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February 16, 2018

To: Clients and Friends
From: David F. Dulock
Subject: CFPB Request for Comments on the CFPB's Processes Related to Enforcement of Federal Consumer Financial Law

In the February 12, 2018, issue of the *Federal Register* (83 FR 5999, [click here](#)), the CFPB published a request for information (RFI) seeking comments and information to assist it in assessing the overall efficiency and effectiveness of its processes related to the enforcement of Federal consumer financial law, and considering whether any changes to these processes would be appropriate.

The following is a redaction of the above RFI published by the CFPB in the *Federal Register*. The redacted text contains the essential information needed to submit the requested information and comments.

You may submit information and other comments, identified by Docket No. CFPB–2018–0003, by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB–2018–0003 in the subject line of the message.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Comments must be received by April 13, 2018, and must include the document title and docket number. Commenters are requested to note the number of the topic(s) commented on at the top of each response.

AS authorized by Federal law and governed by 12 CFR parts 1080 ([click here](#)) and 1081 ([click here](#)), the CFPB may investigate whether any person is or has been engaged in conduct that violates Federal consumer financial law. These investigations may include requiring witnesses to give oral testimony. The CFPB is also authorized to commence legal proceedings for alleged violations of Federal consumer financial law through either administrative adjudication proceedings or civil actions in federal district court. In these actions and proceedings the CFPB may seek appropriate legal and equitable relief, including appropriate civil money penalties.

To more effectively evaluate suggestions, the CFPB requests that, where possible, the comments include:

- Specific suggestions regarding any potential updates or modifications to the CFPB's enforcement processes, consistent with the CFPB's statutory objectives, and including, in as much detail as possible, the potential update or modification, supporting data or other information on impacts and costs, or information concerning alignment with the processes of other agencies; and
- Specific identification of any aspects of the CFPB's enforcement processes that should not be modified, consistent with the CFPB's statutory objectives, and including supporting data or other information on impacts and costs, or information concerning alignment with the processes of other agencies.

The following list of general areas represents the CFPB's preliminary attempt to identify elements of its enforcement processes on which it should immediately focus. This non-exhaustive list is to assist those making comments and is not intended to restrict the issues that may be addressed. In their comments, the CFPB requests that commenters identify with specificity the CFPB regulations or practices at issue, providing legal citations where appropriate and available.

The CFPB is seeking feedback on all aspects of its enforcement processes, including but not limited to:

1. Communication between the CFPB and the subjects of investigations, including the timing and frequency of those communications, and information provided by the CFPB on the status of its investigation;
2. The length of CFPB investigations;
3. The CFPB's Notice and Opportunity to Respond and Advise process, including:
 - a. CFPB Bulletin 2011-04, Notice and Opportunity to Respond and Advise (NORA), issued November 7, 2011 (updated January 18, 2012), [click here](#), including whether invoking the NORA process should be mandatory rather than discretionary; and
 - b. The information contained in the letters that the CFPB may send to subjects of potential enforcement actions pursuant to the NORA process, as exemplified by the sample NORA letter hyperlinked to CFPB Bulletin 2011-04 (updated January 18, 2012) in a. above;
4. Whether the CFPB should afford subjects of potential enforcement actions the right to make an in-person presentation to CFPB personnel prior to the CFPB determining whether it should initiate legal proceedings;
5. The calculation of civil money penalties, consistent with the penalty amounts and mitigating factors set out in 12 U.S.C. 5565(c), [click here](#), including whether the CFPB should adopt a civil money penalty matrix, and, if it does adopt such a matrix, what that matrix should include;
6. The standard provisions in CFPB consent orders, including conduct, compliance, monetary relief, and administrative provisions; and
7. The manner and extent to which the CFPB can and should coordinate its enforcement activity with other Federal and/or State agencies that may have overlapping jurisdiction.

To provide comments specifically on the CFPB's Civil Investigative Demand (CID) processes, please respond to the specific Request for Information on that topic, Docket No. 2018-CFPB-0001, 83 FR 3686 (January 26, 2018), which is the subject of the firm's January 29, 2018 memorandum. To provide comments specifically on the CFPB's rules of practice for adjudication proceedings, please respond to the specific Request for Information on that topic, Docket No. 2018-CFPB-0002, 83 FR 5055 (February 5, 2018), which is the subject of the firm's February 5, 2018 memorandum. Both memorandums are on the firm's website www.bmandg.com under the "Articles" tab.

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