluded that the Bank lacked reasonably complete due diligence information for numerous customers necessary to effectively monitor transactions and report suspicious activity in a timely manner, and violated BSA suspicious activity reporting requirements by filing numerous delayed or incomplete reports. For a copy of the OCC press release, please click here; for a copy of the OCC consent order, please click here; for a copy of FinCEN assessment, please see here.

FTC Finalizes Settlement with Online Data Broker Charged with Deceptive Privacy Pledges. On March 25, the Federal Trade Commission (FTC) announced that after a public comment period, it had unanimously accepted a settlement announced on September 22, 2010 with an online data broker that charged consumers $10 on the promise that it could "lock their records" so that others could not

see or buy them. The respondent, US Search, Inc., which compiles public records and sells data about consumers to the public, sold consumers "PrivacyLock," a service it claimed would prevent their names or other information from appearing on the company's website, its search results, or advertisements for one year. The FTC alleged in its complaint that these claims were false and in violation of Section 5(a) of the Federal Trade Commission Act. The settlement agreement (i) bars respondent from misrepresenting the effectiveness of "PrivacyLock" or similar services, and (ii) requires the issuance of refunds to nearly 5,000 consumers who paid for the service. Commissioner Julie Brill issued a separate concurring statement, saying the industry should consider providing consumers with meaningful notice about information brokers' practices, a reasonable means to access and correct consumers' information, and a reasonable mechanism to opt out of these databases. For a copy of the press release, please click here.

Federal Trade Commission Hosts International Consumer Protection Forum. The Federal Trade Commission (FTC) hosted officials from nine Latin American countries for a "Consumer University" training session from March 28 to April 1, to discuss consumer protection issues and enforcement strategies. The conference, part of a larger project funded by the U.S. Agency for International Development, is part of an ongoing effort to combat cross-border fraud and to promote global consumer protection. Along with a focus on health-related consumer matters, topics were to include consumer privacy, cross-border dispute resolution and consumer education. FTC Commissioner Edith Ramirez gave the keynote address, noting that "[c]onsumers throughout the Americas are being targeted by scammers with cross-border schemes who seek to deceive all members of our communities, so regional law enforcement cooperation is a vital part of the FTC's consumer protection agenda." For a copy of the press release, please see http://www.ftc.gov/opa/2011/03/conuniversity.shtm.

State Issues

New York Creates New Department of Financial Services. On March 27, New York Governor Andrew M. Cuomo and New York Senate Majority Leader Dean Skelos and Assembly Speaker Sheldon Silver announced an agreement on the 2011-2012 budget that includes a merger of the state's Banking Department and Insurance Department. The merger will result in the creation of a new Department of Financial Services, which also would contain a fraud and consumer protection unit. The new Department would be scheduled to open October 3, 2011. The Governor's announcement can be found here.

Courts

Appeals Court Stays Implementation of Loan Originator Compensation Rule After Lower Court Denied Restraining Order. In a "down-to-the wire" ruling, on March 31, the Court of Appeals of the District of Columbia issued an order temporarily staying implementation of the loan originator compensation and anti-steering rule amending 12 CFR § 226.36(a), (d) and (e), based upon an appeal and injunction request by the National Association of Mortgage Brokers (NAMB). The rule was scheduled to go into effect April 1, 2011. It has been reported, but not verified, that the court set another hearing for April 5. The court has the option of making a final ruling based solely on the filed

documents. The stay is in place only until the Court of Appeals can consider the appeal and rule. If the court makes a final ruling in favor of the FRB, the rule likely will become effective immediately. On the other hand, even if the court rules in favor of NAMB, a significant portion of the compensation limitations may still be in effect, as discussed further below.

This appeal arose from the ruling on March 30, in which the U.S. District Court for the District of Columbia declined to grant a temporary restraining order against the Federal Reserve Board's loan originator compensation rule. *Nat'l Assn. of Mortgage Brokers v. Board of Governors of the Federal Reserve System*, Civil Action No. 1:11-cv-00506 (BAH) (D.D.C., Mar. 30, 2011). In the case, which consolidated actions by the National Association of Housing Professionals (NAIHP) and the National Association of Mortgage Brokers (NAMB), the plaintiffs urged the court to grant a temporary restraining order against the Federal Reserve Board's final rule regarding loan originator compensation, which is effective April 1, 2011. The rule amends Regulation Z to restrict the manner in which mortgage loan originators-both individual loan officer employees and mortgage brokerage companies-may be compensated. The plaintiffs claimed that the Federal Reserve Board exceeded its authority in promulgating the rule, and, if the Board did have authority to issue the rule, the rule is arbitrary and capricious. The District Court, in declining to halt the effectiveness of the rule, applied Chevron deference to the Board's action, emphasizing that "the Board has been granted a special degree of deference in its administration of the TILA." Further, even though the NAMB sufficiently demonstrated that its members would suffer irreparable harm, as the rule would result in the "complete destruction of their business," the District Court found that the harm to NAMB's members was outweighed by the public interest.

Of interest to note, while the NAIHP lawsuit challenged the entire rule, the NAMB challenged only the portion that prohibits a mortgage broker from paying its loan officers a commission on a specific loan transaction, which the NAMB called the "Challenged Section of the Rule." The NAMB sought a restraining order and judgment against only the Challenged Section of the Rule. Therefore, since at this point it is only the NAMB that has appealed, and NAIHP has not, technically, the only thing before the Court of Appeals is a further stay of the Challenged Section about mortgage brokers paying commission to their employees, potentially leaving the rest of the rule in force. Of course, we will all need to see how this plays out. Click here for a copy of the opinion.

CitiMortgage Reaches Settlement Agreement in Lender-Placed Insurance Class Action. A settlement was reached in a class action suit against CitiMortgage, Inc. in the Superior Court for the State of California, County of Los Angeles. In *Rounds v. CitiMortgage, Inc.*, No. BC386656 (Cal. Super. Ct., Feb. 24, 2011) plaintiff alleged, among other things, that CitiMortgage allowed the assessment of excessive premiums in its lender placed insurance (LPI) program on California properties, purportedly in violation of California's Unfair Competition Law, Business and Professions Code Section 17200, et seq. The settlement applies to California borrowers of CitiMortgage who paid premiums on LPI between March 4, 2004 and August 10, 2010 and whose insurance was not cancelled without charge to the borrower. The settlement provides for, among other things, a payment by CitiMortgage in a sum not to exceed $2,000,000 for settlement class members making valid claims, attorneys' fees, costs and an incentive award to plaintiff. CitiMortgage agreed to permit each settlement class member to make a claim for payment of up to $95. With respect to

CitiMortgage's LPI program, from February 24, 2011, the date of the judgment granting final approval of the settlement, and for two years thereafter CitiMortgage agreed to maintain a rate of commissions on the placement of LPI to an affiliate of not more than 12%, and a fee in the amount of $.038 for tracking compliance with insurance obligations. Click here for a copy of the complaint and the settlement agreement.

Ninth Circuit Upholds FDCPA Ruling Against Debt Collection Law Firm. In a recent decision, the U.S. Court of Appeals for the Ninth Circuit affirmed a debtor's judgment against a debt collector under the federal Fair Debt Collection Practices Act (FDCPA), the Montana Unfair Trade Practices and Consumer Protection Act and state tort claims of malicious prosecution and abuse of process. *McCollough v. Johnson, Rodenburg & Lauinger*, No. 09-35767 (9th Cir. Mar. 4, 2011). The plaintiff debtor's delinquent credit card account was sold by the credit issuer to a debt buyer. The debt buyer brought a state court action to recover on the debt but dismissed the action after the debtor asserted in response that the statute of limitations had run. The debt buyer then retained a debt collection law firm, Johnson, Rodenburg & Lauinger (JRL), to pursue the action, which it did until it was instructed to dismiss the suit several months later based on it being time barred. The debtor brought an action against JRL in federal court. The district court granted partial summary judgment on the FDCPA claims and the debtor won the other claims at trial. In affirming the ruling of the district court, the Ninth Circuit found that JRL's defense of bona fide error as to the FDCPA action failed as a matter of law. The court held that JRL erred by relying without verification on its debt buyer client's representation that the statute of limitations was extended and by overlooking contrary information in its electronic file. "JRL thus presented no evidence of procedures designed to avoid the specific errors that led to its filing and maintenance of a timebarred collection suit" against the debtor, the court concluded. The court also upheld summary judgment on the debtor's claim that JRL violated the FDCPA by pursuing unauthorized attorneys' fees. The FDCPA prohibits "[t]he collection of any amount . . . unless such amount is expressly authorized by the agreement creating the debt or permitted by law." JRL's presentment of generic evidence that all credit cardholder agreements provide provisions for attorneys' fees was found to be insufficient to defeat summary judgment. The court also concluded that: false requests for admission of JRL in the underlying action violated the FDCPA; the district court did not abuse its discretion in allowed testimony from other consumers relating to JRL; and, that the district court properly allowed the jury's $250,000 award for actual damages due to the emotional distress of the plaintiff, who years earlier had suffered a head injury and suffered from mixed personality disorder and multiple other afflictions, including post-traumatic stress disorder. For a copy of the opinion, please see http://www.ca9.uscourts.gov/datastore/opinions/2011/03/04/09-35767.pdf.

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.

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.

Ben Klubes will be speaking at ACI's 6th National Forum on Residential Mortgage Litigation & Regulatory Enforcement on Thursday, April 7 in Washington, D.C. Mr. Klubes' panel is called "Residential Mortgages and the Capital Markets: Bringing and Defending Against Investor Claims Arising From Loan Modifications and Alleged Foreclosure Documentation Errors." On the panel with Mr. Klubes is Denise P. Brennan, Managing Counsel, Wells Fargo Home Mortgage and Talcott J. Franklin, Attorney, Talcott Franklin P.C., Dallas, Texas.

Margo Tank will be speaking at the E-Signature Summit for Banking Executives in New York on April 8.

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, 2011.

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.

Mortgages

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Banking

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OCC and FinCEN Assess Civil Money Penalties Against Florida Bank. On March 24, the Office of the Comptroller of the Currency (OCC) and the Financial Crimes Enforcement Network (FinCEN) announced their concurrent assessment of a single $7 million civil money penalty against a Florida bank for violations of a prior OCC consent order, the Bank Secrecy Act (BSA) and the USA PATRIOT Act, in the case of the OCC penalty, and the BSA and its implementing regulations, in the case of the FinCEN penalty. Specifically, the OCC based its assessment on its findings that the bank failed to "(i) adequately identify, monitor, and report suspicious activities; (ii) adequately monitor its foreign correspondent bank accounts; (iii) conduct sufficient due diligence; and (iv) adequately audit its high risk areas and the transactions conducted in those areas." FinCEN determined that the Bank failed to implement adequate internal controls and independent testing at a level of consistency necessary to assure compliance with BSA anti-money laundering programs and suspicious activity reporting requirements. It also concluded that the Bank lacked reasonably complete due diligence information for numerous customers necessary to effectively monitor transactions and report suspicious activity in a timely manner, and violated BSA suspicious activity reporting requirements by filing numerous delayed or incomplete reports. For a copy of the OCC press release, please click here; for a copy of the OCC consent order, please click here; for a copy of FinCEN assessment, please see here.

Consumer Finance

Ninth Circuit Upholds FDCPA Ruling Against Debt Collection Law Firm. In a recent decision, the U.S. Court of Appeals for the Ninth Circuit affirmed a debtor's judgment against a debt collector under the federal Fair Debt Collection Practices Act (FDCPA), the Montana Unfair Trade Practices and Consumer Protection Act and state tort claims of malicious prosecution and abuse of process. *McCollough v. Johnson, Rodenburg & Lauinger*, No. 09-35767 (9th Cir. Mar. 4, 2011). The plaintiff debtor's delinquent credit card account was sold by the credit issuer to a debt buyer. The debt buyer brought a state court action to recover on the debt but dismissed the action after the debtor asserted in response that the statute of limitations had run. The debt buyer then retained a debt collection law firm, Johnson, Rodenburg & Lauinger (JRL), to pursue the action, which it did until it was instructed to dismiss the suit several months later based on it being time barred. The debtor brought an action against JRL in federal court. The district court granted partial summary judgment on the FDCPA claims and the debtor won the other claims at trial. In affirming the ruling of the district court, the Ninth Circuit found that JRL's defense of bona fide error as to the FDCPA action failed as a matter of law. The court held that JRL erred by relying without verification on its debt buyer client's representation that the statute of limitations was extended and by overlooking contrary information in its electronic file. "JRL thus presented no evidence of procedures designed to avoid the specific errors that led to its filing and maintenance of a timebarred collection suit" against the debtor, the court concluded. The court also upheld summary judgment on the debtor's claim that JRL violated the FDCPA by pursuing unauthorized attorneys' fees. The FDCPA prohibits "[t]he collection of any amount . . . unless such amount is expressly authorized by the agreement creating the debt or permitted by law." JRL's presentment of generic evidence that all credit cardholder agreements provide provisions for attorneys' fees was found to be insufficient to defeat summary judgment. The court also concluded that: false requests for admission of JRL in the underlying action violated the FDCPA; the district court did not abuse its discretion in allowed testimony from other consumers relating to JRL; and, that the district court properly allowed the jury's $250,000 award for actual damages due to the emotional distress of the plaintiff, who years earlier had suffered a head injury and suffered from mixed personality disorder and multiple other afflictions, including post-traumatic stress disorder. For a copy of the opinion, please see http://www.ca9.uscourts.gov/datastore/opinions/2011/03/04/09-35767.pdf.

Securities

Agencies Publish Risk-Retention Proposal. On March 29, the Federal Reserve Board announced a proposed rule that would require sponsors of asset-backed securities (ABS) to retain at least five percent of the credit risk of the assets underlying the securities. The rule will be proposed jointly with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the U.S. Securities and Exchange Commission, the Federal Housing Finance Agency and the Department of Housing and Urban Development. In drafting the proposed rule, the agencies sought to provide options to sponsors for meeting the risk-retention requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) while at the same time ensuring that the amount of credit risk retained is meaningful. Exemptions to the proposed rule include U.S. government-guaranteed ABS and mortgage-backed securities that are collateralized exclusively by residential mortgages that

qualify as "qualified residential mortgages" (QRMs). The proposed rule would establish a definition of QRMs incorporating criteria designed to ensure that such QRMs are of very high credit quality. Such criteria would include borrower credit history, payment terms, down payment for purchased mortgages and loan-to-value ratio. In addition, under the rule Fannie Mae and Freddie Mac would be permitted to satisfy their risk-retention requirements as sponsors through their 100 percent guarantees of principal and interest for as long as they are in conservatorship or receivership with capital support from the U.S. government. Comments on the proposed rule must be received by June 10, 2011. For a copy of the press release, please see http://www.federalreserve.gov/newsevents/press/bcreg/20110329a.htm.

Privacy/Data Security

Google Agrees to Settle FTC Charges That its Buzz Social Network Used Deceptive Privacy Practices. On March 30, the Federal Trade Commission (FTC) announced that Google Inc. (Google) agreed to settle a complaint that it used deceptive tactics and violated privacy promises to consumers when it launched its social networking application Google Buzz in 2010. The proposed settlement would require Google to refrain from future privacy misrepresentations, implement a comprehensive privacy program, and consent to regular independent privacy audits over the next twenty years. According to the FTC's statement, this is the first time that a FTC settlement order has required a company to implement a comprehensive privacy program to protect the privacy of consumers' information. It is also the first time the FTC has alleged violations of the substantive privacy requirements of the U.S.-EU Safe Harbor Framework, which provides a method for U.S. companies to transfer personal data lawfully from the European Union to the United States. According to the FTC's complaint, deceptive acts or practices occurred at the time of Google's launch of Buzz when the company allegedly led Gmail users to believe that they could choose whether or not they wanted to join the network while at the same time making the options for declining or leaving the social network confusing and ineffective. The complaint further alleged that Google violated its own privacy policy, and in the process the Federal Trade Commission Act and the U.S.-EU Safe Harbor privacy framework, by using information provided for Gmail in social networking without first obtaining consumers' permission. The proposed settlement agreement is open for public comment through May 2, 2011. For a copy of the announcement, please see http://www.ftc.gov/opa/2011/03/google.shtm.

FTC Finalizes Settlement with Online Data Broker Charged with Deceptive Privacy Pledges. On March 25, the Federal Trade Commission (FTC) announced that after a public comment period, it had unanimously accepted a settlement announced on September 22, 2010 with an online data broker that charged consumers $10 on the promise that it could "lock their records" so that others could not see or buy them. The respondent, US Search, Inc., which compiles public records and sells data about consumers to the public, sold consumers "PrivacyLock," a service it claimed would prevent their names or other information from appearing on the company's website, its search results, or advertisements for one year. The FTC alleged in its complaint that these claims were false and in violation of Section 5(a) of the Federal Trade Commission Act. The settlement agreement (i) bars respondent from misrepresenting the effectiveness of "PrivacyLock" or similar services, and (ii) requires the issuance of refunds to nearly 5,000 consumers who paid for the service. Commissioner Julie Brill issued a separate concurring statement, saying the industry should consider providing

consumers with meaningful notice about information brokers' practices, a reasonable means to access and correct consumers' information, and a reasonable mechanism to opt out of these databases. For a copy of the press release, please click here.

Federal Trade Commission Hosts International Consumer Protection Forum. The Federal Trade Commission (FTC) hosted officials from nine Latin American countries for a "Consumer University" training session from March 28 to April 1, to discuss consumer protection issues and enforcement strategies. The conference, part of a larger project funded by the U.S. Agency for International Development, is part of an ongoing effort to combat cross-border fraud and to promote global consumer protection. Along with a focus on health-related consumer matters, topics were to include consumer privacy, cross-border dispute resolution and consumer education. FTC Commissioner Edith Ramirez gave the keynote address, noting that "[c]onsumers throughout the Americas are being targeted by scammers with cross-border schemes who seek to deceive all members of our communities, so regional law enforcement cooperation is a vital part of the FTC's consumer protection agenda." For a copy of the press release, please see http://www.ftc.gov/opa/2011/03/conuniversity.shtm.