Leadership Message

At the Consumer Financial Services Committee, Business Law Section Annual Meetings are a time of transition. We transition to new subcommittee leadership, bring on new Young Lawyer Liaisons, and begin to prepare for our next calendar year of meetings, programs, webinars, newsletters, articles, and treatises. At the upcoming Annual Meeting in Austin, Texas, another transition will occur: Katrina Christakis will take over from me as Committee Chair.

Before I provide you with my reflections on my three years as your Chairman, as well as on Katrina’s stellar qualifications and the bright future ahead of CFSC, let me give you some details about the Annual Meeting itself.

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Legal Feature

The CFPB’s Eventful Year: Key Developments Before and After Rich Cordray’s Resignation
By Lucy Morris

Last spring, the Consumer Financial Protection Bureau was on a roll, rifling its consumer protection drumbeat. A year later, its powerful rhythm has been slowed; in its place, we hear an erratic heartbeat. Anyone following the CFPB knows that this has been an eventful year for the Bureau, with changes happening on an almost-daily basis at times. This article explores the CFPB’s eventful year, where it is today, and what to expect from the Bureau going forward.

Before Cordray’s Resignation

As the CFPB’s first Director, Rich Cordray used all the Bureau’s tools to protect consumers. Law enforcement was his favorite tool of choice. For example, a year ago, in CFPB v. Golden Valley Lending, the CFPB sued four online lenders for allegedly collecting on debts that consumers did not owe, because the loans exceeded usury rates in the consumers’ home states. This was the same theory used in the Bureau’s CashCall case, with one very important difference. In Golden Valley Lending, the Bureau sued arm-of-the-tribe lenders who share in the Tribe’s sovereign rights. This was one of several aggressive law enforcement actions taken by the Bureau last year under Cordray. The Bureau also brought enforcement actions against mortgage servicers, student loan servicers, credit bureaus, national banks, auto lenders, and others. In addition, the Bureau flexed its supervisory muscle. Last September, the Bureau touted that it had required supervised entities to return $14 million to over 100,000 consumers, for law violations identified during exams.

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Legal Feature

Where to start? The Challenge of Corporate Compliance with Cybersecurity Regulations
By William R. Denny

The political consulting firm Cambridge Analytica harvested and used personal data of 87 million Facebook users in a manner that neither Facebook nor its users contemplated. This was not a hack, but nevertheless resulted in a major public relations scandal for the companies involved and reportedly caused many customers to abandon the platform. In 2017, Equifax suffered a huge hack in which attackers gained access to the financial and personal information of at least 150 million people. The breach is expected

Legal Feature

The Madden Effect: Whose Interest Rate is it Anyway?
By Jessica Salisbury-Copper and Sabrina Neff

Pursuant to Section 85 of the National Bank Act ("NBA") and Section 27 of the Federal Deposit Insurance Act ("FDIA"), national and state chartered banks may charge interest on any loan at the rate allowed by the laws of the state where the bank is located. For years, debt buyers and assignees of credit agreements have relied on the Valid-When-Made doctrine, which provides that if a loan is non-usurious at origination, it does not become usurious solely by the act of assignment. The Valid-When_Made doctrine

Important Dates

Business Law Section Annual Meeting
September 13-15, 2018
Austin, TX

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CFSC by the Numbers: As of April 2018, total members = 1,351, which represents a decrease of approximately 6% compared to April 2017. Keep spreading the word about joining the ABA’s CFSC. Encourage your clients and colleagues to check out our fantastic CFSC CLE and content and opportunities to get involved!

Be Social with the CFSC: Connect with us on:
- Facebook: ABA Consumer Financial Services Committee
- LinkedIn: ABA Consumer Financial Services Committee
- Twitter: ABA Consumer Financial Services Committee
- Handle: @ABABusLaw_CFSC
- Hashtag: #BusLawCFSC

CFSC Website: Did you know you can find links to helpful information on the website, including past newsletters, meeting materials and non-CLE Webinars? To learn more, visit the CFSC website.

Get Involved in the CFSC: Want to get more involved in the CFSC? Feel free to contact Grace Powers or Judy Mok, CFSC Membership Subcommittee Chair and Vice-Chair, for information.
to cost Equifax $439 million by the end of 2018, only a small portion of which is covered by insurance. Many financial institutions, private businesses and public agencies have had their networks frozen by ransomware. Companies large and small are facing greater risks due to cyber-attacks, which create legal, financial, operational and reputational risks.

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Legal Feature

The FDCPA After Henson v. Santander: The Evolving Principal Purpose Test
By Nora R. Udel and Anastasia V. Caton

In June 2017, the United States Supreme Court decided Henson v. Santander, a landmark Fair Debt Collection Practices Act ("FDCPA") case. In Henson, the Supreme Court held that a person collecting debt it owns is not "collecting debt owed or due another," which is one prong of the FDCPA's definition of "debt collector." Although important, the holding is unsurprising. In fact, the case is probably more important for what it did not decide: Whether an entity that purchases debt and services that debt in its own name is a "debt collector" because it is engaged in a business with the principal purpose of collecting debts (the other prong of the FDCPA's definition of "debt collector"). In other words, while Henson may have narrowed the scope of the "collecting debt owed or due another" prong of the definition of "debt collector," it left open the question of what exactly it means for someone to have a business with the "principal purpose" of collecting debt.

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Legal Feature

Consumer Financial Services Reform in Year Two of the Trump Administration
By Taylor Tipton

The publicly traded banking sector increased its market value by almost 30 percent in the first year of the Trump Administration. In part, this was a product of an overall strong performance by the stock market, but it also reflects a market and industry expectation for deregulatory efforts. The Administration delivered at least modest reforms in its first year - rulemakings related to capital, the Volcker Rule, living will extensions, and capital planning and stress testing - but noticeably absent were major changes in the consumer financial services space. Looking at the rest of 2018 and into 2019, it is reasonable to believe that the Administration will make modest deregulatory reforms in the consumer space. While some of these changes may be formal rulemakings in response to changes mandated by Senate Bill 2115 (the "Crapo Bill"), it is also likely that the Administration will rely on agency staffing and litigation priorities to reform the consumer financial services industry, most notably in continued litigation over the constitutional status of the Consumer Financial Protection Bureau (the "CFPB"); resetting enforcement priorities for the CFPB; less aggressive interpretations of current law; tailored regulation of community financial institutions; and a continuation of deregulatory rulemakings in the area of capital regulation.

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Legal Feature

Fair Lending Under the New Regime: Where We Are and Where We Are Headed?
By John L. Ropiequet

With the change of Administration, there has been a real pivot point in the fair lending area as well as in many other areas. The change in fair lending policy has been at least as sharp as the change between the Clinton Administration and the Bush Administration, and then between the Bush Administration and the Obama Administration. The change has also been announced more loudly, and has been more explicit.

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Legal Feature

Senator William Proxmire Lifetime Achievement Award Acceptance Speech
By Lawrence (Larry) Young

I think it would be a lot more interesting for me to talk about you than to talk about me. So I am going to talk mostly about you.

The Fellows

Four score and seven years ago, or perhaps a dozen or so years less, Tom Hudson was born in Childersburg, Alabama. Eleven days later, 100 miles to the east in Lagrange, Georgia, I was born. Malcolm Gladwell, the author of Outliers, would tell you that that 11 day head start made all the difference, because I have been trying to catch up to Tom ever since.

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