

Banking and Finance Law Daily Wrap Up, WORTH NOTING—Other regulatory, legislative, litigation, and industry developments, (Sep. 23, 2016)

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A weekly roundup of other items of interest to the banking and finance law community:

COMMUNITY DEVELOPMENT—The Office of the Comptroller of the Currency will hold a meeting of its Minority Depository Institutions Advisory Committee at the OCC's office on Oct. 18, 2016, beginning at 8:30 a.m. EDT. Agenda items will include current topics of interest to the industry. According to the OCC, the purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions.

CONSUMER FINANCIAL PROTECTION BUREAU—The Consumer Financial Protection Bureau will hold a series of free webinars for consumers and organizations intended to help interested persons learn how to put their Your Money, Your Goals information and tools to work in their communities. The webinars are scheduled for October 13 (for social services programs), October 19 (for community volunteers), and October 26, 2016 (for legal aid organizations), will cover how to plan training workshops, how others have adapted the training to fit their organization's needs, and how to order free copies of the toolkit.

CRIMES AND OFFENSES—The Office of the Comptroller of the Currency has advised national banks, federal savings associations, and regulators that an entity calling itself JS Cruiselines Federal Bank purports to be a bank specializing in travel funding. According to the advisory (Alert 2016-10), JS Cruiselines Federal Bank is not a licensed or chartered bank with the OCC or any other financial regulator. The entity is controlled by Lejuan Sims, who purports to have a business address location of 601 N. Ashley Drive, Suite 1100, Tampa, FL 33602 and a business telephone number of (813) 422-7644.

ENFORCEMENT ACTIONS—The Massachusetts Division of Banks has entered into a consent order with Freedom Mortgage Corporation, which is principally located in Mt. Laurel, N.J., for alleged non-compliance with applicable Massachusetts and federal statutes, rules, and regulations governing the conduct and licensing of those engaged in the business of a mortgage lender, mortgage broker, and mortgage loan servicer. Pursuant to the order, Freedom agreed to pay an administrative penalty in the amount of \$2 million and take specified corrective measures. Freedom entered into the consent order without admitting any allegations or implications of fact or the existence of any violation of Massachusetts or federal laws and regulations.

ENFORCEMENT ACTIONS—The Pennsylvania Department of Banking and Securities has entered into a Consent Agreement and Order with Smart Payment Plan, LLC, which has its principal place of business in Austin, Texas, for allegedly engaging in unlicensed money transmitter activity in violation of the Commonwealth's Money Transmitter Act. Smart Payment agreed to pay a \$144,000 fine, and the Department agreed to approve Smart Payment's money transmitter license application. Smart Payment agreed to the entry of the order without admitting any wrongdoing.

ENFORCEMENT ACTIONS—The Pennsylvania Department of Banking and Securities has entered into a Consent Agreement and Order with White & Red Sales LLC of Coopersburg, Pa. for violations of the Consumer Credit Code. According to the consent agreement, White and Red Auto Sales will pay an \$875 fine and take corrective actions for failure to maintain a valid license.

FEDERAL RESERVE SYSTEM—The Federal Reserve Board has highlighted revisions to the Federal Financial Institutions Examination Council's "Information Security" booklet of the FFIEC Information Technology Examination Handbook. The booklet assists examiners in assessing the level of security risks to a financial institution's information systems and the adequacy of an information security program's integration into overall risk management (SR 16-14, Sept. 19, 2016).

FINANCIAL STABILITY—The Office of Financial Research has released a blog by Stacey Schreft, Deputy Director for Research and Analysis, "OFR Monitor Shows Accelerating Shift to Government Money Market Funds." The blog says assets of U.S. prime money market funds have decreased by more than \$700 billion since the beginning of the year, while assets of government money market funds have increased by about the same amount, accelerated in August, according to the OFR's monthly U.S. Money Market Fund Monitor.

MORTGAGES—S.D.N.Y.: The U.S. District Court for the Southern District of New York was recently called to review whether a mortgage loan borrower established standing to bring her proposed class-action claim against JPMorgan Chase Bank, N.A., for allegedly violating the New York Real Property Law and the New York Real Property Actions and Proceedings Law because Chase did not file a certificate of satisfaction of her mortgage within 30 days of receipt of the full amount of principal and interest on the mortgage—although the bank did so later. Despite Chase's argument that the borrower lacked Article III standing to bring her claim because she did not sustain any economic injury resulting from the bank's tardiness and "technical violation," the court disagreed. Stating that the Supreme Court "was clear in *Spokeo* that a concrete harm need not be tangible," the court determined that the New York statutes created a "substantive right" for the borrower to have the satisfaction of mortgage timely filed. Since Chase did not do so in a timely manner, "[n]othing more is required, here, to demonstrate an injury-in-fact," the court concluded (*Bellino v. JPMorgan Chase Bank, N.A.*, Sept. 20, 2016, Roman, N.).

MORTGAGES—The Federal Housing Finance Agency has released its July 2016 Refinance Report, which shows that Fannie Mae and Freddie Mac loans refinanced through the Home Affordable Refinance Program accounted for 3 percent of all refinancings in July. According to the FHFA, borrowers completed 5,121 refinances through HARP in July, bringing total refinances from the inception of the program to 3,423,975. The report also noted that total refinance volume decreased in July after having increased over the previous three months. In addition, mortgage rates continued to decrease in July, with the average interest rate on a 30-year fixed-rate mortgage falling to 3.44 percent from a 3.57 percent rate in June.

MORTGAGES—D. Mass.: Although a homeowner claimed that a bank and mortgage loan servicer failed to comply with Massachusetts law when the bank sought foreclosure of his real property, the U.S. District Court for the District of Massachusetts dismissed the homeowner's complaint. Addressing the claims against the bank, the court rejected the homeowner's contention that multiple assignments of the underlying mortgage failed to comply with a "Pooling and Services Agreement" and Massachusetts' statutory foreclosure law. Also, because the mortgage assignments appeared to be valid, the "slander of title" claim against the bank fell. Next, addressing the claim against the mortgage loan servicer for allegedly having failed to comply with Massachusetts regulations governing a loan servicer's certification of the chain of title and ownership of the note and mortgage, the court determined that the homeowner's "conjecture that there may be intermediate, unrecorded transfers is not enough to state a claim for failing to comply" with the Massachusetts regulations "where a chain of title without gaps is provided" (*Johnson v. Wilmington Trust, N.A.*, Sept. 20, 2016, Talwani, I.).

SECURED TRANSACTIONS—Bankr. W.D. Va.: A secured creditor, The Huntington National Bank, that entered into an agreement with a third party to sell secured collateral prior to sending the debtor, Morgantown Excavators, Inc., a notice of the collateral's disposition violated Article 9 of the West Virginia Uniform Commercial Code. Although HNB did not deliver the bill of sale to the third party until after the notice's designated date of the collateral's disposition, the third party possessed the equipment, paid the full contractual purchase price for the equipment, and began marketing the equipment for resale prior to that date. The U.S. Bankruptcy Court for the Northern District of West Virginia concluded that because the third party enjoyed all of the benefits of ownership prior to the designated date of disposition, HNB's notice was not timely and the subsequent disposition of collateral was not commercially reasonable (*In re Godfrey; Morgantown Excavators, Inc. v. The Huntington National Bank*, Sept. 12, 2016, Flatley, P.).

STATE BANKING LAWS—The Finance Commission of Texas has adopted amendments to its rule governing the form of notice that state banks and other regulated entities are required to provide to consumers regarding the filing of complaints with the Department. The amended rule allows consumer complaint notices to be in

a form that is substantially similar to the form of notice set forth in the rule. Previously, the form consumer complaint notice had to be duplicated exactly.

Companies: Fannie Mae; Freddie Mac; Freedom Mortgage Corporation; The Huntington National Bank; JPMorgan Chase Bank, N.A.; JS Cruiselines Federal Bank; Morgantown Excavators, Inc.; Smart Payment Plan, LLC; White & Red Sales LLC; Wilmington Trust, N.A.

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