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Consumer Complaints

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CFPB's Attention to Consumer Complaints Presents Unique Risks and Opportunities That Banks and Other Retail Finance Companies Should Not Ignore

The Issue: That the Consumer Financial Protection Bureau (CFPB or Bureau) intends to use its authority under Dodd-Frank to "collect[], investigat[e], and respond[] to consumer complaints" (Section 1021(c)(2)) as a basis for supervising banks' operations is not so clear from its first **annual report on consumer complaints** (Report) released April 6, 2012. In the Report the CFPB describes its role as an intermediary between consumers and companies, and only in the penultimate paragraph indicates that it investigates consumer disputes of company responses under "the company's minimum required actions under the consumer financial protection laws within the CFPB's authority" and has referred complaints "to colleagues in the CFPB's Division of Supervision, Enforcement, and Fair Lending and Equal Opportunity for further action." More revealing is the CFPB's **description** of how it intends to regulate unfair, deceptive, or abusive acts and practices. In that document, the Bureau indicates that a consumer complaint may be "a red flag indicating that examiners should conduct a detailed review of the relevant practice":

> Consumer complaints play a key role in the detection of unfair, deceptive, or abusive practices. Consumer complaints have been an essential source of information for examinations, enforcement, and rule-making for regulators. As a general matter, consumer complaints can indicate weaknesses in elements of the institution's compliance management system, such as training, internal controls, or monitoring.

The Risk: The implication of this intention to view consumer complaints as symptomatic of grave defects in an institution's compliance infrastructure is clear: companies that neither implement systems to ensure accurate, timely, and appropriate responses to consumer complaints, nor use such complaints proactively to detect and resolve compliance failures, risk enforcement when a consumer takes her grievance to the CFPB, which the Bureau has encouraged and made very easy to do.

Opportunity: This regulatory focus on consumer complaints also presents an opportunity to materially mitigate enforcement risk through the proactive implementation of procedures that might eliminate the risk of human error and enhance information capture and reporting. Based on our experience advising on such risk and designing risk mitigation programs, the most effective method entails scripted investigations of a consumer complaint that (i) reflect the minimal legal requirements in effect at the time of the alleged mistreatment, (ii) guide reviewing associates through the relevant determinations, and (iii) capture information on any defects, recognize patterns, and communicate such findings to the relevant business leaders. The greatest challenge in implementing scripts is determining the relevant minimal legal requirements, how they interrelate, and when each is triggered in response to the circumstances of a particular consumer account – particularly where there might be overlapping requirements from multiple sources and in the context of rapidly evolving requirements, as with residential mortgage modification programs. However, with the appropriate teams comprising legal experts and internal information systems and risk governance personnel, it is not only possible but quite straightforward based on our experience to create and replicate scripts or "checklists" that effectively mitigate the enforcement risk posed by the CFPB's interpretation of its complaint response powers.

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