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Cross-border crosswalk: An overview of Canadian and US banking and consumer financial services regulators

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Eric Goldberg helps clients tackle regulatory compliance issues that arise in consumer finance with a particular focus on payments and FinTech issues. Previously, Eric was Managing Counsel for Regulations at the Consumer Financial Protection Bureau (CFPB) where he led the Agency's payments regulatory work. At Akerman, Eric evaluates federal and state regulatory issues that arise for providers of prepaid accounts, money transmission services, credit cards and other lending products, earned wage access services and on FinTech products, such as those involving virtual currency, blockchain and consumer data aggregation. Eric evaluates unfair, deceptive and abusive acts and practices (UDAAP) risk and counsels clients on issues arising under the federal consumer finance laws, the Dodd–Frank and Federal Trade Commission (FTC) Acts, Bank Secrecy Act / Anti-money Laundering (BSA/AML) and state licensing consumer protection laws. While at the CFPB, Eric led rulemakings on prepaid accounts and remittance transfers and was involved in the Agency's innovation activities. Eric is a frequent writer and speaker on consumer finance issues including on regulators' innovation and sandbox initiatives.

Thomas Kearney helps lenders, technology companies and other financial services providers navigate issues arising under financial services laws. Thomas works with clients to operationalise state and federal laws and regulations, ranging from implementing the recent Home Mortgage Disclosure Act (HMDA) amendments to assessing programme compliance with information privacy, data breach and cybersecurity requirements. He counsels FinTechs, RegTechs and vendors on developing and maintaining compliant technology and data systems. Thomas joined Akerman from the Consumer Financial Protection Bureau's (CFPB) Office of Regulations, where he played a key role developing and drafting multiple mortgage originations related rulemakings. He led the team responsible for the Home Mortgage Disclosure Act rulemakings. He was also substantially

involved in the CFPB's TILA-RESPA Integrated Disclosure (Know Before You Owe) rulemaking and the Ability-to-Repay and Qualified Mortgage rulemakings.

ABSTRACT

Canada and the United States are neighbours, each with its own 'alphabet soup' of banking and consumer financial services regulators. Many institutions in each country are under the purview of both federal and state/provincial regulators, and some institutions may be supervised by multiple financial regulators. For businesses engaged in financial services on either side of the border, it is important to understand which agencies regulate the products and services they offer and how agencies policies change over time.¹ Understanding how local regulatory environments differ should inform business decisions. For example:

- There may be costs associated with expanding to a new jurisdiction as there are likely different compliance requirements.
- A product that is viable in one area may be untenable in another due to differing regulations (eg varying usury limits).
- Litigation risk may differ between jurisdictions: various US regulators can file lawsuits in federal court whereas Canadian regulators often have supervisory and regulatory powers that do not include prosecution. US companies are also often able to insulate themselves from class action liability through the operation of arbitration clauses and class action waivers.
- Companies seeking to do business in both the United States and Canada should consider engaging legal and expert teams during product development to harmonise where possible. Additionally, when facing regulatory scrutiny or litigation, similar harmonisation may be beneficial as well.

Navigating the oversight of each agency is nuanced within each country, and one's knowledge, experience and jargon are often specific to their area of expertise. Regulated entities' incentives may differ

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due to differences in regulation or licensing requirements. Engaging with and retaining expertise (eg staff, counsel or external experts) in one country who have the tools and language to work with people in another can be valuable. To help with that, this paper provides an overview of the legal framework, financial services landscape and key regulators in Canada and the United States.

Keywords: *Canada, United States, regulation, banking, consumer finance, consumer protection, FinTech, compliance*

LEGAL FRAMEWORK IN CANADA AND THE UNITED STATES

Canada has a parliamentary system of government, comprised of ten provinces and three territories.² All provinces (except Québec) and each territory have an English common law legal system.³ Québec has a civil law system based on the Napoleonic Code.⁴ The legal framework for the financial services regulation in Canada involves a mix of laws and voluntary arrangements.⁵ In particular, consumer protection laws are enacted at the federal, provincial and territorial levels.⁶ The Canadian federal government has enacted various laws that regulate federally regulated entities and a variety of consumer protection matters, including matters related to anticompetitive practices, payments, banking, prepaid payment products, packaging and labelling and privacy.⁷ At the provincial and territorial levels, laws have been enacted that govern matters such as gift cards, loyalty programmes, misleading or deceptive representations, consumer credit, documentation requirements in consumer transactions and consumer warranties.⁸

In Canada, there is a shared responsibility of regulation of the Canadian financial system.⁹ Federal financial regulators include the Department of Finance, the Office of the Superintendent of Financial Institutions (OSFI), the Canada Deposit Insurance Corporation (CDIC) and the Financial Consumer Agency of Canada (FCAC).¹⁰

The Bank of Canada, Canada's national bank, is responsible for the Canadian financial system, developing and implementing monetary policy, designing, issuing and distributing Canadian currency and, as the fiscal agent of the federal government, managing the public debt and foreign exchange reserves.¹¹ At the provincial and territorial levels, there are consumer affairs offices (with oversight over provincial and territorial consumer protection laws),¹² regulatory authorities who regulate credit unions and *caisse populaires* (cooperative, member-owned financial institutions), securities commissions and insurance regulators.¹³

The United States, like Canada, employs a legal system based on English common law, with the exception of Louisiana, which follows a civil law system.¹⁴ Consumer protection laws are generally enacted at both the federal and state levels,¹⁵ although a few US municipalities have laws regulating certain types of financial services.¹⁶ Many US federal financial services laws are implemented by, or supplemented with, regulations issued by a federal agency that provide more details on the scope and requirements of the statute.¹⁷ Businesses subject to these laws must review both the statute and the related regulation to fully understand their obligations. Both state and federal laws can require certain disclosures, restriction on terms and conditions, and regulate advertising and other practices.¹⁸ Licensing and registration of non-bank financial services providers — specifically consumer finance lenders, mortgage companies, debt collectors and money transmitters — are generally handled exclusively by the states. Obtaining licenses can be a costly undertaking for entities seeking to do business in all 50 states and the District of Columbia, although recently some regulators have taken some steps to streamline some licensing processes.¹⁹ Licenses are subject to certain reporting and examination requirements, as well. Many states have usury caps on consumer credit

product and some states may ban certain products, such as payday loans, altogether.²⁰

In the United States, financial regulatory oversight is split between regulators at the federal and state levels, and then further split based on the type of entity, transaction or activity.²¹ The federal regulators overseeing depository institutions are the Office of the Comptroller of the Currency (OCC), the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Association (NCUA); a depository institution's charter determines its regulator.²² Comparable state regulators exist with oversight of state-chartered depository institutions.

The Consumer Financial Protection Bureau (CFPB) has authority over most federal laws concerning consumer credit. CFPB also have supervisory and enforcement authority over many bank and nonbank providers of these products.²³ The Federal Trade Commission's (FTC) jurisdiction is broad, covering nonbank activity ranging from anticompetitive practices to data privacy and unfair and deceptive acts and practices.²⁴ The US Department of Treasury's Financial Crimes Enforcement Network (FinCEN) oversees the entire US financial system to monitor and protect against money laundering, terrorist financing and similar financial crimes.²⁵ The US Department of Justice,²⁶ Department of Housing and Urban Development²⁷ and Department of Defense²⁸ and other federal agencies also monitor and enforce various aspects of financial services laws. In addition, each of the 50 states, the District of Columbia, US territories and many federally recognised Indian tribes have one or more agencies tasked with monitoring, regulating, and, in most states, licensing certain types of financial services providers.²⁹

Regulatory, supervisory and enforcement authority is often shared with another regulator or government agency. For example, the FTC and state attorneys general often

pursue joint federal and state actions against individuals engaging in unfair or deceptive practices.³⁰ The CFPB shares supervisory authority over certain depository institutions with state and federal prudential regulators.³¹ Nonbank providers are also potentially subject to the authority of state regulators and attorneys general, the FTC and the CFPB. Similarly, money transmitters must comply with both state licensing requirements and federal regulations from CFPB and FinCEN.³²

FINANCIAL SERVICES LANDSCAPE

In light of the roles of both national and subnational (ie state, provincial or territorial) financial services regulation, a helpful metric for thinking about the coverage of a set of regulations is population. Although the total population of Canada was 11.3 per cent that of the United States as of 1st July, 2017,³³ Canada's largest provinces have populations comparable to large US states. For example, Ontario, the largest Canadian province, has a population of 14.2 million, which is larger than the population of Pennsylvania (12.8 million), the fifth largest US state.³⁴ The three largest provinces, which combined account for 74.7 per cent of the population of Canada, each have larger populations than the median US state.³⁵

In comparison to the United States, commercial banking in Canada has been described as stable³⁶ and concentrated or highly concentrated, with over 90 per cent of all banking assets held by the largest six banks.³⁷ The 'Big Six' banks (Bank of Montreal, the Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada and the Toronto-Dominion Bank) are designated domestically systemically important banks by OSFI.³⁸ There are considerably fewer banks in Canada than the United States. As of the date of this paper, including the Big Six, there are 37 domestic banks

and 19 foreign bank subsidiaries operating in Canada³⁹ compared to the 4,952 domestic commercial banks and 204 foreign bank subsidiaries operating in the United States as of 31st December, 2017.⁴⁰ In the fourth quarter of 2017, there were 272 credit unions or *caisses populaires* in Canada⁴¹ and 5,573 credit unions in the United States.⁴²

Canadian and American consumers utilise select financial services at rates higher than the aggregate level for Organisation for Economic Co-operation and Development (OECD) countries, including credit cards and housing loans.⁴³ In addition, utilisation rates for Canadians for formal financial services are higher than Americans in various categories: 99.7 per cent of Canadians aged 15 or over hold accounts at formal financial institutions, compared to 93.1 per cent of Americans.⁴⁴ Canada also has higher debit, credit card, and digital payment utilisation rates than the United States — 96.8 per cent and 80.2 per cent, respectively, for debit cards, 82.6 per cent and 65.6 per cent, respectively for credit cards and 97.9 per cent and 91.1 per cent for digital payments.⁴⁵ In addition, in a cross-country comparison of payment methods utilisation, Canadians and Americans were the only countries that routinely use credit for small transactions⁴⁶ and were more likely to use credit than Europeans for larger transactions.⁴⁷

CANADIAN REGULATORS

Financial Consumer Agency of Canada

Canada's federal consumer agency, the FCAC, monitors and supervises federally regulated financial institutions (FRFIs), which include banks, federal credit unions and federally incorporated or registered insurance, trust and loan companies.⁴⁸ The FCAC is mandated under federal law to, inter alia, ensure FRFIs comply with consumer protection provisions of federal legislation, regulations, voluntary codes of conduct and public commitments; inform

consumers of their rights and responsibilities when dealing with FRFIs and obligations of payment card network operators to consumers and merchants; monitor and evaluate trends and emerging issues that impact consumers of financial products and services; and promote financial literacy and protection of consumers of financial services and products.⁴⁹

The FCAC is led by a Commissioner, appointed by the federal government,⁵⁰ with a variety of responsibilities including providing annual reports to the federal government on the FCAC's initiatives and activities of the prior year and the compliance of FRFIs with consumer protection measures.⁵¹

The FCAC has a risk-based supervisory model of enforcement⁵² and a range of administrative and enforcement powers that include monetary penalties and criminal sanctions.⁵³ The FCAC Commissioner has authority to issue notices of violation to FRFIs that do not comply with their legislative obligations and has the discretion to disclose the violation to the public and select a monetary penalty of up to CA\$500,000.⁵⁴

In early 2018, the FCAC established the Consumer Protection Advisory Committee (CPAC) to support the FCAC's mandate. The CPAC is comprised of members of the private, nonprofit and academic sectors. The CPAC provides guidance and advice to the FCAC by informing policy development and the FCAC's supervision role in respect of financial consumer protection in Canada.⁵⁵

Office of the Superintendent of Financial Institutions

The OSFI is an independent federal government agency that regulates and supervises FRFIs and federally regulated private pension plans. OSFI plays a significant oversight role in respect of FRFIs and, among other responsibilities, OSFI interprets legislation and regulation, develops rules, ensures FRFIs are meeting requirements and are in sound financial condition, and provides

regulatory approvals for certain matters (eg formation of a bank in Canada). OSFI does not regulate consumer-related matters or the securities sector.⁵⁶

The Superintendent of Financial Institutions heads the OSFI and has various powers and responsibilities designated by various federal laws. The Superintendent reports to the federal government on matters related to OSFI's administration and supervision of federal laws applicable to FRFIs.⁵⁷

Competition bureau

The Competition Bureau is a federal independent law enforcement agency that ensures the Canadian marketplace operates in a competitive and innovative manner. The Competition Bureau is responsible for the administration and enforcement of Canada's federal Competition Act and federal legislation governing consumer packaging and labelling, textile labelling, and marking of precious metals and articles.⁵⁸ The Competition Bureau also works with other regulatory authorities in Canada and has partnered with various authorities to issue formal agreements and memoranda of understanding.⁵⁹

The Commissioner of Competition heads the Competition Bureau and administers and enforces the Competition Act, which prohibits various anticompetitive conduct, including cartels, multilevel marketing, pyramid schemes and deceptive prize notices.⁶⁰ The Commissioner has oversight over the administrative branches of the Competition Bureau, which address matters, such as mergers and monopolistic practices, cartels and deceptive marketing practices, competition promotion and corporate services.⁶¹

The Competition Tribunal is an independent adjudicative body that hears a variety of matters, such as trade practices, deceptive marketing practices, business mergers and foreign judgments, laws or directives that have an adverse impact on Canadian economic activity.⁶² While the Competition

Bureau has investigative powers, it does not prosecute competition offences; the Public Prosecution Service of Canada prosecutes those offences.⁶³

Anticompetitive practices, such as false or misleading representations, exclusive dealing, tied selling and deceptive marketing practices, are investigated by the Competition Bureau.⁶⁴ The compliance and enforcement tools available to the Competition Bureau include written opinions, written undertakings, the power of search and seizure, the power to refer criminal matters for prosecution, the authority to bring civil matters before the Competition Tribunal or other courts, and the authority to intervene on matters of competition policy before federal or provincial or territorial governmental authorities.⁶⁵ The Competition Bureau may also offer immunity or leniency for certain offences.⁶⁶

Financial transactions and reports analysis centre of Canada

Canada's financial intelligence unit, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), mandate is to facilitate the detection, prevention and deterrence of money laundering and terrorist financing activities.⁶⁷ The Director of FINTRAC heads the organisation⁶⁸ and the federal Minister of Finance has statutory power and oversight over FINTRAC.⁶⁹

FINTRAC advises the Canadian government about the nature and scope of money laundering in Canada and any new or emerging trends that may require legislative amendment. FINTRAC also has a role in informing and educating the public in its role and mandate, as well as on the extent of money laundering in Canada. FINTRAC collects reports and voluntary information, monitors compliance by 'reporting entities' with Canada's federal Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and its regulations, and provides financial intelligence to a number of

law enforcement and intelligence agencies.⁷⁰ Reporting entities are entities prescribed in Part 1 of the PCMLTFA that are subject to reporting, record keeping and compliance requirements. These entities include banks, casinos and money services businesses.⁷¹

FINTRAC is specifically directed to receive reports under the PCMLTFA and any information about suspicious transactions and suspicious attempted transactions provided to FINTRAC voluntarily, to collect the information it considers relevant from other reports and public sources, and to analyse and assess the reports and information.⁷²

To facilitate and support compliance with the legislative and regulatory requirements, FINTRAC issues guidelines with explanations and guidance for compliance. The guidelines do not have the force of law and focus on assisting reporting entities and individuals in understanding their obligations under the PCMLTFA and its regulations.⁷³ FINTRAC also issues interpretation notices and policy interpretations on occasion, to provide a better understanding of how the PCMLTFA and its regulations are administered.⁷⁴

Office of the Privacy Commissioner of Canada

In Canada, privacy laws govern the private, public and health care sectors and are a mix of federal and provincial/territorial laws. Canada has two federal privacy laws, the Personal Information Protection and Electronic Documents Act (PIPEDA), which governs private sector organisations and their collection, use and retention of personal information, and the Privacy Act, which governs the personal information-handling practices of federally regulated organisations.⁷⁵ PIPEDA generally does not apply to provinces in Canada that have their own substantially similar private-sector privacy laws; if the personal information data, however, crosses provincial or national borders,

PIPEDA will apply.⁷⁶ Currently, Alberta, British Columbia and Québec have substantially similar private-sector privacy laws.⁷⁷

Each province and territory has public sector privacy laws that apply to provincial and territorial government agencies. Most Canadian jurisdictions also have health privacy laws, employment-related privacy laws and laws governing consumer credit reporting.⁷⁸

The Office of the Privacy Commissioner (the OPC) of Canada is Canada's national regulator and enforces Canada's federal privacy laws. The OPC oversees compliance with PIPEDA, investigates complaints, performs audits, pursues legal action, provides legal opinions or analysis, provides public reports on personal information-handling practices of organisations, and promotes public awareness of privacy laws and issues.⁷⁹

If the OPC receives a complaint alleging a breach by a business or federal organisation of PIPEDA, the OPC will investigate the complaints and may audit the practices of the organisation (and has discretion to publicise the results of the audit public).⁸⁰ The OPC publishes selected findings on its website.⁸¹ With respect to federal government organisations, the OPC is subject to confidentiality obligations and can only publicise its findings from investigations of such organisations in limited circumstances.⁸² Complaints reviewed may be referred to federal court, which has the authority to award damages for breach of PIPEDA.⁸³

Audits of federal organisations and businesses in the private sector subject to Canada's federal privacy laws may be performed by the OPC to verify personal information is being managed in compliance with privacy law requirements.⁸⁴ Audits include a review of security controls, policies, procedures and practices.⁸⁵ The Privacy Commissioner of Canada is directed to review the protection of information received by FINTRAC and to submit the Privacy Commissioner's

report to Canada's federal government, every year.⁸⁶

PROVINCIAL AND TERRITORIAL REGULATORS

Each province and territory of Canada has a regulatory body with oversight over, inter alia, consumer protection laws in their respective jurisdiction and the regulation of financial institutions under provincial and territorial responsibility.⁸⁷

Consumer matters are addressed by provincial and territorial regulators, including matters related to contracts, memberships, collection agencies, credit/consumer reporting, cost of credit disclosure, loyalty programmes, the purchase and sale of goods and services, advertising, rental/lease agreements and automotive repairs.⁸⁸ The regulators promote consumer rights, investigate complaints and enforce a variety of provincial and territorial consumer protection laws.⁸⁹ Certain businesses must be licensed to operate in Canadian jurisdictions, such as consumer-reporting agencies, collection agencies, payday lenders and door-to-door sellers.⁹⁰

Each of the Canadian provinces and territories has a securities regulator that administers and enforces compliance with securities laws in their respective jurisdiction.⁹¹ Canada does not have a national securities regulator; the securities regulators in the Canadian jurisdictions, however, formed the Canadian Securities Administrators to work collaboratively in an effort to harmonise practices.⁹² As with many other provincial and territorial governmental authorities, the regulators also work with federal departments and agencies and law enforcement. A recent Supreme Court of Canada decision has cleared the path for a national securities regulator in Canada, recognising an effort to establish such a regulator in Canada for the last 30 decades.⁹³

Provincial and territorial insurance regulators regulate insurance products, market

conduct, solvency and financial soundness of insurance companies incorporated in their respective jurisdictions and issue licenses to such companies.⁹⁴ Similar to the securities regulators, the insurance regulators have formed a national organisation, the Canadian Insurance Services Regulatory Organizations, to collaborate and harmonise practices.⁹⁵

US REGULATORS

The United States has a dual banking system, meaning an entity may obtain a federal banking charter subjected to federal supervision, or a state banking charter subjected to state supervision.⁹⁶ Banks may — and often do — convert from state to federal charters and vice versa.⁹⁷ Depository institutions must generally comply with both state and federal law regardless of whether they are state or federally chartered, although some state banking laws are pre-empted by federal law.⁹⁸ An entity must also decide what type of depository institution it wants to become as separate charters exist for banks, savings banks, savings associations and credit unions.⁹⁹

Different agencies have jurisdiction over different types of depository institutions. The Federal Reserve regulates state-chartered banks that have elected to become members of the Federal Reserve System, as well as bank holding companies and several other types of financial institutions.¹⁰⁰ The FDIC regulates state banks that are not members of the Federal Reserve.¹⁰¹ The OCC has jurisdiction over national banks and federal savings associations.¹⁰² The NCUA regulates federally chartered credit unions.¹⁰³ And each state, territory and the District of Columbia has a banking regulator responsible for chartering and supervising banks, savings associations and credit unions.¹⁰⁴ These regulators are collectively called 'prudential' regulators because their primary focus is the safety and soundness of the banking system.

It is helpful for all financial services providers to be familiar with prudential regulators, even if their business is not a depository institution, because of overlapping issues and regulatory concerns. Prudential regulators expect depository institutions to obtain services from compliant third-party vendors and monitor their performance.¹⁰⁵ In recent years, financial technology (FinTech) companies have increasingly sought to partner with depository institutions to provide consumers access to new products and services and to utilise a bank's charter to, for example, offer lending products exempt from state usury laws, engage in money transmission exempt from state licensing laws or issue payment cards.¹⁰⁶ As partnerships between depository institutions and nonbanks have increased, prudential regulators have emphasised the need for depository institutions to be accountable for the actions of their non-bank partners. Thus, FinTech companies must be prepared not only to comply with all applicable laws and regulations, but also to comprehensively demonstrate compliance to their banking partners and provide needed support during examinations and other regulatory inquiries.¹⁰⁷ Understanding the expectations of the bank or credit union's prudential regulator will help ensure a successful partnership.

CONSUMER FINANCIAL PROTECTION BUREAU

Prior to 2011, prudential regulators were responsible for both safety and soundness and consumer protection.¹⁰⁸ As part of the reforms enacted in response to the financial crisis in the Dodd–Frank Wall Street Reform and Consumer Protection Act, Congress created the CFPB by both transferring jurisdiction over consumer protection regulation from other regulatory agencies to the CFPB and also giving the CFPB powers that other regulators lacked (although prudential regulators retain authority to enforce these laws with respect to the entities they supervise).¹⁰⁹

The CFPB's purview is expansive; it regulates bank and nonbank providers of 11 different categories of products and services ranging from all manners of credit, banking and payment products as well as debt collectors, real estate settlement services, check cashing and financial advisory services.¹¹⁰

CFPB has three primary regulatory mandates. The first is to implement federal consumer finance laws by developing rules and guidance to explain the contours of the laws it is implementing.¹¹¹ Most of these laws, including the Truth in Lending Act,¹¹² which mandates certain disclosures for credit products, and the Electronic Fund Transfer Act (EFTA),¹¹³ which provides protections for consumers engaged in electronic payments, were previously implemented by the CFPB's predecessor agencies. (Both TILA and EFTA were implemented by the Federal Reserve.)¹¹⁴ Other key laws the CFPB inherited include laws regulating fair lending (Equal Credit Opportunity Act),¹¹⁵ debt collection (Fair Debt Collection Practices Act),¹¹⁶ credit reporting (Fair Credit Reporting Act),¹¹⁷ and real estate transactions (Real Estate Settlement Procedures Act).¹¹⁸ All told, the CFPB implements 19 different consumer finance laws.¹¹⁹ CFPB also has authority to adopt new regulations to prevent conduct it deems unfair, deceptive or abusive.¹²⁰ The CFPB has sought to use this authority to regulate providers of payday, instalment and auto title loans¹²¹ and has proposed the same with respect to debt collectors.¹²² Most recently, the CFPB issued a policy statement articulating the process by which it would find conduct to be abusive.¹²³

The CFPB also conducts supervisory examinations of many of the entities it regulates. Specifically, the CFPB can examine all banks and credit unions with greater than US\$10bn in assets and nonbank mortgage originators and servicers, payday lenders, and private student lenders of all sizes.¹²⁴ The CFPB also has adopted rules permitting it to

supervise larger nonbank participants in the consumer reporting, debt collection, student loan servicing, international money transfer and automobile financing markets.¹²⁵ The CFPB's onsite supervisory examinations have three goals: (1) to assess compliance with Federal consumer financial laws, (2) to obtain information about activities and compliance systems or procedures and (3) to detect and assess risks to consumers and to markets for consumer financial products and services.¹²⁶ While CFPB examination results are not public, the CFPB periodically releases 'Supervisory Highlights' explaining some items CFPB examiners found concerning during recent exams. In addition to supervisory authority, the CFPB can bring enforcement lawsuits against banks with greater than US\$10bn in assets and most nonbank providers of consumer financial products and services that violate one of the 19 consumer finance laws or engage in practices the CFPB deems unfair, deceptive or abusive.¹²⁷ These actions are public, and either are filed in federal court or the CFPB's own administrative court.

Federal Trade Commission

The CFPB is not the only federal consumer protection regulator. The FTC implements the FTC Act which, among other things, allows it to stop unfair, deceptive or fraudulent practices in the consumer finance marketplace through its Bureau of Consumer Protection.¹²⁸ The FTC has jurisdiction over nonbank providers of financial services except that it lacks jurisdiction over federally chartered banks.¹²⁹ The FTC has 'concurrent' jurisdiction with the CFPB to pursue unfair and deceptive acts and practices and FCRA violations.¹³⁰ In recent years, the FTC has taken a particular interest in data privacy and data security issues, including in implementing the Gramm–Leach–Bliley Act, which requires certain financial services companies that have ongoing customer relationships to explain information sharing and

to safeguard consumers' sensitive data.¹³¹ In addition, the FTC has authority to develop regulations and enforce violations of a number of other laws that impact financial services including electronic fund transfers (Electronic Fund Transfer Act¹³²) and credit repair activities (the Credit Repair Organizations Act¹³³). Like the CFPB, the FTC has regulatory and enforcement authority. The FTC, however, does not have supervisory authority.¹³⁴ Additionally, the FTC, through its Bureau of Competition, also has authority to enforce federal antitrust laws. The FTC shares this authority with the US Department of Justice (DOJ). The FTC reviews proposed mergers to see if they violate the federal antitrust laws and also investigates and pursues civil antitrust violations.¹³⁵

Other US Federal Agencies

Other agencies in the United States' federal government also play a role in the regulation of financial services. The DOJ files criminal and civil lawsuits against those that violate many federal laws; it has overlapping jurisdiction with many the other federal regulators discussed in this paper. For example, DOJ enforces US civil rights laws that apply to financial services including the Fair Housing Act and ECOA.¹³⁶ DOJ can also pursue criminal violations of anti-money laundering and terrorist financing laws (eg the PATRIOT Act¹³⁷ and Bank Secrecy Act¹³⁸) and it can bring suit for fraudulent activities involving the United States government including bank and mortgage fraud.¹³⁹ The US Department of Housing and Urban Development (HUD) implements many aspects of federal housing policy, including the Fair Housing Act and other forms of housing discrimination.¹⁴⁰ The Department of Defense implements the Military Lending Act, which imposes consumer protections on most nonmortgage loan products offered to service members and their families.¹⁴¹ The Department of Education offers government-backed student loans to students

pursuing higher education and also regulates certain banking activities on college campuses.¹⁴²

US State Authorities

As noted earlier, each state and the District of Columbia (as well as US territories such as Puerto Rico, the US Virgin Island and Guam) also regulates certain financial services providers that offer products and services in their jurisdiction. In most cases, states do not have the ability to regulate federally chartered banks and credit unions, although they do charter state banks and credit unions.¹⁴³

Most states require nonbanks offering certain financial services to obtain and maintain a license in order to do business in that particular state.¹⁴⁴ Almost all states require a license to act as a mortgage lender, money transmitter and check casher.¹⁴⁵ Some states also require licensure of other types of providers including nonmortgage lenders and commercial lenders.¹⁴⁶ To obtain a license, providers must provide details regarding their business operations, post a bond and subject themselves to periodic examinations of their conduct.¹⁴⁷ Notably, online providers typically must be licensed in states where their customers live, even if those providers have no physical operations in particular states and only, for example, an online presence.¹⁴⁸

States also may restrict the offering of certain products within their state or bar providers from engaging in prohibited conduct.¹⁴⁹ For example, many states prohibit payday lending or have usury caps that block interest loans with high interest rates.¹⁵⁰ Most states also have consumer protection laws that prohibit other forms of conduct including unfair and deceptive acts and practices.¹⁵¹ While the law in this area is complex, states typically can impose requirements on providers when federal law does not specifically address the issue and the state law imposes requirements stricter than federal law or unaddressed in federal

law; states typically cannot loosen federal requirements.¹⁵² States, through their financial regulators or their attorneys general, also can file suit on behalf of their residents for violations of state laws.¹⁵³

REFERENCES AND NOTES

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