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COMPLIANCE IN A UDAAP RISK ENVIRONMENT

In this article, the authors report that the CFPB has devoted significant resources to reviewing the compliance management systems (“CMS”) of financial institutions, and has noted that a robust and effective system is a critical component of a well-run financial institution. After discussing the statutory background of CFPB enforcement, the authors set out the characteristics and benefits of a strong CMS program.

By Anthony Alexis and Levi Swank *

Why should consumer financial services providers devote scarce resources to developing an effective compliance management system (“CMS”) when the Dodd-Frank Wall Street Reform and Consumer Protection Act (“CFPA”) does not mandate a formal compliance program at all? To be sure, some providers of consumer financial services, particularly banking institutions, may be subject to specific CMS requirements imposed by other federal laws, or state law. For most consumer finance companies, however, the lack of a CMS does not, in and of itself, subject the company to civil or criminal liability.

Yet ignoring proper CMS hygiene comes at a steep price for those companies subject to the jurisdiction of the Consumer Financial Protection Bureau (“CFPB” or “Bureau”), the entity created by the CFPA and tasked with enforcing it. The CFPB’s supervisory oversight is

explicitly “risk-based,” and its enforcement priorities undoubtedly are as well. But the reduced risk of negative regulatory or enforcement outcomes is just one reason to have a CMS. Too often ignored are the multiple positive contributions to the business organization made by a CMS, including a culture of good business operations and morale, a good “seal of approval” by others considering doing business with the company, and concessions from regulators in the event of an investigation or enforcement action.

This article examines compliance through the lens of the CFPB and the prohibition on unfair, deceptive, and abusive acts or practices in the CFPA. It provides a rationale for CMS based on principles that animate the CFPB’s supervisory and enforcement authority, and identifies the key features of a strong CMS for entities subject to the CFPB’s oversight.

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