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CFPB ENCOURAGES STATE CONSUMER PROTECTION ENFORCEMENT ACTIONS

The Consumer Financial Protection Bureau (“CFPB”) has taken two actions to encourage state governments to bring enforcement actions for alleged violations of any federal consumer financial laws enforced by the CFPB. First, the CFPB issued an interpretive rule delineating state governments’ authority to enforce federal consumer protection laws. Second, the CFPB began issuing Consumer Financial Protection Circulars, guidance directed at state attorneys general and regulators.

The CFPB issued an interpretive rule delineating states’ authority to bring civil suit against alleged (i) unfair, deceptive or abusive acts or practices; (ii) violations the Truth in Lending Act and Regulation Z and (iii) the federal Fair Debt Collection Practices Act and Regulation F. The rule further clarifies that states may bring or continue enforcement actions under federal law even if the CFPB is pursuing the same action against the same entity. The interpretive rule is silent on whether states can pursue remedies potentially unavailable to them under federal consumer protection law or their own state laws, such as civil monetary penalties.

The CFPB also has begun issuing Consumer Financial Protection Circulars to provide enforcement guidance for state attorneys general and regulators. The CFPB intends the Circulars to promote clarity and consistency among the different enforcers of federal consumer protection laws. However, Circulars are promulgated as policy statements and thus do not have the force of law. The CFPB has issued two substantive Circulars so far. The first Circular arose from a multi-agency effort to address deceptive use of the Federal Deposit Insurance Corporation’s logos. The second Circular addressed requirements for credit algorithms and computer models under the Equal Credit Opportunity Act and Regulation B.

The CFPB’s actions are poised to continue the environment of heightened state enforcement. State actions under the new enforcement provision can result in duplicative actions as well as new and potentially expansive interpretations of federal consumer protection laws. We will continue to monitor the increasingly complex overlay of federal and state compliance. □

✧ *Mike Tomkies and Ben Hurford*

CALIFORNIA ATTORNEY GENERAL BACKS SUITS AGAINST NATIONAL BANKS

California Attorney General Rob Bonta filed an amicus brief in support of enforcement actions brought by multiple district attorneys against Credit One Bank alleging violations of California’s Rosenthal Fair Debt Collection Practices Act and Unfair Competition Law. When the district attorneys sued in California state court, Credit One filed a collateral attack in federal court to stop them. Credit One argued that the district attorneys’ pending enforcement action is an exercise of visitatorial power on a national bank prohibited by the federal National Bank Act and that only the California Attorney General can sue a national bank for violations of state law. The federal district court ruled against Credit One. The case is now on appeal before the Ninth Circuit.

Credit One was successful in dismissing an investigative subpoena served by one of the district attorneys. The Office of the Comptroller of the Currency wrote in a 2020 letter to Credit One that the non-judicial investigation of a national bank by the district attorney was an unlawful exercise of visitatorial powers (The district attorney that served the investigative subpoena later withdrew it.)

Attorney General Bonta claimed that district attorneys are “critical partners” in protecting the rights of Californians and claimed in a press release that “[i]f you break the law in California, local prosecutors have the authority and the responsibility to hold you accountable.” The case against Credit One may affect the ability of California district attorneys to continue their aggressive pursuit of other companies for alleged violations of California law. Last November, Synchrony Bank reached a settlement and agreed to pay \$3.5 million in fines and restitution. In 2018, iQor Holdings paid \$9 million to settle a lawsuit that filed by 18 prosecutors in California.

Companies must be prepared to navigate the interplay between federal and state enforcement efforts, particularly as one frequently can beget the other. □

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Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eansaett@dtlaw.com

Nathan D. Copeland
ncopeland@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dtlaw.com

Benjamin J. Hurford
bhurford@dtlaw.com

Mercedes C. Ramsey
mramsey@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com