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APPLE CARD FAILURES HIGHLIGHT COMPLIANCE CONCERNS FOR BANK-FINTECH ARRANGEMENTS

The Consumer Financial Protection Bureau (“CFPB”) recently entered into consent orders with Goldman Sachs Bank and Apple, Inc. over alleged mismanagement of disputes and deceptive marketing related to the Apple Card. The order requires Apple and Goldman to pay over \$89 million collectively in civil penalties and redress for issues with the Apple Card. Additionally, Goldman is prohibited from launching a new credit card without a credible compliance plan.

Launched in 2019, the bank-fintech arrangement between the two behemoths operated on a division of labor common in bank-fintech arrangements wherein the non-bank company acts as a service provider to the bank, designing and operating the consumer-facing interfaces and marketing on behalf of the bank, while the bank extends credit and investigates disputes submitted by consumers. Apple Card consumer disputes were submitted on the consumer-facing interfaces designed and operated by Apple, with Apple taking responsibility for forwarding disputes to Goldman. The consent order against Goldman indicates that Goldman was aware, prior to launching the Apple Card, that Apple’s disputes system was “not fully ready” because of technological issues. According to the consent orders, the problems led to tens of thousands of disputes going uninvestigated by either Goldman or Apple. Goldman’s failure to investigate disputes resulted in violations of TILA and Regulation Z’s billing error and dispute requirements, while Apple’s failure to forward disputes to Goldman resulted in unfair acts or practices in violation of the Consumer Financial Protection Act (CFPA).

In addition to disputes system issues, the CFPB identified deceptive and abusive acts or practices in the advertising of Apple Card Monthly Installments (“ACMI”), a program that intended to allow Apple Card users to finance the purchase of certain Apple devices directly from Apple through the payment of interest-free monthly installments. According to the consent orders, Apple was responsible for designing the advertising and checkout process for enrolling in ACMI, and Goldman was responsible for reviewing the advertisements and checkout process for compliance with law prior to their use. The language in the consumer-facing advertisements conflicted with the realities of the checkout process, and the checkout

process did not adequately explain that certain options referred to ACMI. For example, the advertisements suggested that Apple Card cardholders would automatically be enrolled in ACMI with a qualifying purchase. In reality, the cardholder had to make correct selections in the checkout flow to be enrolled. If a cardholder did not correctly enroll in ACMI, they would be required to return and repurchase the device to enroll in ACMI.

The consent orders highlight the importance of a well-structured bank-fintech arrangement with appropriate bank oversight. This action against Goldman is the latest in the trend of regulators holding banks directly accountable for failures in bank-fintech arrangements. See our ALERTS of [June 12, 2023](#), [Nov. 10, 2022](#) and [Sep. 22, 2022](#). Technology companies are expected to be experts in technology, banks are expected to be experts in banking. Adequate and appropriate coordination of compliance efforts is imperative. Regulators require banks to bear ultimate responsibility for ensuring that programs are compliant with the law, regardless of how parties have divided the labor of that compliance. Breakdowns in the division of labor will roll up to the bank eventually. Responsible oversight of bank-fintech arrangements provides for a more stable program.

As regulators increase their scrutiny of bank-fintech arrangements, ensuring that such relationships are properly structured is critical for all parties. We often advise on the proper structure for bank-fintech arrangements, as well as any policies that may be necessary to ensure that programs are compliant with the law. □

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