Message from the Chair

I am pleased to report that this is the sixth issue of the Consumer Financial Services Committee eNewsletter. This issue completes the second year that the Consumer Financial Services Committee has published an eNewsletter. Our thanks and congratulations are due to eNewsletter Editor Rick Eckman and Managing Editor Jackie Parker. I hope that you find the eNewsletter useful, and I encourage you to contact Rick, Jackie or me (614-628-1602; jlanger@dltlaw.com) with any comments or questions, or if you wish to become involved in writing for or producing the eNewsletter.

Upcoming Events

Section Spring 2006 Meeting in Tampa (April 6-9, 2006)

Please join fellow CFSC members and other business lawyers at the Spring Meeting at the Marriott Waterside Hotel and Marina in Tampa. The CFSC’s meetings begin on Thursday, April 6 at 8:00 a.m. with the Welcome session and end on Saturday, April 8 at 12:30 p.m. [Click here for CFSC Meetings schedule] Both of the original meeting hotels (the Marriott and the Wyndham Harbour Island Hotel) are sold out, but the Section has secured additional rooms at the Wyndham Westshore-Tampa, 4860 West Kennedy Boulevard, Tampa, Florida 33609, Phone (800) 866-7177, about five miles from the Marriott, and a shuttle will run between the Wyndham Westshore, the Marriott and the Wyndham Harbour Island. Meeting registration materials are available on the Section website. [Click here for registration materials] Thanks to the efforts of long-time Committee member Bruce Roberson and his firm, Holland & Knight LLP, the Committee Dinner will be held at the Tampa Club, walking distance from the Marriott, on Thursday, April 6 at 6:00 p.m. [Click here for CFSC Dinner registration form] We have an excellent set of subcommittee meetings and programs. We will sponsor or co-sponsor seven programs and Committee Forums, as follows:

- **Diversity Committee Program:** Foreign Language Marketing and Servicing: What You Need to Know to Market, Make and Service Financial Products in a Foreign Language; Thursday, April 6, 9:00-10:30 a.m. (Co-sponsored by CFSC).

- **Program:** Consumer Financial Services Ombudsman: Will the Canadian System be a Model for the United States?; Thursday, April 6, 10:30 a.m.-12:30 p.m. (Sponsored by CFSC).

- **Committee Forum:** Home Mortgage Disclosure Act: Compliance, Agency Enforcement and Class Action Litigation; Thursday, April 6, 2:15-4:00 p.m. (Sponsored by CFSC).

- **Frederick Fisher Memorial Program:** Consumer Privacy and Information Security: Does the Risk of Security Breaches Justify the Burden of Additional Safeguards?; Friday, April 7, 2:30-4:30 p.m. (Sponsored by CFSC).

- **Uniform Commercial Code Committee and Commercial Financial Services Committee Forum:** Using the New Model Deposit Account Control Agreement; Friday, April 7, 3:00-4:30 p.m. (Co-sponsored by CFSC).

- **Gaming Law Committee Program:** Federal Morality Enforcement Through Payment Systems Regulation; Saturday, April 8, 8:00-10:00 a.m. (Co-sponsored by CFSC).

- **Technology Committee Program:** Information Security Response Plans: Data Gone Missing; Saturday, April 8, 10:30 a.m.-12:30 p.m. (Co-sponsored by CFSC).

CLE credit will be available at all programs and forums. I hope to see as many of you as possible at the Meeting.
ABA Annual Meeting in Honolulu (August 3-7, 2006)

The CFSC will hold its meetings in Honolulu at the Marriott Waikiki Beach Resort & Spa on Sunday, August 6 from 7:30 a.m. to 12:00 noon (the CFSC Leadership meeting is from 12:00 noon to 1:00 p.m.) and Monday, August 7 from 7:30 a.m. to 1:00 p.m. [Click here for CFSC Meetings Schedule] The Business Law Section will hold meeting events from Thursday evening, August 3 through Monday afternoon, August 7. [Click here for BLS Annual Meeting Alphabetical, Chronological and Program Schedules] We will sponsor only one program, “You Had a Security Breach, What Do You Have to Do and What Happens Next?” on August 7, 9:00-11:00 a.m. In addition, only eight of our 12 substantive subcommittees will meet. Due to space limitations, the ABA and the Business Law Section mandated shorter and less-comprehensive meeting and program schedules for all Committees. This scheduling is intended to encourage ABA members to combine the Annual Meeting with a Hawaiian vacation. I hope that you will take advantage of this opportunity and attend the meeting.

Latest Updates

Publication of ABA Guide to Credit and Bankruptcy

The ABA recently published this book for the public. In late 2004 and early 2005, a number of CFSC leaders and other members, under the direction of Robin Warren, edited the Consumer Credit portion of the manuscript and immeasurably improved the final product. The manuscript was written by non-lawyers. We should be proud of this and other examples of the CFSC’s commitment to educating consumers about consumer financial services products and their legal rights and obligations. I want to thank all CFSC members who edited chapters of the Guide, and Robin in particular for organizing and ensuring completion of the editing process.

Website Access Directions

CFSC Programs Subcommittee Vice-Chair Nikki Munro has prepared instructions for accessing and navigating the ABA and CFSC websites. [Click here for instructions] These instructions should enable you to more easily find information on CFSC membership (including access to the membership roster), leadership, subcommittees and task forces, meetings, projects and publications. I strongly encourage you to visit the CFSC website frequently for the latest information on CFSC happenings.

Joint Home Banking Services Agreement Task Force

I am delighted to report that after a long and difficult process, and thanks to the extraordinary persistence of Coordinating Editor John Lee, the Joint Task Force of the CFSC and the Cyberspace Law Committee on Home Banking Services Agreement will have its Report published as part of a series of articles on the Agreement in the February 2006 issue of The Business Lawyer. The Task Force Report, co-authored by Hazel Hall and CFSC member Dan Weiss with comments by several members of the participating Committees, consists of a Home Banking Services Agreement with commentary. The Report is intended to be a...
Joint Deposit Account Control Agreements Task Force

I also am pleased that the Joint Task Force of the Banking Law, Commercial Financial Services, CFS and Uniform Commercial Code Committees on Deposit Account Control Agreements is scheduled to publish its Initial Report and model forms of Deposit Account Control Agreement (DACA) and General Terms for DACA in the February 2006 issue of The Business Lawyer. The Task Force’s goal has been to develop a standard form of DACA that could gain wide acceptance in the industry and be implemented with little or no negotiation. In addition to publication of the Task Force Report and related documents, the Commercial Financial Services and UCC Committees will sponsor, and the CFSC will be a co-sponsor of, a Committee Forum at the Spring Meeting entitled “Using the New Model Deposit Account Control Agreement” on Friday, April 7, 3:00-4:30 p.m. I want to recognize Roberta Torian, Vice-Chair of the CFSC Subcommittee on Internet Delivery/Electronic Banking, for her contributions to the development of the Initial Report and the model documents as the CFSC’s Co-Chair of the Task Force.

Jeffrey I. Langer
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Subcommittee Update

For 2006, the Membership Subcommittee is continuing to focus on increasing the level of participation by in-house counsel, and lawyers of color and other minority lawyers. Additionally, we are actively seeking to retain Committee members who have not renewed their ABA/BLS memberships for 2006 so we don’t lose any members who are unaware that they must renew their Business Law Section membership in order to retain membership in the Committee or who are otherwise unaware that their 2006 dues have not been paid.

The membership recruitment efforts in 2005 resulted in 144 new Committee members, 39 of which are in-house counsel. We especially appreciate the involvement of law firms, companies and other organizations which have multiple Committee members. Here is a list of those supportive organizations. All Committee members are requested to invite other members of their organization, as well as attorneys outside of their organization with whom they work, to attend the Spring Meeting and to encourage them to join the Committee.
Other Membership Subcommittee initiatives for 2006 include determining how we can best reach out to law students and developing outreach opportunities to recruit new members at the ABA meeting sites. The Membership Subcommittee welcomes your ideas on advancing any of the membership initiatives. Please contact Julie Caggiano (Julie.caggiano@aegismtg.com) or Joe Looney (looney@hudco.com).

Meeting Notes

**Compliance Management and Privacy Subcommittee Joint Session on Internal Compliance Measures for Data Security**

The Compliance Management and Privacy Subcommittees sponsored a joint session on internal compliance measures for data security at the Winter Meeting. Agnes Bundy Scanlan of Goodwin Procter LLP, Chair of the Compliance Management Subcommittee, moderated the panel; and the panel included Joanne Sundheim of JP Morgan Chase & Co. (Vice-Chair, Compliance Management Subcommittee), Patricia Covington of Hudson Cook LLP (Vice-Chair, Privacy Subcommittee), Amy Friend of the Office of the Comptroller of the Currency (OCC), Christine Frye of Countrywide, and Joel Winston of the Federal Trade Commission (FTC).

The session commenced with Agnes Bundy Scanlan’s overview of data security breach issues, which included the following information regarding data breach incidents:

More...

**Joint Housing Finance/RESPA and TILA Meeting and Separate TILA Meeting**

The Truth in Lending, and Housing Finance and RESPA Subcommittees held a joint meeting at the Winter Meeting. Joe Kolar of Buckley Kolar LLP (Chair, Housing Finance and RESPA Subcommittee) moderated a panel discussion entitled *Do TILA and RESPA Clash?* Ken Markison of the Mortgage Bankers Association presented an informative and thought provoking slide show concerning the historical conflicts between the two statutes, the ongoing efforts at regulatory reform, and recommendations for improving things in the future. Stan Mabbitt of Countrywide Financial Corporation provided his thoughts from the lender’s perspective, and Nina Simon of AARP added the consumer perspective to this enlightening presentation.

The Truth in Lending Subcommittee meeting, moderated by Lynette Hotchkiss of Mavent Inc. (Chair, Truth in Lending Subcommittee), featured a presentation by Ducie Le of the Federal Reserve Board. Ms. Le discussed the Board’s perspective on the Interagency Guidance for Nontraditional Mortgage Products. She also provided a status report on the Reissued ANPR for Open-End Credit Revisions. Marvin Adviento of Mavent Inc. provided a “year in review” report concerning the FTC enforcement actions relevant to Truth in Lending violations throughout 2005. Cathy Brennan of Hudson Cook, LLP brought us up to date on some of the more relevant Truth in Lending cases decided throughout the country during the latter half of 2005. And, even though he was enlisted at the last minute, Jeremy Rosenblum of Ballard Spahr Andrews & Ingersoll, LLP was a good
support, providing us all with a discussion of the Vallies v. Sky Bank case, a decision filed by the U.S. Court of Appeals for the Third Circuit on January 5, 2006. Attendees were provided with the opportunity to pick up a copy of the TILA Case Summaries report, which covered all published Truth in Lending cases decided between January 1 and December 31, 2005. To obtain a copy of this report, please go to http://www.mavent.com/aba/TILACASESUMMARIES12-31-05.PDF.
Joint Session on Internal Compliance Measures for Data Security

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The session commenced with Agnes Bundy Scanlan’s overview of data security breach issues, which included the following information regarding data breach incidents:

**2005 U.S. Data Breach Incidents**

166 disclosed incidents, potentially affecting more than 60 million individuals

Approximate breakdown by incident:

- Educational institutions -- 49%
- Banking/Credit/Financial institutions -- 14%
- Government/Military agencies -- 13%
- Retail companies -- 7%
- Health Care institutions -- 8%
- Data/Information companies -- 2%
- Other companies -- 7%

Approximate breakdown by number affected:

- Educational institutions – 3%
- Banking/Credit/Financial institutions – 81%
- Government/Military agencies – 7%
- Retail companies – 3%
- Health Care institutions – 3%
- Data/Information companies – 1%
- Other companies – 2%

Approximate breakdown by type of breach:

- Hackers or unauthorized access – 51%
- Theft of equipment – 29%
- Inadvertent disclosures – 20%

[Click here for additional documents that Ms. Bundy Scanlan provided to the participants.] Patty Covington provided the legal context for the discussion and discussed the differing components of states’ data security breach legislation, which is outlined on the attached chart. For instance, the definition of personal information varied in Arkansas and Delaware (medical information included), North Dakota (mother’s maiden name and employee identification...
number included) and Georgia (pin password included). Minnesota had an exemption for financial institutions. North Carolina extended its legislation to include the media and all data including physical data. New Jersey has the strongest security breach law. In Illinois, Connecticut and Pennsylvania it is an unfair and deceptive practice to not provide notice to customers when their personal information has been breached. Twelve states have credit freezes. Patty noted that in 2006 seven additional states and jurisdictions are contemplating similar legislation: Arizona, Hawaii, Maryland, Michigan, Oklahoma, Wisconsin, and DC. There are twelve to thirteen federal bills being deliberated in six to eight Committees.

Joanne Sundheim and Christine Frye of JPMorgan Chase and Countrywide, respectively, spoke about data security best practices at their institutions. Joanne said that JPMorgan Chase assembled a corporate team and a team for each major line of business, each comprised of individuals with specialized expertise to manage response to a data breach. Their task is to minimize the harm to the customer, focus on the customers’ trust, contain the issue, and limit exposure. This team employs internal controls to stop further breach and is responsible for the communications to internal employees, regulators and law enforcement. JPMorgan Chase’s contracts with third parties have provisions regarding reporting an actual or potential breach.

Christine Frye spoke about Countrywide’s practices. Please see the attached documents that Christine provided to the participants. Countrywide also has taken a corporate level approach to data security. There is a single point of contact for reporting a breach via e-mail, a toll free telephone number, etc. Countrywide has multiple regulators and has met with these regulators to establish common criteria and methods for notifying them of investigations. Countrywide’s management receives weekly reports of all data security activity including investigations, consumer notifications, etc. Customer notification envelopes include a stamp on the cover entitled, “URGENT SECURITY INFO”.

Amy Friend, OCC, and Joel Winston, FTC, spoke about the guidance and issues that have arisen under the guidance since March 2005. Amy responded to questions from bankers and shared the types of breaches the OCC has seen.

Many bankers asked the OCC if they had to report every breach. There is not a de minimis requirement and the OCC’s response has been that bankers should have a discussion with their regulator. The reporting could range from incident to incident to reporting on a monthly basis, and again, this is a good opportunity for the banker to have dialog with their regulator. Bankers asked the OCC when they should notify customers. The OCC expects the bank to conduct an investigation to determine what the reasonable expectation is that customers’ nonpublic information has been compromised or misused.

Joel Winston spoke about the existing laws relating to data security. He mentioned FCRA where the CRA can only provide consumer reports to those with a permissible purpose and must have reasonable "know your customer" procedures; FACTA where the disposal rule governs the proper disposal of consumer report information; GLBA safeguard rules; and the FTC Act's prohibition on unfair or deceptive practices. Mr. Winston also spoke about several FTC data security lawsuits regarding deceptive representations or unfair failure to have reasonable safeguard procedures.