

[Banking and Finance Law Daily Wrap Up, WORTH NOTING—Other regulatory, legislative, litigation, and industry developments, \(Jul. 22, 2016\)](#)

Banking and Finance Law Daily Wrap Up

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

BANK HOLDING COMPANIES—The Federal Reserve Board is seeking comments on its [proposed extension and revision](#) of the information collection entitled "Savings Association Holding Company Report— FR H-(b)11." The Fed proposes to eliminate the requirement that a publicly-traded SLHC submit a copy of its filings with the Securities and Exchange Commission. Comments on the information collection must be received by Sept. 20, 2016.

BANKING OPERATIONS—Ga. Sup. Ct.: In reviewing a provision in a bank's deposit agreement that allowed a depositor to reject arbitration, the Supreme Court of Georgia has determined that the terms of the did not prohibit a depositor from bringing a class action against the bank. SunTrust Bank contended that its arbitration-rejection clause was drafted in such a manner as to make it impossible for an individual depositor to act as a class representative. Rejecting SunTrust's argument, Georgia's high court determined that, under Georgia law, the arbitration-rejection provision did not prevent the depositor's class-action complaint from "tolling the contractual limitation for rejecting that provision on behalf of all putative class members" until the time for certifying the class—allowing each class member the opportunity to opt out or remain in the class" ([Bickerstaff v. SunTrust Bank](#), July 8, 2016, Benham, R.).

BANKING OPERATIONS—In a recent *FEDS Notes* entitled "[Bank Complexity: Is Size Everything](#)," the authors — Jeremy Oldfather, Stefan Gissler, and Doriana Ruffino—proposed a network-based analysis to study the structural complexity of banks through publicly available data on the structure of large U.S. banks. The authors noted that their analysis is also informative more broadly for tailoring bank resolution plans.

CAPITAL AND BASEL ACCORDS—A Finance and Economics Discussion Series [working paper](#) released by the Federal Reserve Board investigated the empirical determinants of the variation in the data based on the theories of bank capital regulation in various countries. The results showed that countries with high average returns on investment and a high ratio of government ownership of banks choose less stringent capital regulation standards. Capital regulations may also be less stringent in countries with more concentrated banking sectors. The working paper was authored by Gazi Ishak Kara, member of the Fed's Division of Financial Stability.

COMMUNITY DEVELOPMENT—The Federal Reserve Board has issued [guidance](#) on the revised "Interagency Questions and Answers Regarding Community Reinvestment." The Fed, along with the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency, recently [published](#) final revisions to the interagency FAQs. The revisions address several community development related issues, including economic development, community development loans and activities that are considered to revitalize or stabilize underserved nonmetropolitan middle-income geographies, the availability and effectiveness of retail banking services, community development services, innovative or flexible lending practices, and general guidance on responsiveness and innovativeness.

CONSUMER FINANCIAL PROTECTION BUREAU—The Consumer Financial Protection Bureau has published its updated [list](#) of institutions under its supervision. The list includes CFPB-supervised banks, thrifts, and credit unions as of March 31, 2016.

CONSUMER FINANCIAL PROTECTION BUREAU—W.D. Wis.: A pretrial order in a Consumer Financial Protection Bureau enforcement suit has resolved a number of issues in the bureau's favor and rejected defenses raised by two mortgage assistance companies and their four officers. Included among the district judge's

rulings are that fees charged consumers constituted advance fees that were banned by Reg. O—Mortgage Assistance Relief Services (12 CFR Part 1015), that employees of the companies misrepresented the services the companies offered and the possibility of success, and that three of the four officers could be individually liable for at least some of the violations. However, the judge left for trial a major issue—whether the activities were protected by the Reg. O exemption that covers the practice of law. ([CFPB v. The Mortgage Law Group, LLP](#), July 20, 2016, Crabb, B.).

DEBT COLLECTION—Wash. App.: In reviewing a debt buyer's action to enforce a credit card agreement against a consumer, the Washington Court of Appeals ruled that the debt buyer failed to meet its burden to prove that the consumer assented to the material terms of the agreement. The court determined that the consumer could not have assented to the terms of an unsigned 2010 credit card agreement proffered by the collector because she last used her credit card in July 2008 and made her last payment in November 2009. Although the collector argued that the consumer assented to the agreement by using her credit card, the court emphasized that the collector was still required to prove the consumer's assent to "the version of the card agreement in existence at the time of the card's most recent use" ([Unifund, CCR, LLC v. Elyse](#), July 18, 2016, Verellen, J.).

ENFORCEMENT ACTIONS—The Illinois Department of Financial and Professional Regulation, Division of Banking, has entered an [order](#) suspending the license of Middle East Financial Services, Inc., an Illinois corporation engaged in the business of transmitting money in the state. According to the order, Middle East failed to comply with state and federal money laundering statutes and regulations by, among other things: not transmitting money within three days of receiving the money to be transmitted; operating a business not listed as an authorized seller; and failing to update its list of authorized sellers.

ENFORCEMENT ACTIONS—The Illinois Department of Financial and Professional Regulation, Division of Banking, has entered a [cease and desist order](#) against Orient Services, Inc., for conducting money transmission services in the state without a license. The order prohibits Orient services from providing any money transmission services in Illinois and requires the company to produce specified documents to the Department relating to its activities and anti-money laundering program by Aug. 1, 2016.

ENFORCEMENT ACTIONS—The Massachusetts Division of Banks has issued a [consent order](#) against PoaPay, LLC, for allegedly failing to comply with applicable state and federal laws, rules, and regulations governing the conduct of those engaged in the business of a foreign transmittal agency in the Commonwealth. PoaPay agreed to the entry of the consent order without admitting any violations. The order requires PoaPay to pay a civil money penalty of \$200,000, surrender its foreign transmittal agency license, and refrain from engaging in the foreign transmittal business in Massachusetts.

ENFORCEMENT ACTIONS—The Michigan Department of Insurance and Financial Services entered an [Order Accepting Stipulation and Requiring Compliance and Payment of Fines](#) against All-Star Payday Loans, LLC, relating to alleged violations of the state's Deferred Presentment Service Transactions Act. The Department imposed a \$2,000 administrative and civil fine. In addition, the company must implement daily checks to ensure that all transactions are reported to the Veritec database. All-Star Payday Loans agreed to the entry of the order without admitting or denying the Department's allegations.

ENFORCEMENT ACTIONS—The Michigan Department of Insurance and Financial Services entered enforcement orders against Cash Now XXVI, LLC ([Enforcement Case No. 15-12808](#)), Great Lakes Specialty Finance, Inc. ([Enforcement Case No. 16-12796](#)), and Allied Check Cashing Michigan LLC dba Allied Check Advance dba Allied Check Cashing ([Enforcement Case No. 16-13387](#)) requiring compliance and the payment of fines for alleged violations of the state's Deferred Presentment Service Transactions Act. Cash Now agreed to pay a fine of \$5,500, Great Lakes agreed to pay a fine of \$28,500, and Allied agreed to pay a fine of \$14,500. In addition, each lender must implement daily checks to ensure that all transactions are reported to the Veritec database. The three lenders agreed to the entry of the respective orders without admitting or denying the Department's allegations.

ENFORCEMENT ACTIONS—The Pennsylvania Department of Banking and Securities has entered into consent agreements and orders with Art's Money Loan, Inc. ([Docket No. 160025 \(BNK-ORD\)](#)), and Golden Cousins Inc.

([Docket No. 160026 \(BNK-C&D\)](#)), both principally located in Philadelphia, Pa., relating to alleged violations of the Commonwealth's Pawnbrokers Licensing Act. Pursuant to the orders, Art's Money Loan agreed to surrender its license and take specified corrective actions, while Golden Cousins agreed to cease offering pawn loans, pay a \$2,500 fine, and take corrective actions.

ENFORCEMENT ACTIONS—The Texas Department of Banking [announced](#) it has issued a [Consent Order](#) against DebtWave Credit Counseling, Inc., of San Diego, Calif., which had provided an accelerated loan repayment program for Texas customers. According to the Department, DebtWave conducted money transmission without a license. The Order requires DebtWave to pay the Department a penalty of \$67,000.

ENFORCEMENT ACTIONS—The Office of the Comptroller of the Currency has released a July 15, 2016, listing of new enforcement actions taken against national banks, federal savings associations, and individuals. The OCC's listing ([NR 2016-83](#)) notes that, unless otherwise indicated, the pertinent "Decision and Order" issued by the OCC was made with the consent of the parties involved.

FINANCIAL INTERMEDIARIES—The Office of Financial Research has launched the [U.S. Money Market Fund Monitor](#), an online charting tool to help users take a closer look at the portfolios of U.S. money market funds. To develop the tool, the OFR analyzed more than 4 million records of data about the holdings of about 500 funds over five years. The OFR also released a related brief, "[Reference Guide to the OFR's U.S. Money Market Fund Monitor](#)," as well as an accompanying [blog](#) by Stacey Schreft, OFR Deputy Director for Research and Analysis.

FINANCIAL STABILITY—As part of his "[President's Message](#)" in the latest issue of the Federal Reserve Bank of St. Louis' *The Regional Economist*, James Bullard discussed several proposals aimed at addressing the issue of financial institutions that are "too big to fail." He also shared some of his perspectives on the topic.

LOANS—According to a July 15, 2016, *Treasury Notes* [blog](#), the Treasury Department has issued reports on the progress of its State Small Business Credit Initiative and Small Business Lending Fund, two nationwide programs that provide small business owners with greater access to loans and investments. The SBCI [quarterly report](#) indicates that states have now drawn 95 percent of the nearly \$1.5 billion of available funds and that the program has "helped to support \$8.5 billion in private loans, supporting more than 16,000 small businesses across the United States." The [SBLF report](#) indicates that, since its inception, the SBLF program has served to increase small business lending by approximately \$18.5 billion; moreover, more than 90 percent of participating community banks reported "stronger small business lending as a direct result of the program."

MERGERS AND ACQUISITIONS—The Massachusetts Division of Banks' Board of Bank Incorporation has [approved](#) the application of Spencer MHC and its wholly owned subsidiary, Spencer Mid-Tier Holding Company, Spencer, Mass., to each become a bank holding company and to directly and indirectly own and control Spencer Bank and Southbridge Bank through the acquisition of Green Valley MHC and its subsidiary, Green Valley Mid-Tier. The transaction will result in Spencer Mid-Tier continuing as a wholly-owned subsidiary of Spencer MHC and controlling two state-chartered banks, Spencer Bank and Southbridge Bank. The resulting mutual holding company will operate under the name SSB Community Bancorp MHC, and the resulting mid-tier subsidiary will operate under the name SSB Community Bancorp Inc. Spencer Bank and Southbridge Bank will not merge following the consummation of the Merger, but rather, will operate as separate wholly-owned subsidiaries, with each retaining its respective charter, board of directors, and management.

MORTGAGES—The Consumer Financial Protection Bureau has released the first of a series of videotaped [webinars](#) on the CFPB's final Reg. C—Home Mortgage Disclosures (12 CFR Part 1003). In addition, the CFPB has made available a sample data collection [form](#).

MORTGAGES—5th Cir.: Housing and Urban Development regulations on reverse mortgages do not create a cause of action against the lender unless those regulations are expressly incorporated into the loan documents, the U.S. Court of Appeals for the Fifth Circuit has decided. As a result, the borrower's widow could not sue the lender for failing to ensure the Home Equity Conversion Mortgage lien was superior to a lien of her husband's previous wife that arose from their divorce. ([Johnson v. World Alliance Financial Corp.](#), July 19, 2016, Jones, E.).

SECURED TRANSACTIONS—Delaware has revised the definition of the term "person," as used in the Uniform Commercial Code, to include statutory trusts. Section 1-201(27) of the Delaware UCC now defines "person" as "an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity." The law ([Ch. 305](#)) takes effect Aug. 1, 2016.

SECURED TRANSACTIONS—W.D. Mo.: The U.S. District Court for the Western District of Missouri has determined that Santander Bank could pursue a judgment against a leasing company after the company defaulted on eight loans with the bank, even though Santander may have been in possession of some of the secured collateral pursuant to a partial settlement with other parties to the action. The loan agreements contained choice of law provisions selecting New York law, and Section 9-601 of the New York Uniform Commercial Code authorizes a creditor to exercise its rights to repossess collateral and reduce a claim to judgment simultaneously and cumulatively ([Santander Bank, N.A. v. Moody Leasing Co., LLC](#), July 14, 2016, Kays, G.).

Companies: Allied Check Cashing Michigan LLC dba Allied Check Advance dba Allied Check Cashing; All-Star Payday Loans, LLC; Art's Money Loan, Inc.; Cash Now XXVI, LLC; Consumer First Legal Group, LLC; DebtWave Credit Counseling, Inc.; Golden Cousins Inc.; Great Lakes Specialty Finance, Inc.; Green Valley MHC; Green Valley Mid-Tier; Middle East Financial Services, Inc.; Moody Leasing Co., LLC; Orient Services, Inc.; PoaPay, LLC; Santander Bank, N.A.; Southbridge Bank; Spencer Bank; Spencer MHC; Spencer Mid-Tier Holding Company; SSB Community Bancorp Inc.; SSB Community Bancorp MHC; SunTrust Bank; The Mortgage Law Group, LLP; Unifund, CCR, LLC; World Alliance Financial Corp.

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