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The Washington Report

for the week ended August 14, 2015

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Safety & Soundness

Federal Reserve Publishes Clarification to Transaction-Monitoring Costs under Regulation II

On August 10, 2015, the Federal Reserve Board (Federal Reserve) published a clarification to its Regulation II, *Debit Card Interchange Fees and Routin*g, regarding the inclusion of transaction-monitoring costs in the interchange fee standard. As required by Section 920 of the *Electronic Fund Transfer Act*, Regulation II implements standards for assessing whether interchange transaction fees for electronic debit transactions are reasonable and proportional to the cost incurred by the issuer with respect to the transaction. The recently released clarification is being published in response to a March 21, 2014, decision of the Court of Appeals for the District of Columbia Circuit, which required the Federal Reserve to further explain its treatment of transaction-monitoring costs. [Press Statement] [Clarification]

Enterprise & Consumer Compliance

CFPB, OCC, and FDIC Take Action to Address UDAAP/UDAP Violations Related to Deposits

The Consumer Financial Protection Bureau (CFPB or Bureau) announced on August 12, 2015, that it had taken action against a large banking institution and its affiliated institutions (collectively Bank) to address the Bureau's findings the entities failed to credit customers the full amount of their deposited funds when there was a discrepancy between the customer's deposit slip and the actual amount transferred to the customer's account. The CFPB found these practices violated the unfair, deceptive, or abusive acts or practices (UDAAP) prohibitions of the *Consumer Financial Protection Act* (CFPA). The CFPB stated that failure to credit certain customers for the full amount of their deposit was unfair. The CFPB also stated that the Bank was deceptive because it disclosed to customers that all deposits would be subject to verification but actually did not provide a review of deposit amounts when a discrepancy between the deposit slip and the deposited funds fell below a stated threshold. The CFPB entered into a Consent Order with the Bank that required total payments of approximately $11 million in restitution to harmed consumers, and a $7.5 million civil money penalty.

The CFPB's action was coordinated with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), which took separate actions against the Bank's affiliated parties to address those agencies' findings of unfair and deceptive practices (UDAP) in violation of Section 5 of the *Federal Trade Commission Act* (FTC Act) related to the same or similar procedures for reconciling discrepancies between the amount of a deposit as stated on an account holder's deposit slip and the actual amount of the deposit. The OCC entered into a Consent Order that required a national bank affiliate to pay restitution to harmed customers as well as a $10 million civil money penalty. The FDIC required an insured state nonmember bank affiliate to pay approximately $5.8 million in restitution to 475,000 affected consumer and business accounts, and to pay a $3 million civil money penalty.

FTC Issues Statement of Enforcement Principles for Section 5 UDAP Prohibitions

The Federal Trade Commission (FTC) issued a *Statement of Enforcement Principles Regarding "Unfair Methods of Competition"* (Statement) on August 13, 2015, that is intended to describe the underlying antitrust principles that guide

the FTC's application of its statutory authority to take action against "unfair methods of competition" prohibited by Section 5 of the FTC Act "but not necessarily by the Sherman or Clayton Act." The Statement explains that, consistent with FTC precedent, when determining whether to challenge an act or practice as an unfair method of competition in violation of Section 5 on a standalone basis, the FTC will adhere to the following principles:

- The FTC will be guided by the public policy underlying the antitrust laws, which is the promotion of consumer welfare;
- The act or practice will be evaluated under a framework similar to the rule of reason, such that an act or practice challenged by the FTC must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications; and
- The FTC is less likely to challenge an act or practice as an unfair method of competition on a standalone basis if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm arising from the act or practice. [Press Statement] [Statement]

FTC Files Claim Against Data Broker

The Federal Trade Commission (FTC) announced that it had filed a claim against a data broker enterprise that collected consumer information from its own payday lending Web site and also purchased consumer information from other payday loan Web sites, and then sold that information to a scam operation that subsequently debited funds from consumers' bank accounts and placed charges on their credit cards without the consumers' consent. The complaint alleges the data broker knew the scam operator was making unauthorized debts and credit card charges.

Capital Markets and Investment Management

Enforcement Actions

The Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA) announced the following enforcement actions in the past week:

- The SEC announced that a brokerage firm and the former head of its municipal underwriting desk have agreed to settle charges that they overcharged customers in new municipal bonds sales. This is the SEC's first case against an underwriter for pricing-related fraud in the primary market for municipal securities. The firm was also charged with separate misconduct related to supervisory failures in its review of certain secondary market municipal bond trades. The firm agreed to settle the case by paying more than $20 million, which includes nearly $5.2 million in disgorgement and prejudgment interest that will be distributed to current and former customers who were overcharged for the bonds.
- The SEC announced that a firm and its affiliate have agreed to admit wrongdoing and to pay $20.3 million ($18 million in penalties) to settle charges that they operated a secret trading desk and misused the confidential trading information of dark pool subscribers. The SEC notes this is the largest penalty to date to be assessed against an alternative trading system.
- The SEC announced that an investment management firm agreed to settle charges that it breached its fiduciary duty by failing to disclose a $50 million loan that an advisory client had made to one of its senior executives. The firm agreed to pay $20 million for disclosure failures and other violations, which included the use of a compliance program that the SEC found was not reasonably designed to prevent violations of federal securities laws, and failure to enforce its code of ethics.
- FINRA fined a firm $800,000 to address violations of Regulation SHO and related supervisory failings.

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This is a publication of KPMG's Financial Services Regulatory Risk Practice and KPMG's Americas FS Regulatory Center of Excellence

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