

## Federal Agency Enforcement Actions (Excluding RESPA Settlements)

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### 1. Federal Trade Commission

Although the FTC had relatively few credit-specific cases recently, several others impact the mortgage industry significantly.

#### A. FTC v. DirecTV - Violation of Do-Not-Call Rule

In a settlement announced December 13, 2005, satellite television provider DIRECTV paid \$5.3 million to settle FTC charges that, since October 2003, DIRECTV and companies it hired to promote DIRECTV programming have been violating the Do Not Call (DNC) provisions of the Commission's Telemarketing Sales Rule (TSR). This is the largest civil penalty the FTC has ever announced in a case enforcing any consumer protection law.

At the Commission's request, the U.S. Department of Justice (DOJ) filed the complaint and stipulated settlements in Federal District Court in Los Angeles. The complaint names as defendants DIRECTV, five firms that telemarketed on its behalf, and six principals of those telemarketing firms. Settlements with DIRECTV and two of the telemarketing firms and their principals were filed along with the complaint.

"This multimillion dollar penalty drives home a simple point: Sellers are on the hook for calls placed on their behalf," said Chairman Deborah Platt Majoras. "The Do Not Call Rule applies to all players in the marketing chain, including retailers and their telemarketers."

**The Complaint.** The complaint alleges that telemarketers calling on behalf of DIRECTV contacted consumers on the National DNC Registry. In addition, the complaint alleges that one of the telemarketers – Global Satellite, directly or through another entity – abandoned calls to consumers by failing to put a live sales representative on the line within two seconds after the called consumer completes his or her greeting, as required under the law.

Finally, the complaint alleges that DIRECTV provided substantial assistance and support to Global Satellite, even though it knew or consciously avoided knowing, that Global Satellite was violating the TSR.

**Terms of the Court Orders.** The FTC announced proposed stipulated final orders with DIRECTV and two telemarketers, Communications Concepts and its principal and American Communications of the Triad and its principal.

The first order requires DIRECTV to pay \$5,335,000 in civil penalties. The proposed settlement agreement also prohibits DIRECTV, whether acting directly or through its authorized telemarketers, from violating the TSR. The proposed settlement tracks the relevant Telemarketing Sales Rule provisions, prohibiting calls to consumers on the DNC Registry, calls to consumers who asked not to receive calls on behalf of a particular seller, and abandoned calls.

The proposed settlement also requires DIRECTV to terminate any marketer of its products who DIRECTV knows or should know is making cold calls to consumers without express, written authorization from DIRECTV. The proposed settlement also prohibits DIRECTV from assisting and facilitating any telemarketer it knows or consciously avoids knowing is violating the Telemarketing Sales Rule.

Finally, the proposed settlement imposes extensive monitoring requirements on DIRECTV mandating that the company oversee those marketers selling its goods or services. <http://ftc.gov/opa/2005/12/directv.htm>

*Under the FTC's position, mortgage companies using telemarketers and other third party agents making calls to consumers will be held responsible for their telemarketers' and agents' compliance with DNC rules.*

#### **B. FTC v. DIRECTV Telemarketers – Violation of Do-Not-Call Rule**

The FTC on August 15, 2006 announced it entered into a court settlement with Nomrah Records, Inc. and its president, Mark Harmon – named defendants in the recent DIRECTV telemarketing case. Under the settlement, Harmon will pay a \$75,000 civil penalty and both he and the company will be barred from violating the Do Not Call (DNC) Rule and Telemarketing Sales Rule (TSR) in the future.

**The Final Judgment and Order:** The stipulated final judgment and order against Nomrah and Harmon contains strong injunctive relief, barring Nomrah and Harmon from calling consumers on the DNC Registry, as well as from violating any other provisions of the TSR in the future.

The judgment and order also requires Harmon to pay a \$75,000 civil penalty, with the stipulation that \$400,575 will become due if he is found to have misrepresented his financial condition to the Commission. Finally, the order contains standard record keeping and reporting terms to ensure the defendants comply with the order.

**NOTE:** Stipulated final judgments are for settlement purposes only and do not necessarily constitute an admission by the defendants of a law violation. Stipulated judgments have the force of law when signed by the judge.

<http://ftc.gov/opa/2006/08/directv.htm>

### C. FTC v. Austin Board of Realtors – Illegally Restraining Competition

The FTC on July 13, 2006 charged the Austin Board of Realtors with violating the antitrust laws by effectively preventing consumers with real estate listing agreements for potentially lower-cost unbundled brokerage services from marketing their listings on important public Web sites. In settling the charges, ABOR is prohibited from adopting or enforcing any rule that treats one type of real estate listing agreement more advantageously than any other listing type, and from interfering with the ability of its members to enter into any kind of lawful listing agreement with home sellers.

ABOR is a 5,000-member, not-for-profit organization of competing real estate professionals that operates a Multiple Listing Service in the Austin, Texas, metropolitan area. Under ABOR's rules, MLS information is available for public Web site searches only when a home seller enters into a traditional style of real estate broker listing agreement, typically associated with a non-discounted commission. If a home seller enters into a non-traditional form of listing agreement to buy lower-cost, unbundled brokerage services, ABOR blocks MLS information about the home from Web sites such as the National Association of Realtors' "Realtor.com" site, the ABOR-owned "Austinhomesearch.com" site, and other public Web sites operated by ABOR member brokers.

"ABOR's Web site rules create significant roadblocks for real estate brokers to offer consumers alternatives to full-service brokerage agreements," said Jeffrey Schmidt, Director of the FTC's Bureau of Competition. "By its law enforcement action today, the Commission is not saying that one form of brokerage agreement is better than another. We are saying that the consumer should be able to decide."

**Types of Real Estate Listings:** Under the traditional type of listing agreement, known as an Exclusive Right to Sell Listing, the property owner appoints a real estate broker for a set period of time as an exclusive agent to sell the property, and agrees to pay the listing broker a commission if and when the property is sold. An alternative form of listing agreement, often used by home sellers who do not wish to purchase the full range of brokerage services, is the Exclusive Agency Listing, which makes the listing broker the exclusive agent of the property owner, but gives the property owner the right to sell the property without extensive help from the listing broker. Under an Exclusive Agency Listing agreement, the listing broker often charges an up-front fee, but may receive a reduced commission, or no commission at all, if the owner sells the property without the broker's further help.

**Austin Board of Realtors:** Comprised of more than 5,000 real estate professionals – and most of the residential real estate brokerage professionals in the Austin metropolitan area – ABOR operates the Austin/Central Texas Realty Information Service, the only multiple listing service available to metropolitan Austin. The Commission contends that ABOR has market power, because participation in ACTRIS is critical to the ability of brokers to provide effective residential real estate services in Austin. ACTRIS is a key means for brokers to publicize to other ACTRIS participants the residential real estate listings in central Texas, and a way to distribute information about real estate listings to real estate Web sites used by the general public.

In February 2005, ABOR adopted a rule preventing information about Exclusive Agency Listings contained in ACTRIS from being transmitted to public real estate Web sites. The Web site policy specifically allows only information concerning traditional Exclusive Right to Sell Listings to be included in the information made available to public Web sites.

**The Commission's Complaint:** According to the Commission's complaint, ABOR violated Section 5 of the FTC Act by unlawfully restraining competition among real estate brokers in central Texas. ABOR's Web site policy, the Commission contends, is a joint action by a group of competitors to withhold listing information from publicly accessible Web sites unless competitors contract with home sellers in the way ABOR dictates. As such, it is a concerted refusal to deal except on specified terms. The FTC contends that ABOR's conduct is a variation of a type of anticompetitive activity by operators of multiple listing services that was condemned by the agency two decades ago.

Specifically, the FTC charges that ABOR's Web site policy has the effect of discouraging the use of Exclusive Agency Listings, which often are used to offer lower-cost, unbundled real estate brokerage services to consumers. The policy has caused some home sellers to switch away from Exclusive Agency Listings to traditional forms of listing agreements. For example, after the policy was implemented in 2005, the number of Exclusive Agency Listings decreased from 18 percent to 2.5 percent of the total listings on ACTRIS. This decrease has had an adverse effect on consumers, the FTC alleges, by limiting home sellers' choices of brokerage services, and by denying home buyers the opportunity to use the Internet to see all of the houses listed by real estate brokers in the Austin area.

The Commission also contends that ABOR's Web site policy does not produce competitive efficiencies to balance its anticompetitive effects. While an MLS in some circumstances might be concerned that buyers and sellers of properties under an Exclusive Agency Listing could "free ride" on the efforts that the MLS is intended to foster, this concern does not justify ABOR's Web site policy, because the ABOR rules already include protections against such misuse.

**Terms of the Consent Order:** The consent order approved by the Commission is designed to remedy ABOR's alleged anticompetitive conduct. It will ensure that ABOR does not misuse its market power, but also that the pro-competitive incentives of joint ventures, such as ABOR and ACTRIS, remain intact.

The order prohibits ABOR from adopting or enforcing any policy to deny, restrict, or interfere with the ability of its members or ACTRIS participants to enter into Exclusive Agency Listings or other lawful agreements with property sellers. ABOR is prohibited from preventing its members or ACTRIS participants from: (1) offering or accepting Exclusive Agency Listings or other lawful listing agreements; (2) cooperating with listings brokers or agents that offer or accept Exclusive Agency Listings or other lawful listing agreements; or (3) publishing Exclusive Agency Listings or other lawful listing agreements on Web sites otherwise approved to use ACTRIS information. The order also bars ABOR from denying or restricting the services of the ACTRIS to Exclusive Agency Listings or other lawful listings in any way that such services are not denied or restricted

to Exclusive Right to Sell Listings; or treating Exclusive Agency Listings – or any other lawful listings – in a less advantageous manner than Exclusive Right to Sell Listings.

The order preserves ABOR’s ability to adopt or enforce any policy, rule, practice, or agreement that it can show is reasonably ancillary to the legitimate and beneficial objectives of ACTRIS. Finally, it requires ABOR to conform its rules to the provisions of the order within 30 days of it becoming final, and to notify its members and ACTRIS participants of the order via e-mail or its Web site. The order, which will expire in 10 years, applies to ABOR and the entities it owns and controls, including ACTRIS and Austinhomesearch.com.

The Commission vote to approve the consent order was 5-0. The order will be subject to public comment for 30 days, until August 11, 2006, after which the Commission will decide whether to make it final.

The materials related to this case, as well as a wide range of other real estate competition information, can be found on the FTC’s real estate competition Web page.  
<http://www.ftc.gov/opa/2006/07/austinboard.htm>

#### D. FTC v. Whitewing Financial Group – Violation of FDCPA

A debt collection agency that allegedly used lies and threats to collect debts agreed to settle FTC charges that its tactics violated federal laws. Under the court settlement, the company agreed to a \$150,000 judgment and to refrain from illegal practices when collecting debts, including “time-barred” debts – debts so old they are no longer legally enforceable.

The government’s complaint alleges that Whitewing Financial Group, Inc. bought and attempted to collect on very old debts, many of which were beyond statutory limitations and too old to appear on credit reports, and many of which had been discharged in bankruptcy. As required by law, Whitewing sent “validation notices” informing consumers of their right to dispute the alleged debts, but its statements in phone calls allegedly often contradicted those notices. The statements pressured consumers to make payments before they had received the validation notice, and confused them about their rights, including who had the burden of establishing the validity of the debt. Under the Fair Debt Collection Practices Act (FDCPA), if a consumer disputes all or part of a debt in writing within 30 days of receiving a validation notice, the debt collector must cease collection efforts until it has provided the consumer with written verification of the debt.

The complaint alleged that, because there is no legitimate method to enforce payment of time-barred debts, the defendants often misrepresented the status of the debts, leading people to believe that legal proceedings had begun, that lawsuits to collect debts were not time-barred, or that the defendants had documents showing that the debts were valid when, in fact, they did not. The complaint also alleged that the defendants misrepresented that if the consumer did not pay the debt, the defendants would take actions that they never intended to take, such as reporting the debts to credit bureaus or initiating legal proceedings.

Whitewing, based in Houston, Texas, and co-defendants Christopher B. Badger, Lynda J. Badger, and Jon P. Badger are charged with violating the FDCPA and the FTC Act by, among other things, misrepresenting the character, amount, or legal status of debts, threatening to take actions that cannot legally be taken or that are not intended to be taken, using false representations or deceptive means to collect or attempt to collect debts or to obtain information concerning a consumer, contradicting the notification of consumer rights contained in the validation notice, and communicating with consumers without prior consent or court permission, at times or places the defendants knew or should have known were inconvenient for the consumer, such as their work place.

All but \$30,000 of the \$150,000 judgment has been suspended based on the defendants' inability to pay. The Commission vote to refer the complaint and proposed consent decree to the Department of Justice for filing was 5-0. At the FTC's request, the DOJ filed the complaint and consent decree in the U.S. District Court for the Southern District of Texas, Houston Division. Judge Lynn N. Holmes entered the consent decree on June 23, 2006. <http://www.ftc.gov/opa/2006/07/whitewing.htm>

E. FTC v. Executive Home Loan – Violation of Do-Not-Call Rule Prohibiting Use of Unscrubbed “Lead Lists”

A Southern California-based mortgage broker will pay \$50,000 under a court order filed June 21, 2006 on behalf of the FTC for allegedly calling tens of thousands of consumers who are on the National Do Not Call (DNC) Registry for telemarketers and for failing to pay the annual fee required to access the DNC Registry. In addition, the company and its officers are permanently barred from violating the DNC provisions of the Telemarketing Sales Rule (TSR) and from making illegal telemarketing calls in the future.

Although the defendants claimed they relied on service providers for their compliance with the DNC rules – specifically by buying “lead lists” of phone numbers from list brokers such as title companies – the FTC stated it was not enough for them to rely on the brokers' claims that the lists had been properly “scrubbed” against the DNC Registry. A “scrubbed” list is one that has had all telephone numbers that are on the DNC Registry removed from it no more than thirty days before calls are placed. Further, although the defendants paid the brokers for the phone lists, they did not properly pay for access to numbers on the Registry, leading them to illegally call thousands of registered consumers.

“The bottom line is that telemarketers are responsible for complying with the Do Not Call provisions of the Telemarketing Sales Rule, and cannot hide behind the claims of their service providers,” said Lydia B. Parnes, director of the FTC's Bureau of Consumer Protection. “If a telemarketer purchases a ‘scrubbed’ list, they better make sure that it is current and squeaky clean or else they may be violating the law and subject to penalties.”

**The Commission's Complaint.** The FTC's complaint alleges the defendants violated two primary provisions of the TSR. First, in the course of conducting their business, they allegedly called consumers whose names were listed on the National DNC Registry. At

the same time, the complaint states, they failed to pay the required fees to gain access to the phone numbers in the Registry itself.

**Term of the Stipulated Order.** The stipulated order settling the Commission's complaint permanently bars the defendants from violating the TSR, or assisting others in violating the TSR and its DNC provisions by: 1) prohibiting outbound telemarketing calls to consumers whose numbers are on the DNC Registry and do not want to receive calls from the defendants; and 2) initiating outbound telemarketing calls to any phone number without first paying the required fee to access the telephone numbers within that area code that are on the DNC Registry. Finally, the order imposes a monetary judgment in the amount of \$1,138,551 against the corporate defendant in this matter as a civil penalty, with all but \$50,000 suspended due to an inability to pay. The total judgment would become due if the defendants are found to have misrepresented their financial condition. The order also contains standard record keeping and reporting requirements to ensure the defendants comply with its terms.

The consent judgment announced today settles the Commission's charges against the following defendants: Executive Financial Home Loan Corp., d/b/a Executive Home Loan, a California corporation; Michael Nikraves, individually and as an officer of Executive Financial Home Loan Corp.; and Ron Fattal, individually and as an officer of Executive Financial Home Loan Corp.

The Commission vote to refer the complaint and proposed consent decree to the Department of Justice for filing was 5-0. The complaint and proposed consent were filed on June 21, 2006, by the Department of Justice at the request of the FTC and are subject to court approval. The filing was made in the U.S. District Court for the Central District of California in Los Angeles.

<http://www.ftc.gov/opa/2006/06/exechomeloans.htm>

*Mortgage companies that purchase lead lists will be held responsible for the scrubbing of such lists with the DNC Registry.*

F. FTC v. Peoples Benefit Services - First Case Highlighting Application of Do Not Call Provisions to Affiliates

A seller of discount health and prescription drug cards and its telemarketer agreed to pay civil penalties of \$300,000 and \$50,000, respectively, to settle Federal Trade Commission charges that they have been violating the Do Not Call (DNC) provisions of the Commission's Telemarketing Sales Rule (TSR), and will be prohibited from similar conduct in the future, the agency announced June 15, 2006. At the Commission's request, the U.S. Department of Justice (DOJ) filed the complaint and proposed stipulated consent orders in Federal District Court in New York City. This is the Commission's first case to highlight the application of DNC provisions to corporate affiliates.

The FTC alleges that Peoples Benefit Services, Inc. (PBS), a seller of prescription drug discount cards, dental discount cards, health-related discount cards, and an online medical referral service to consumers, authorized its telemarketer, Malvern Marketing, LLC, d/b/a Phase One Marketing (POM), to call consumers on the DNC Registry on the basis of an alleged established business relationship (EBR) with PBS or its corporate affiliates.

According to the FTC, tens of thousands of those calls constituted violations of the TSR because the defendants did not meet their burden of proving an EBR with those affiliates' consumers. The FTC also alleged that the defendants violated the Fee Rule provision of the TSR's DNC Rule because PBS did not pay a fee to access numbers on the DNC Registry, but instead accessed the Registry using the Subscription Account Number (SAN) of one of its corporate affiliates, a separately incorporated insurance company selling insurance products. The FTC also alleged the defendants violated the TSR by continuing to call tens of thousands of consumers who had asked to be placed on their entity-specific do-not-call lists, and abandoning more phone calls than permitted by law.

"Sellers who try to skirt the Do Not Call rules on technicalities are asking for trouble," said Lydia Parnes, Director of the FTC's Bureau of Consumer Protection. "We're serious about enforcing all provisions of the Telemarketing Sales Rule."

**Case Background.** According to the FTC, PBS hired POM to place outbound calls to consumers to sell its products. Most of these PBS products were health-related discount cards: in exchange for a monthly fee, consumers received discounts on prescription drugs, and/or medical or dental care, from participating providers.

PBS provided consumer leads to POM, which POM expected PBS to first cross-check against both the National DNC Registry and PBS's own do-not-call list of telephone numbers for consumers who specifically asked not to be called by PBS. According to the complaint, Defendants called tens of thousands of telephone numbers on the Registry in violation of the TSR. In numerous instances, PBS did not have an EBR with the consumers called. Instead, the defendants called consumers who had recently purchased insurance products, including accidental death, term life and whole life insurance, sold by affiliates of PBS. But such consumers did not reasonably expect telemarketing calls from PBS, given the identities of the affiliates involved and the nature and type of goods or services offered. For example, consumers who had recently purchased life insurance from a PBS affiliate operating under a different name would not reasonably expect to receive a call selling drug discount cards offered by PBS. Defendants thus did not have an EBR for calls to tens of thousands of consumers' telephone numbers on the DNC Registry.

The complaint also alleges for the first time a Fee Rule violation based on the use of an affiliate's SAN. PBS caused POM to call telephone numbers in area codes across the country, without first paying the required annual fee for access to the telephone numbers within such area codes that are included in the DNC Registry. Instead, PBS accessed such numbers through an insurance affiliate's SAN. PBS, however, is a separately-incorporated entity that markets a distinct product under a different name than its affiliate, and that difference in name reflects more than a geographic distinction; it identifies a different product. PBS and POM are both liable for this Fee Rule violation.

In addition, the Commission's complaint charges the defendants with ignoring consumers' requests to put them on PBS's entity-specific do-not-call list, and abandoning automatically dialed calls more often than allowed by the TSR.

**Terms of the Court Orders.** The proposed stipulated final orders settling the Commission's complaint prohibit both defendants from future violations of the TSR, including provisions regarding the National DNC Registry, entity-specific do-not-call

requests, abandoned calls, and the Fee Rule. The orders also impose civil penalties on the defendants: PBS will pay \$300,000, and POM is subject to a \$120,000 civil penalty, with all but \$50,000 suspended due to its inability to pay. The POM penalty is subject to an avalanche clause, and the entire \$120,000 will be due if it is found to have misrepresented its financial condition. Finally, the proposed orders contain record-keeping and monitoring provisions to ensure the defendants' compliance.

The Commission vote to refer the complaint and proposed consent decrees to the DOJ for filing was 5-0. The complaint and proposed consents were filed on June 15, 2006, by the DOJ at the request of the FTC and are subject to court approval. The filing was made in the U.S. District Court for the Southern District of New York.

<http://www.ftc.gov/opa/2006/06/phaseone.htm>

*Mortgage companies will not have an established business relationship under the Do-Not-Call rules where an affiliate is the source of the customer relationship if the consumers did not reasonably expect telemarketing calls from the mortgage company, given the identities of the affiliates involved and the nature and type of goods or services offered. For example, consumers who had recently purchased life insurance from one company operating under a different name would not reasonably expect to receive a call selling drug discount cards offered by that company's affiliate.*

G. FTC v. Credit Foundation of America – Debt Managers' Misrepresentation and Violation of Do-Not-Call Rule

As announced June 15, 2006, a credit counseling service and related companies and individuals agreed to pay \$926,754 in consumer redress and civil penalties to settle Federal Trade Commission charges that they made false claims about their debt management program and violated the FTC's Do Not Call Rule.

According to the FTC, Credit Foundation of America, Inc. (CFA), and its associates sold debt management services nationwide through unsolicited, pre-recorded messages left on home telephones, falsely claiming that consumers were pre-approved for a program to consolidate their credit card debts to a single monthly payment at a much lower interest rate. When consumers responded to the calls, they were encouraged to enroll in a debt management plan, regardless of their individual circumstances. Many enrollees were not appropriate candidates for debt management plans and lost the large enrollment fees the defendants charged.

“When it comes to debt-related problems, a ‘one-size fits all’ solution should raise a red flag,” said Lydia Parnes, Director of the FTC's Bureau of Consumer Protection. “Debt management programs work best when they are tailored to consumers’ particular circumstances.”

In marketing its debt management program, CFA also intruded on the privacy of millions of people who did not wish to be called. The FTC alleges that CFA solicited prospective clients primarily through auto-dialing equipment that delivered prerecorded messages, placing more than three million telemarketing calls each week. Many of the consumers called had placed their names on the National Do Not Call Registry. Others had futilely requested to be placed on CFA's in-house do not call list.

According to the complaint, although CFA claimed to be exempt from the do-not-call requirements of the FTC's Telemarketing Sales Rule (TSR) because of its tax-exempt status with the Internal Revenue Service, CFA mainly generated profits for related for-profit companies and individuals. Therefore, it is subject to FTC jurisdiction and must comply with the TSR, regardless of the form of its corporate organization.

The complaint charges CFA with acting as part of a for-profit enterprise to generate substantial revenue from the fees paid by consumers, along with TTT Marketing Services, Inc., Sure Guard Credit Corporation, Inc., Anthony P. Cara, Todd A. Rodriguez, and Walter F. Villaume (CFA defendants). The complaint also names CFA telemarketing agents Credit Defenders of America, Inc., Credit Shelter of America, Inc., Robert Brown, and Bryan E. Taylor. The complaint alleges that the California-based defendants misrepresented that consumers were pre-approved for participation in a debt management plan with particular creditors or were guaranteed acceptance in a debt management plan at a particular interest rate or payment level by particular creditors. It further alleges that the defendants misrepresented the benefits that consumers would receive, including that the interest rates consumers paid would be reduced to as low as zero percent; that the consumers would receive debt management services before their next credit billing cycle; and that the defendants' credit counselors would provide consumers with individualized credit counseling.

The complaint alleges that the CFA defendants violated the TSR by calling consumers on the National Do Not Call Registry and by failing to place consumers' names on in-house do not call lists when requested. The complaint also alleges that they failed to pay for access to the Registry.

To resolve the allegations, CFA, TTT Marketing Services, Inc., Sure Guard Credit Corporation, Inc., Anthony P. Cara, Todd A. Rodriguez, and Walter F. Villaume agreed to pay \$250,000 in civil penalties and \$606,754 in consumer redress. Credit Defenders of America, Inc. and its owner, Robert Brown, agreed to pay \$70,000 in consumer redress. Credit Shelter of America, Inc. and its owner, Bryan E. Taylor, agreed to a judgment of \$102,540, which has been suspended due to their inability to pay. It will be imposed if they are found to have misrepresented their financial condition.

The settlement orders prohibit the defendants from making false claims about debt management or credit counseling programs and from engaging in abusive telemarketing practices. The defendants also agreed to standard compliance and reporting provisions that enable the FTC to monitor future compliance with the orders.

<http://www.ftc.gov/opa/2006/06/cfa.htm>

#### H. FTC v. Bad Credit B Gone – False Claims by Credit Repair Company

FTC announced on June 12, 2006 that a federal judge has ruled that a bogus credit repair company and its owner violated the law by making false and misleading claims, and billing in advance for its services, and has ordered them to pay more than \$322,000. This action was a result of "Project Credit Despair," a crackdown on 20 operations that deceptively claimed they could remove negative information from consumers' credit reports – even if that information was accurate and timely.

In response to thousands of consumer complaints, the FTC began coordinating the crackdown last year with the U.S. Postal Inspection Service, the State of Louisiana Office of Financial Institutions, and other state law enforcement agencies. The actions involved operations throughout the nation, many of which promised to remove accurate and timely information from consumers' credit reports, and typically charged hundreds of dollars in advance for the service.

The FTC charged Bad Credit B Gone and Joseph A. Graziola III with violating the FTC Act by making false and misleading statements, including claims that they could substantially improve consumers' credit reports by permanently removing negative information that was accurate and not obsolete. They also violated the Credit Repair Organizations Act (CROA) by requiring advance payment for their credit repair services.

Under the court's ruling, the defendants are permanently prohibited from misrepresenting that they can improve substantially most consumers' credit reports by permanently removing negative information from the reports, even when the information is accurate and not obsolete; misrepresenting any fact material to a person's decision to purchase credit repair services from them; misrepresenting any material fact regarding anything sold or offered for sale by them; and assisting others who violate these provisions. They also are permanently prohibited from violating the CROA, including charging or receiving payment for credit repair services before they have been performed, and making deceptive statements to induce consumers to purchase credit repair services. The defendants also must pay \$322,047.38 in consumer redress. In addition, they are prohibited from collecting, or trying to collect, payment from their customers for credit repair services, or disclosing personal information about them.

The Commission vote to authorize staff to file the complaint against Bad Credit B Gone, LLC, was 4-0 on December 1, 2005, when there was a vacant seat on the Commission.

The complaint was filed in the U.S. District Court for the Northern District of Illinois, Eastern Division, in Chicago, which granted a default judgment and order for permanent injunction and monetary relief.

The FTC advises that only time, a conscious effort, and a personal debt repayment plan can improve your credit report. The first step is to learn what information is in your credit report. If you find errors or mistakes, federal law gives you the right to have them corrected – free of charge. Federal law requires that the nationwide consumer reporting companies – Equifax, Experian, and TransUnion – provide you with a free copy of your credit report once every 12 months, if you ask for it. To order your free report, visit [annualcreditreport.com](http://annualcreditreport.com), call 1-877-322-8228, or complete and mail the Annual Credit Report Request Form. Other credit repair information is available on the FTC's Web site, <http://www.ftc.gov>. <http://www.ftc.gov/opa/2006/06/badcreditbgone.htm>

#### I. FTC v. Kodak Imaging Network – Internet Marketers' Violation of CAN-SPAM Act

The Federal Trade Commission has charged two Internet marketers with violating the CAN-SPAM Act by failing to offer an opt-out method or honor consumers' right to opt out of receiving future marketing mailings within 10 days of making the request. One

marketer also failed to include a valid physical postal address, which also is required by the CAN-SPAM Act. Settlements with the marketers prohibit future violations of the Act and provide for civil penalties totaling more than \$32,000.

The CAN-SPAM Act bans false or misleading header information, prohibits deceptive subject lines, requires that commercial e-mailers give recipients an opt-out method, requires that they honor requests to opt-out within 10 business days, requires that commercial e-mail be identified as an advertisement, and requires the sender to include a valid physical postal address.

The FTC charged that Kodak Imaging Network, formerly Ofoto, Inc., sent a commercial e-mail message to more than two million recipients that failed to contain an opt-out mechanism, failed to disclose in the e-mail message that consumers have the right to opt-out of receiving further mailings, and failed to include a valid physical postal address, as required by law.

The stipulated final judgment with Kodak Imaging Network prohibits future violations of the CAN-SPAM Act and imposes \$26,331 in civil penalties, which represents a one hundred percent disgorgement of the gross proceeds from the offending e-mail campaign. The settlement also contains record-keeping and reporting provisions to allow the agency to monitor compliance with its order.

The FTC also charged that ICE.com sent more than 6,000 e-mail messages to consumers who had previously requested not to receive future commercial e-mail messages from the company. The stipulated final judgment with ICE.com requires the company to pay \$6,500 in civil penalties. The final order also prohibits future violations of the CAN-SPAM Act and includes record-keeping provisions.

The Commission votes to refer each of the complaints and proposed consent decrees to the Department of Justice for filing were 5-0. The proposed consent judgments were filed on May 10 and May 11 by the Department of Justice at the request of the FTC. They are subject to court approval.

<http://www.ftc.gov/opa/2006/05/ofotokodak.htm>

#### J. FTC v. Nations Title Agency – Violation of Privacy and Security Requirements

A title company that promised consumers it maintained "physical, electronic and procedural safeguards" to protect their confidential financial information, but tossed consumer home loan applications in an open dumpster, agreed to settle Federal Trade Commission charges that its inadequate storage and disposal procedures for sensitive consumer information violated federal laws. The settlement was announced May 10, 2006. The settlement with Nations Title Agency, Inc., Nations Holding Company, and Christopher M. Likens bars deceptive claims about privacy and security policies, and requires that they implement a comprehensive information security program and obtain audits by an independent third-party security professional every other year for 20 years.

NHC, based in Kansas City, Kansas, is a privately held holding company that provides real estate services in 44 states. Its subsidiary, NTA, provides a variety of services in

connection with financing home purchases and refinancing existing home mortgages. Likens is the president and sole owner of NHC and its subsidiaries.

"Careless handling of consumers' sensitive financial information is an open invitation to identity thieves," said Deborah Platt Majoras, Chairman of the FTC. "Enforcing the laws designed to protect consumers' sensitive financial data is a priority at the FTC. This is the thirteenth case challenging faulty data security practices, and we will bring more cases if companies continue to fail consumers."

According to the FTC's complaint, NHC, NTA, and Likens routinely obtain sensitive consumer information from banks, real estate brokers, consumers, and public records that include such things as consumer names, Social Security numbers, bank and credit card account numbers, and credit histories. The FTC alleges that they engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security to protect the information. Specifically, the FTC charges that they failed to:

- assess risks to the information they collected and stored, both online and offline;
- implement reasonable policies and procedures in key areas such as employee screening and training and the collection, handling, and disposal of personal information;
- implement simple, low-cost, readily available defenses to common Web site attacks or implement reasonable measures to prevent hackers from gaining access to their computer network;
- employ reasonable measures to detect and respond to unauthorized access to the data or to conduct security investigations; and
- provide reasonable oversight for the handling of personal information by service providers, such as third parties employed to process the information and assist in real estate closings.

According to the complaint, a hacker exploited these failures by using a common Web site attack to gain access to NHC's computer network. In addition, a Kansas City television station found documents containing sensitive consumer information discarded in NHC's and NTA's unsecured dumpster.

The FTC alleged that NHC, NTA and Likens made security claims in their privacy policies. For example, NTA's privacy policy claimed: "NTA, at all times, strives to maintain the confidentiality and integrity of the personal information in its possession and has instituted measures to guard against its unauthorized access. We maintain physical, electronic and procedural safeguards in compliance with federal standards to protect the information."

The FTC charged that the failure to provide reasonable and appropriate security to protect the information violates the FTC's Safeguards Rule, which requires financial institutions to take appropriate measures to protect customer information. The complaint also alleges that NTA's privacy policy claims are deceptive because of these failures, in violation of

the FTC's Privacy Rule and the FTC Act. The Privacy Rule, among other things, requires financial institutions to disclose accurately the manner in which they safeguard customer information. The FTC Act prohibits unfair or deceptive practices.

The proposed settlement bars misrepresentations about the extent to which NHC, NTA, and Likens protect the privacy, confidentiality, or integrity of any personal information collected from or about consumers. It requires that they establish and maintain a comprehensive information security program that includes administrative, technical, and physical safeguards. The settlement also requires them to obtain – every two years for the next 20 years – an audit from a qualified, independent, third-party professional that confirms that their security program meets the standards of the order, and to comply with standard bookkeeping and record-keeping provisions. Finally, the settlement bars future violations of the Safeguards Rule and Privacy Rule, as well as the FTC's Disposal Rule. The Disposal Rule, which took effect on June 1, 2005, requires companies to dispose of credit reports and information from credit reports in a safe and appropriate manner.  
<http://www.ftc.gov/opa/2006/05/nationstitle.htm>

*This settlement provides a list of security measures that mortgage companies holding sensitive consumer data must follow under the privacy rules.*

#### K. FTC v. Scorpio Systems – Mortgage Lender's Violation of Do-Not-Call Rule

As announced May 8, 2006, a nationwide telemarketer of mortgage loans has been calling people whose numbers are listed on the National Do Not Call Registry, and doing so without identifying itself, according to the Federal Trade Commission, which is seeking civil penalties and an injunction against the telemarketer for violations of the FTC's Telemarketing Sales Rule. This is the Commission's first case alleging transmission of false caller ID information.

According to an FTC complaint, Srikanth Venkataraman, formerly of New Jersey, has been doing business as Scorpio Systems, Ltd., selling mortgage loans, refinancing, and other products and services. Scorpio allegedly called numbers on the Do Not Call Registry, failed to transmit its telephone number and name to consumers' caller identification service, and failed to pay the fee required to access the Registry. The telemarketer transmitted either no caller ID or a phony caller ID – 234-567-8923 – and, as a result, consumers were unable to contact the telemarketer to stop unwanted telemarketing calls.

The Commission vote to authorize staff to file the complaint against Scorpio Systems, Ltd. was 5-0. The complaint was filed at the FTC's request by the U. S. Department of Justice in U.S. District Court for the District of New Jersey on April 26, 2006. Assistance in this matter was provided by the FTC's Southwestern Regional Office.

The FTC's Bureau of Consumer Protection is committed to ensuring compliance with the National Do Not Call Registry. To date, the Bureau has brought 26 law enforcement actions for various DNC-related violations. Consumers can register their phone number on the Registry either online at [www.donotcall.gov](http://www.donotcall.gov) or by calling toll-free 1-888-382-1222 (TTY 1-866-290-4236) from the number they wish to register.  
<http://www.ftc.gov/opa/2006/05/scorpio.htm>

L. FTC v. Lighthouse Credit Foundation – Debt Manager’s Misrepresentation of Services

A credit counseling agency and related companies have agreed to settle Federal Trade Commission charges that they deceptively marketed themselves as a not-for-profit enterprise to entice financially distressed consumers to enroll in debt management plans, and then failed to deliver on promises of personalized credit counseling and dramatic and immediate interest rate reductions. The settlement was announced May 3, 2006.

Under proposed settlements, Lighthouse Credit Foundation Inc. and its co-defendants will pay more than \$2.4 million in consumer redress, and they are prohibited from making deceptive claims about credit counseling or debt management services.

According to the FTC’s complaint, defendant Integrated Credit Solutions, Inc. solicited consumers for Lighthouse’s debt management plans by leaving prerecorded messages on home answering machines stating that the consumer had been approved through “a certified non-profit nationwide program” to consolidate credit card debt before the next billing cycle at interest rates “as low as 1.5%.” People who responded to the messages were told that the program included counseling on how to manage finances, and that a monthly administrative fee was tax-deductible because Lighthouse was a nonprofit organization. Consumers agreed to pay large fees to enroll in debt management plans based on these representations, the complaint alleges.

The FTC’s complaint alleges that the defendants neither provided the promised interest rate reductions nor lowered interest rates before the consumers’ next billing cycle, noting that it typically takes three to four billing cycles before interest rates can be reduced under a debt management plan. Consumers were not provided with financial counseling, and the monthly administrative fee was not tax-deductible, the FTC alleged. According to the FTC’s complaint, Lighthouse acted as part of a for-profit enterprise with its co-defendants to generate substantial revenue from the fees paid by consumers.

The proposed settlements prohibit the companies and their principals, Mary M. Melcer and J. Steven McWhorter, from making misrepresentations about credit counseling or debt management services, including non-profit or tax-exempt status, financial counseling, interest rate reductions, and the deductibility of fees. The defendants must honor cancellation, refund, and termination requests from consumers, and follow certain recordkeeping and reporting requirements to assist the FTC in monitoring their compliance. In addition to the defendants’ payment of \$2,371,380 in consumer redress, the corporate defendants will set aside \$415,000 to refund the enrollment fees of consumers who complete their debt management plans.

The FTC’s complaint alleges that Jeffrey E. Poorman and Daniel M. Melgar, Sr., without participating in the alleged deception, received proceeds of the illegal conduct as shareholder distributions from co-defendant Flagship Capital Services Corporation, Integrated’s parent company. Poorman has settled with the FTC, agreeing to pay \$105,000. The FTC is proceeding with its claims against Melgar. The FTC acknowledges the valuable assistance of the Attorneys General in California, Florida, Massachusetts,

and Vermont, who settled claims against Lighthouse, Integrated, and/or Flagship in 2004 and 2005.

The Commission vote to file the complaint and settlements in this matter was 5-0. They were filed in the U.S. District Court for the Middle District of Florida, Tampa Division, on May 2, 2006.

<http://www.ftc.gov/opa/2006/05/lighthouse.htm>

M. FTC v. Optin Global et al. – Violation of CAN-SPAM Act

The Federal Trade Commission and the Attorney General of California have brought a permanent halt to an operation that sent millions of spam messages that violated federal and state laws. The settlement will bar future violations of the spam laws, will require the operators to monitor affiliates closely to assure that they are not violating state and federal laws, and requires that they give up approximately \$475,000 in ill-gotten gains.

In April 2005, the FTC and the Attorney General of California charged that the defendants used third-party affiliates or “button pushers” to send spam hawking mortgage loans and other products and services. The operation used hyperlinks in the spam to refer consumers to Web sites operated by the defendants. Consumers forwarded more than 1.8 million of the defendants' e-mail messages to the FTC. Those messages demonstrated that the defendants were violating almost every provision of the CAN-SPAM Act, the law enforcers said.

The FTC and California charged that the defendants e-mail:

- contained false or forged header information;
- included deceptive subject headings;
- failed to identify e-mail as advertisements or solicitations;
- failed to notify consumers they had a right to opt out of receiving more e-mail;
- failed to provide an opt-out mechanism;
- failed to include a valid physical postal address.

At the agencies' request, the court ordered a temporary halt to the illegal spamming, pending trial, and froze the defendants' assets. The settlement announced today ends that litigation.

The settlement bars future violations of the CAN-SPAM Act. Specifically, it prohibits the defendants from sending commercial e-mail that contains false or misleading headers; contains misleading subject headings; does not contain a valid physical postal address; and does not identify the message as an advertisement. It requires that they include an opt-out mechanism for consumers who do not wish to receive their messages in the future.

The settlement requires that the defendants establish an aggressive monitoring regime for any future affiliate program to assure that their affiliates are complying with the provisions of the CAN-SPAM Act and California law. In addition to reviewing, in advance, the subject line, text, and other particulars of the affiliates proposed campaign, the defendants are required to establish an opt-out mechanism for any e-mail campaign conducted on their behalf and requires that they ensure that all opt-out requests are honored.

The order imposes a \$2.4 million judgment - representing the total of the defendants' ill-gotten gains. Based on financial records provided by the defendants, the judgment will be suspended upon payment of \$385,000 in cash and approximately \$90,000 from the sale of real property. Should the court find that the defendants misrepresented their financial situations, the entire \$2.4 million will be due.

The settlement also contains certain bookkeeping and record keeping requirements to allow the agencies to monitor compliance.

The Commission vote to accept the proposed settlements with Optin Global, Inc., Vision Media Limited Corp., Qing Kuang "Rick" Yang, and Peonie Pui Ting Chen was 5-0.  
<http://www.ftc.gov/opa/2006/04/optin.htm>

#### N. FTC v. Debt Solutions Inc. et al. - Misrepresentation and Violation of DNC Rule

The Federal Trade Commission and the Washington State Attorney General have asked a federal judge to order Debt Solutions Inc. and three other telemarketers in Washington and Florida to stop charging consumers hundreds of dollars for a "debt elimination program" that offers a false promise of substantially reduced interest rates and thousands of dollars in savings. The agencies jointly filed the action in U. S. District Court in Seattle, seeking an injunction against them and refund of monies paid for violations of Section 5(a) of the FTC Act, the FTC's Telemarketing Sales Rule (TSR), and Washington's Consumer Protection Act. The settlement was announced March 21, 2006.

"The defendants' so-called 'debt elimination program' was not the answer for consumers who found themselves in financial hot water," said Lydia Parnes, Director of the FTC's Bureau of Consumer Protection. "There are a variety of legitimate options to reduce debt, including more realistic budgeting, credit counseling from reputable organizations, debt consolidation programs, and, if need be, filing for bankruptcy. In every case, though, people should be wary of any business that claims it can negotiate substantially lower interest rates on credit cards and loans."

According to the FTC and the State of Washington's complaint, since at least 2002, Debt Solutions Inc., DSI Financial Inc., DSI Direct Inc., Pacific Consolidation Services Inc., Kenneth Schwartz, Jennifer Ruth Whalen, David C. Schwartz, and Greg Moses have telemarketed and sold what they call a debt elimination program by making unsolicited phone calls to consumers nationwide, and by marketing the program on several Internet Web sites, including [www.debt2wealth.com](http://www.debt2wealth.com) and [www.acceleratedfinancialinc.com](http://www.acceleratedfinancialinc.com). The complaint alleges that the defendants falsely represented to consumers that they would be assigned a financial consultant whose special relationships with creditors will enable the

consultant to negotiate substantially lower interest rates, saving consumers thousands of dollars, reducing their monthly payments, and paying off their debts three to five times faster—all without higher monthly payments. In fact, according to the complaint, consumers who purchase the program typically do not have their interest rates lowered at all, and, if they do, the reductions are rarely more than one percentage point.

Consumers are promised a full refund if they do not save at least \$2,500, but few consumers have received the guaranteed refund, according to the agencies' complaint. Before buying the program for \$399 to \$629, the complaint alleges, consumers are not told that the promised savings may take decades to achieve, or that most of the savings will result from simply paying more money every month, not from reduced interest rates. The defendants also claim the program is endorsed by the Financial Standards Council in Canada and the Registered Financial Planners Institute of North America, but both claims are false, according to the complaint.

The FTC and the State of Washington's complaint alleges that the defendants violated Section 5(a) of the FTC Act by falsely representing that purchasers will (1) save thousands of dollars in a short time; (2) have credit card and loan interest rates reduced substantially; (3) pay off their debt much faster without higher monthly payments; and (4) reduce their monthly credit card and loan payments. The complaint also alleges that they falsely represent that they have special relationships with credit card companies and lenders, and that their program is endorsed by the two organizations mentioned above. It also alleges that they misrepresented their money-back guarantee.

The complaint further alleges that the defendants violated the TSR and Washington state law by misrepresenting projected savings, failing to disclose the limits of their money-back guarantee, calling phone numbers listed on the Do Not Call Registry, failing to pay the required annual fee for access to DNC-listed numbers, and calling persons who had asked them to stop calling. The defendants also violated Washington state law by engaging in unfair or deceptive acts or practices and unfair methods of competition.

By a 5-0 vote, the Commission authorized the joint filing of the case with the State of Washington in U. S. District Court for the Western District of Washington at Seattle on March 6.

<http://www.ftc.gov/opa/2006/03/dsi.htm>

*This settlement provides examples of claims of "savings" from new mortgage products that should be avoided.*

O. FTC v. CardSystems Solutions – Violation of Information Security Requirements

CardSystems Solutions, Inc. and its successor, Solidus Networks, Inc., doing business as Pay By Touch Solutions, have agreed to settle Federal Trade Commission charges that CardSystems' failure to take appropriate security measures to protect the sensitive information of tens of millions of consumers was an unfair practice that violated federal law. According to the FTC, the security breach resulted in millions of dollars in fraudulent purchases. The settlement will require CardSystems and Pay By Touch to implement a comprehensive information security program and obtain audits by an

independent third-party security professional every other year for 20 years. The settlement was announced February 23, 2006.

This is another case targeting companies whose security practices compromised consumers' confidential financial information, and the first the Commission has brought against a credit card processor.

“CardSystems kept information it had no reason to keep and then stored it in a way that put consumers' financial information at risk,” said Deborah Platt Majoras, Chairman of the FTC. “Any company that keeps sensitive consumer information must take steps to ensure that the data is held in a secure manner.”

According to the FTC, CardSystems provided merchants with products and services used in “authorization processing” – obtaining approval for credit and debit card purchases from the banks that issued the cards. Last year, it processed about 210 million card purchases, totaling more than \$15 billion, for more than 119,000 small and mid-size merchants. In processing these transactions, CardSystems collected personal information from the magnetic strip of the card, including the card number, expiration date, and other data. CardSystems then stored this information on its computer network. Pay By Touch acquired CardSystems' assets in December 2005, and now processes transactions for the same merchants CardSystems served.

The FTC charged that CardSystems engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for sensitive consumer information. Specifically, the agency alleges that CardSystems:

- created unnecessary risks to the information by storing it;
- did not adequately assess the vulnerability of its computer network to commonly known or reasonably foreseeable attacks, including “Structured Query Language” injection attacks;
- did not implement simple, low-cost, and readily available defenses to such attacks;
- did not use strong passwords to prevent a hacker from gaining control over computers on its computer network and access to personal information stored on the network;
- did not use readily available security measures to limit access between computers on its network and between its computers and the Internet; and
- failed to employ sufficient measures to detect unauthorized access to personal information or to conduct security investigations.

According to the FTC's complaint, these practices compromised millions of credit and debit cards, and led to millions of dollars in fraudulent purchases. In addition, after the fraud was discovered, banks cancelled and re-issued thousands of credit cards, and

consumers experienced inconvenience, worry, and time loss dealing with the affected cards.

The proposed settlement requires CardSystems and Pay By Touch to establish and maintain a comprehensive information security program that includes administrative, technical, and physical safeguards. The settlement also requires them to obtain – every two years for the next 20 years – an audit from a qualified, independent, third-party professional that confirms that its security program meets the standards of the order, and to comply with standard bookkeeping and record-keeping provisions.

This case is similar to prior FTC actions involving alleged failures to secure credit and debit card information. As in the prior cases, CardSystems faces potential liability in the millions of dollars under bank procedures and in private litigation for losses related to the breach.

[http://www.ftc.gov/opa/2006/02/cardsystems\\_r.htm](http://www.ftc.gov/opa/2006/02/cardsystems_r.htm)

## 2. Federal Reserve Board

A. Banco Industrial de Venezuela, C.A. – Violation of Bank Secrecy Act/AML/OFAC/SARs – ordered to hire a consultant to fix their programs. Joint action with New York and Florida state banking departments. July 5, 2006.

<http://www.federalreserve.gov/boarddocs/press/enforcement/2006/20060714/attachment.pdf>

B. Bank of Tazewell – Alleged violation of Flood Insurance Requirements. July 12, 2006. Civil money penalty of \$4,000.

<http://www.federalreserve.gov/boarddocs/press/enforcement/2006/20060612/>

C. United Bank – Alleged violation of Flood Insurance Requirements. May 10, 2006. Civil money penalty of \$16,350.

<http://www.federalreserve.gov/boarddocs/press/enforcement/2006/20060510>

04/25/2006		<b>Texas State Bank, McAllen, TX</b>		Written Agreement
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AML issues–Must submit compliance procedures, periodic reports

<http://www.federalreserve.gov/boarddocs/press/enforcement/2006/200605192/attachment.pdf>

04/21/2006		<b>The Bank of New York, New York, NY</b>		Written Agreement <a href="#">Press Release</a>
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AML issues– Must submit compliance procedures, periodic reports

<http://www.federalreserve.gov/boarddocs/press/enforcement/2006/20060424/attachment.pdf>

04/12/2006		<b>Sella Holding Banca, S.p.A., Biella, Italy and Sella Holding Banca. S.p.A. Miami Agency, Miami, FL</b>		Written Agreement <a href="#">Press Rel</a>
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AML Issues.

<http://www.federalreserve.gov/boarddocs/press/enforcement/2006/200604244/attachment.pdf>

### 3. OCC

The Office of Inspector General of the Department of the Treasury issued its audit report related to OCC's oversight of Bank Secrecy Act (BSA) compliance at Wells Fargo. In 2005 OCC issued an informal, nonpublic safety and soundness enforcement action rather than a formal enforcement action, as recommended by the examiner. This decision was later criticized in Congress especially in light of the OCC's purported soft treatment of Riggs Bank prior to its aggressive actions against Riggs. The IG report takes the position that the Comptroller's decision to reverse the examiner was incorrect. This report is likely to strengthen the hands of examiners and their ground level decisionmaking against potential reversals by senior management at OCC who consider the institution's regulatory posture and relationship as a whole. In turn, this puts more emphasis on making sure that the bank's position is presented fully to the examiners prior to an initial decision.

Order Number	Issue Date	Institution City, State	Type	Subject/Comments
2006 OCC Enf. Dec. LEXIS 99; OCC NR #2006-41	5/9/2006	Terrabank National Association, Miami, Florida	Consent Order	AML + safety and soundness
2006 OCC Enf. Dec. LEXIS 94; OCC NR #2006-29	4/20/06	Bangkok Bank Public Company Limited, New York, New York, a Federal branch of Bangkok Bank Public Company Limited, Bangkok, Thailand	Consent Order	AML issues
2006 OCC Enf. Dec. LEXIS 29; OCC NR #2006-1	1/25/06	PineBank, National Association, Miami, Florida	Consent Order	AML issues
2006 OCC Enf. Dec. LEXIS 33;	1/19/06	The Summit National Bank, Atlanta, Georgia	Consent Order	AML issues

OCC NR #2006-2				
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#### 4. FDIC

Issue (mm/dd/yy)	Banking organization	Enforcement action	Paragraph & Docket Number(s) (ctrl-click to display)	Comments
07/21/06	<b>MOUNTAIN HERITAGE BANK</b> CLAYTON, GEORGIA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06- 093k – PDF</a>	Flood– \$1,800 CMP
07/21/06	<b>BLACKHAWK STATE BANK</b> MILAN, ILLINOIS	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-05- 218k – PDF</a>	Flood– \$3,400 CMP
07/15/06	<b>UNITED BANK OF MICHIGAN</b> GRAND RAPIDS, MICHIGAN	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06- 088k – PDF</a>	Flood– \$1,750 CMP
07/15/06	<b>BANK OF WISCONSIN DELLS</b> WISCONSIN DELLS, WISCONSIN	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06- 069k – PDF</a>	Flood– \$7900 CMP
07/05/06	<b>FIRST BANK OF THE SOUTH</b> LAWRENCEVILLE, GEORGIA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06- 018k – PDF</a>	Flood– \$1,900 CMP
07/05/06	<b>SOUTHERN COMMUNITY BANK</b> FAYETTEVILLE, GEORGIA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-05- 234k – PDF</a>	Flood– \$2,400 CMP
07/05/06	<b>WEST BANK</b> WEST DES MOINES, IOWA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06- 055k – PDF</a>	Flood– \$5,440 CMP
07/05/06	<b>FARMERS &amp; MERCHANTS BANK OF KENDALL</b> KENDALL, WISCONSIN	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06- 057k – PDF</a>	Flood– \$5,555 CMP
05/22/06	<b>LABE BANK</b> CHICAGO, ILLINOIS	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06- 064k</a>	HMDA– \$5,000 CMP

05/18/06	<b>LIBERTY BANK OF NEW YORK</b> NEW YORK, NEW YORK	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06-083k</a>	Apparently AML—\$300,000 CMP to FDIC & FinCEN, \$300,000 CMP to state banking department
05/15/06	<b>FIRST GASTON BANK OF NORTH CAROLINA</b> GASTONIA, NORTH CAROLINA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06-076k</a>	HMDA—\$6,000
05/11/06	<b>GREAT EASTERN BANK OF FLORIDA</b> MIAMI, FLORIDA	ORDER TO CEASE AND DESIST	<a href="#">Docket No. FDIC-06-037b</a>	AML
05/03/06	<b>MCNB BANK AND TRUST CO.</b> WELCH, WEST VIRGINIA	ORDER TO CEASE AND DESIST	<a href="#">Docket No. FDIC-06-029b</a>	AML Issues
04/27/06	<b>FIRST SENTRY BANK, INC.</b> HUNTINGTON, WEST VIRGINIA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06-017k</a>	Flood—\$10,875 CMP
04/25/06	<b>OMNI BANK</b> METAIRIE, LOUISIANA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-05-051k</a>	Flood—\$22,330 CMP
04/10/06	<b>SAN JOAQUIN BANK</b> BAKERSFIELD, CALIFORNIA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06-016k</a>	Flood—\$600 CMP
04/10/06	<b>PREFERRED BANK</b> LOS ANGELES, CALIFORNIA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-06-051k</a>	Flood—\$450 CMP
04/08/06	<b>FIRST SECURITY STATE BANK</b> CHARLESTON, MISSOURI	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">Docket No. FDIC-05-209k</a>	Flood—\$20,000 CMP
3/28/2006	<b>FARMERS &amp; MERCHANTS STATE BANK</b> BOISE, IDAHO	ORDER TO PAY	<a href="#">¶ 12557</a> FDIC-06-031k	Flood—\$36,290 CMP
3/19/2006	<b>THE PEOPLES BANK</b> BILOXI, MISSISSIPPI	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">¶ 12547</a> FDIC-05-114k	Flood—\$13,750 CMP
3/8/2006	<b>CHELSEA SAVINGS BANK</b> BELLE PLAINE, IOWA	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">¶ 12543</a> FDIC-05-216k	Flood—\$1,600 CMP

2/26/2006	<b>THE COTTONPORT BANK</b> COTTONPORT, LOUISIANA	ORDER TO CEASE AND DESIST	<a href="#">¶ 12542</a> FDIC-05- 207b	AML issues
2/7/2006	<b>BANK OF ODESSA</b> ODESSA, MISSOURI	ORDER TO PAY CIVIL MONEY PENALTY	<a href="#">¶ 12530</a> FDIC-05- 192k	HMDA- \$4,000 CMP

## 5. OTS

The most significant OTS settlement was its and the Financial Crimes Enforcement Network's (FinCEN) decision to each assess a \$10 million civil money penalty against BankAtlantic of Fort Lauderdale, Florida, for violations of the Bank Secrecy Act. OTS also issued a Cease and Desist Order requiring BankAtlantic to take certain corrective actions. BankAtlantic, without admitting or denying the allegations, consented to the payment of the civil money penalty and issuance of the Orders by FinCEN and the OTS. The action was announced April 26, 2006.

These actions demonstrate a coordinated effort on the part of the agencies that regulate and enforce the Bank Secrecy Act. In taking these actions, FinCEN and the OTS determined that BankAtlantic failed to implement an adequate Bank Secrecy Act anti-money laundering program that included internal controls and other measures to detect and report money laundering and other suspicious activity. In particular, the agencies found systemic defects in BankAtlantic's anti-money laundering program that resulted in the failure to timely file suspicious activity reports.

"This case, which involved tens of millions of dollars in unreported suspicious financial transactions, including more than \$10 million in suspected drug proceeds, is an example of serious and systemic violations of BSA requirements," said Robert W. Werner Director of FinCEN. "The actions taken today highlight how consequential it is for banks to have an effective anti-money laundering program in place to ensure that the financial system is not used to facilitate criminal activity."

OTS Director John Reich observed that, "the vast majority of insured depository institutions have BSA-compliant anti-money laundering programs in place. Today's action, however, is a reminder that institutions must remain vigilant to ensure BSA programs and systems are effectively implemented to detect and report potential money laundering activities."

Other actions include:

Order Number (ctrl-click to display)	Issue Date	Institution City, State	Type	Subject/Comments
<a href="#">ATL 2006-14</a>	06/23/2006	Independence FSB Washington, DC Docket 07173	Cease and Desist	CTR/AML/BSA
<a href="#">ATL 2006-13</a>	06/22/2006	Olde Cypress Community Bank Clewiston, FL Docket 02517	Civil Money Penalty	Flood Insurance \$4,200 civil money penalty ("CMP")

<a href="#">SA</a>	06/09/2006	Alliance, FSB Chicago, IL Docket 13824	Supervisory Agreement	AML/BSA issues
<a href="#">SA</a>	06/05/2006	Homestead Bank Ponchatoula, LA Docket 03606	Supervisory Agreement	BSA + safety and soundness issues
<a href="#">ATL 06-12</a>	05/30/2006	Plantation FB Pawleys Island, SC Docket 08349	Cease and Desist	AML/BSA + safety and soundness issues
<a href="#">ATL 2006-11</a>	05/23/2006	First Federal Bank of North Florida Palatka, FL Docket 02558	Civil Money Penalty	Flood insurance-\$770.00
<a href="#">SA</a>	05/23/2006	Lafayette SB Lafayette, IN Docket 08050	Supervisory Agreement	BSA/SARs, appraisal requirement, ECOA, HMDA (not specified)
<a href="#">NE 06-05</a>	05/23/2006	Dwelling House Savings and Loan Association Pittsburgh, PA Docket 07178	Cease and Desist	BSA
<a href="#">ATL-2006-07</a>	04/27/2006	BankAtlantic Fort Lauderdale, FL Docket 05551	Civil Money Penalty	BSA \$10 million CMP (referenced above)
<a href="#">ATL-2006-06</a>	04/27/2006	BankAtlantic Fort Lauderdale, FL Docket 05551	Cease and Desist	BSA (same as above)
<a href="#">NE 06-03</a>	04/18/2006	The Home Building and Loan Company Greenfield, OH Docket 08107	Civil Money Penalty	AML-order violation – \$15,000 CMP
<a href="#">ATL 2006-05</a>	04/10/2006	United Trust Bank Bridgeview, IL Docket 16310	Cease and Desist	BSA
<a href="#">ATL 2006-01</a>	01/05/2006	Peoples First Community Bank Panama City, FL Docket 07939	Civil Money Penalty	Flood – \$2450 CMP

