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MORTGAGE SERVICING

**Implementing New Industry Standards Post-Fairbanks
Practical Strategies for Reducing Legal Risks**

**May 24 and 25, 2004
Hyatt Regency Washington on Capitol Hill, Washington DC**

Senior government officials, mortgage servicing executives and top lending attorneys will provide expert legal, tactical and practical information on:

- The ramifications of the *Fairbanks* settlement guidelines on the mortgage servicing industry
- The latest federal regulations and enforcement activities
- State regulatory initiatives on mortgage servicing
- How to incorporate the *Fairbanks* guidelines into your client's servicing processes
- Strategies for creating an internal compliance program for servicing
- Avoiding liability for third party conduct
- Class action litigation on mortgage servicing – and how to avoid being the next target
- The effect of *Fairbanks* on the secondary market and GSE's

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Are You Prepared for the Intense Scrutiny of the FTC Regarding Your Servicing Processes?

Do Your Servicing Methods Measure up to the *Fairbanks* Standards?

The landmark settlement between **Fairbanks Capital Corporation** and the **FTC** and **HUD** last November heralded a new focus of federal enforcement for the mortgage industry.

While mortgage lending practices have been a popular target for the past few years, servicing in the non-prime market has become the major concern of the FTC, HUD, banking regulators, consumer advocacy groups and aggressive State Attorneys General. Now that there are explicit guidelines stemming from the *Fairbanks* settlement, mortgage lenders are scrambling to enact their own "best practices" servicing model in hopes of avoiding class action suits and liability on the federal, state and individual level. With penalties and settlements reaching the tens of millions of dollars, potential negative effects on the grading of mortgage backed securities and the servicing companies, the costs of not being fully informed are enormous.

American Conference Institute has developed this timely event to provide you with an intensive and focused assessment of what the *Fairbanks* settlement means for your company, how to implement its guidelines, and its overall significance on the mortgage industry as a whole.

Senior industry insiders from **Ameriquest Mortgage Company, Bank of America, Fairbanks Capital Corporation, Fannie Mae, Freddie Mac, GMAC Mortgage, New Century Mortgage Corporation, Standard & Poor's, Moody's Investors Service, National Home Equity Mortgage Association**, and the **National Community Reinvestment Coalition** will give their expert advice on:

- New paradigms for payment, acceleration and force-placed insurance
- Implementing post-*Fairbanks* processes for charging fees, disclosures and disputes
- The status of *Fairbanks* as an industry standard
- The OCC pre-emption rule and its effect on mortgage servicing
- How to create a first-rate internal compliance environment
- Identifying conflicts of interest when dealing with third party mortgage servicers
- What servicers should be doing to protect themselves from potential class action suits

In addition, key representatives from the **US Attorney's Office, US Department of Housing and Urban Development, Federal Trade Commission, Office of the Comptroller of the Currency, California Department of Corporations**, and the **North Carolina Office of the Commissioner of Banks** will offer their insights and knowledge on how to reduce your legal exposure in the wake of this important development.

Don't miss this opportunity to get answers to vital questions from those on the front lines and speak with the very people who were involved in the *Fairbanks* settlement. You will also benefit from the speakers' comprehensive program materials created expressly for this event. Reserve your spot at this important event by registering early. Call **1-888-ACI-2480**, fax your registration form to **1-877-927-1563** or register online at **www.AmericanConference.com** today!

Mortgage Servicing

Monday, May 24, 2004

7:30 Registration & Continental Breakfast

8:30 Co-Chairs' Opening Remarks

Bennet Koren
Partner
McGlinchey Stafford PLLC (New Orleans, LA)

Jeffrey P. Naimon
Partner
Buckley Kolar LLP (Washington, DC)

8:45 The Impact of the Fairbanks Settlement on the Mortgage Industry

William Smith
General Counsel
Option One Mortgage Corporation (Irvine, CA)

David Berenbaum
Senior Vice President, Policy
Director of Civil Rights
National Community Reinvestment Coalition
(Washington, DC)

Paul Hancock
Counsel
Hogan & Hartson LLP (Miami, FL)

- What industry segments does *Fairbanks* impact?
 - prime market vs. non-prime
 - state chartered lenders
 - banks vs. mortgage shops
 - loan originators
 - mortgage securitizers
- What do companies need to do now?
 - is there a need to implement a formal policy?
 - applicable law underlying the specific *Fairbanks* requirements
 - has *Fairbanks* created a federal standard?
 - overcoming barriers to implementation
- Risks associated with implementation of the *Fairbanks* guidelines
- Will new standards prevent future innovation in servicing and collection practices?
- Do the *Fairbanks* standards institutionalize secondary review of disputes?
- Will *Fairbanks* guidelines be used as a UDAP standard?
- Do the new guidelines require expanded corporate relations departments?

9:45 Trends and Developments in Federal Regulation of Mortgage Servicing

Michael Blume
Assistant US Attorney
US Attorney's Office
(Philadelphia, PA)

Lucy Morris
Senior Attorney, Bureau of Consumer Protection
Federal Trade Commission (Washington, DC)

Michael Bylsma (invited)
Director, Community Law Division
Office of the Comptroller of the Currency
(Washington, DC)

Andrew Sandler
Partner
Skadden, Arps, Slate, Meagher & Flom LLP
(Washington, DC)

TBA
US Department of Housing and Urban
Development (Washington, DC)

Moderator:

Paul Hancock
Counsel
Hogan & Hartson LLP (Miami, FL)

- The latest regulations from FTC, HUD, FDIC and OCC
 - is *Fairbanks* officially an industry standard?
 - what have the government enforcement agencies been doing to curb contested servicing practices?
 - plans for additional guidelines/industry recommendations
 - how will the new focus on mortgage servicing impact RESPA and TILA as they apply to loan servicing in the non-prime arena?
- Upcoming enforcement actions
 - the "hot button" allegations
 - what do the enforcers consider when reviewing allegations?
 - what other practices not in the *Fairbanks* settlement should you avoid?
- Actions and procedures that can place your company at risk for federal regulatory action
- The outlook for federal pre-emption of state initiatives

11:00 Coffee Break ☞

11:15 State Initiatives on Mortgage Servicing

Joseph Smith
Commissioner of Banks
North Carolina Office of the Commissioner of Banks
(Raleigh, NC)

William P. Wood
California Corporations Commissioner
California Department of Corporations
(Sacramento, CA)

Bennet Koren
Partner
McGlinchey Stafford PLLC (New Orleans, LA)

Moderator:

Jeffrey Zeltzer
Executive Director
National Home Equity Mortgage Association
(Washington, DC)

- The effect of the OCC pre-emption on state mortgage servicing initiatives
- Will states incorporate the settlement terms?
- New and upcoming abusive servicing state regulations

Mortgage Servicing

- How to keep track of the multitude of State law regulatory requirements
- State regulations on privacy relating to mortgage servicing
- Will mortgage servicing regulations expand along a track similar to anti-predatory lending laws?
- Servicing in states with additional requirements
- What the lack of a "federal umbrella" means for mortgage servicers
- Understanding the nuances between federal law mandates and UDPA
- Reconciling the FDCA with UDPA, FTC laws and Section 5 consent agreements
- Creditors and compliance with collections law – limitations on use of the UDPA and other state laws

- using disclosures to justify fees – timing, content, agreements vs. statements
- notices of default
- Bankruptcy
 - actions to take when customers file for bankruptcy and discharge debt but do not reaffirm
 - what fees are chargeable in bankruptcy?
 - can servicers outsource bankruptcy processing and charge the costs to the customer?
- Customer disputes and risk management
 - analyzing risks associated with fees/practices
 - avoiding the top servicing snafus
 - systems controls – what needs to be in place?
 - improving customer service: training, incentives, empowerment, responsiveness
 - responding to and managing disputes – how is it done?
 - how Fannie and Freddie deal with customer disputes
- Ensuring that your processes do not discriminate against minorities and the elderly

12:30 Networking Luncheon

1:45 Fees, Disclosures and Disputes: Creating and Implementing Post-Fairbanks Policies

Jeffrey P. Naimon
Partner
Buckley Kolar LLP
(Washington, DC)

Stephen Ornstein
Partner
Thacher, Proffitt, & Wood LLP
(Washington, DC)

Loretta Salzano
Partner, Franzen & Salzano P.C.
(Atlanta, GA)

- Allowable fees post-Fairbanks
 - the impact on state law as well as the federal agencies
 - when fees can be incurred
 - have the fees been contracted for?
 - is the fee reasonable?
 - payment hierarchies
 - risks associated with various types of fees – mandatory and supplementary services
 - processing insurance premium payments
 - complying with the FDCPA and other federal statutory, regulatory and common law
 - the applicability of FDCPA to creditors collecting on their own behalf
 - changes Fannie & Freddie have implemented with regard to servicing fees
 - what the limits are where the law is not explicit
 - how much notice is needed before imposition
 - customer notification – the intent to begin a collection process before assessment
 - response time
 - contacting borrowers
 - layering risk – collecting fees from affiliated third parties performing default services
- Disclosures
 - what does the law require?
 - proper procedures for ARMS

3:15 Afternoon Refreshment Break

3:30 Payment, Acceleration and Force-Placed Insurance: Adhering to the Latest Guidelines

Melanie Brody
Partner, Kirkpatrick & Lockhart LLP
(Washington, DC)

- Payment posting and handling procedures
 - reforms to application of payments
 - when late fees need to be or should not be assessed
 - what is considered improper under the current guidelines?
 - processing checks the next business day
 - procedures that must be avoided
- Acceleration – how the rules have changed due to Fairbanks
 - pre-foreclosure procedures: who it applies to, what it all means
 - the use of foreclosure as a scare tactic
 - the foreclosure process
 - insuring reasonable forbearance in lieu of foreclosure
 - flexibility in foreclosure and acceleration
 - attorney's fees in accelerated foreclosure actions
- Force-placed insurance – what is allowed under Fairbanks?
 - comparing your company's procedures with Fairbanks
 - avoiding slips between interdepartmental cracks
 - when can a servicer provide force-placed insurance?
 - avoiding allegations of abuse when force-placing insurance
 - subsidiary responsibility
 - balancing the investor's best interests with customer's best interest
 - Fannie and Freddie's guidelines on force-placed insurance
 - why general administration is the key

4:15

Developing and Implementing an Internal Compliance Program for Mortgage Servicing

Greg Harmer

General Counsel

Fairbanks Capital Corporation (Salt Lake City, UT) 9:45

Melanie Brody

Partner

Kirkpatrick & Lockhart LLP (Washington, DC)

- Creating a first-rate control environment
 - a solid understanding of processes
 - continual testing environment
 - fixing what's broken quickly
 - monitoring the right people
 - sufficient money to put into the program
- Procedures that need to be in place
- Monitoring practices and employee conduct
- Privacy considerations
- When case law-mandated methods are required to compel lending institutions into having a compliance review to avoid a *Fairbanks*-type problem
- The impact of defaults on servicing practices
- Due diligence by lenders
 - ensuring their servicers are high quality and have first-rate processes in place
- The role of counsel in overseeing internal compliance

- relating to the due diligence performed
- servicer vs. sub-servicer liability
- layering risk – use of affiliated third parties to perform default services
- administrative actions vs. lawsuits
- collections vs. loan servicing

Working With Consumer Advocates to Minimize Potential Claims

Mark Loewenthal

Senior VP Corporate Affairs & Chief Privacy Officer
New Century Mortgage Corporation (Irvine, CA)

David Berenbaum

Senior Vice President, Policy

Director of Civil Rights

National Community Reinvestment Committee
(Washington, DC)

- The role of the consumer advocate
 - how can servicers work cooperatively with consumer advocates to evaluate and mediate claims?
 - how can servicers collaborate on remedial loan programs?
- Practical advice on handling the *Fairbanks* initiative
 - what the FTC and HUD are looking for
 - what consumer advocates object to
- How consumer advocates can help repackaging loans
 - how can prime and non-prime servicers support post-loan origination counseling programs?
- Forbearance—avoiding the pitfall of a “one size fits all” approach
- Coordinating with a consumer advocate's best practices task force to proactively avoid regulators and improve servicing processes
- Making customers aware of consumer advocates as places to go for help
- What role should credit counseling play in mortgage servicing?
- How does housing counseling fit into the servicing mix?
 - foreclosure prevention initiatives

5:15

Conference Adjourns for the Day

Tuesday, May 25, 2004

8:00

Continental Breakfast

8:30

Co-Chairs' Opening Remarks

8:45

Third Parties and Affiliated Providers: Avoiding Liability and Managing Conflicts

Donald C. Lampe

Partner, Womble Carlyle Sandridge & Rice PLLC
(Charlotte, NC)

Andrew Sandler

Partner

Skadden, Arps, Slate, Meagher & Flom LLP
(Washington, DC)

- Identifying conflicts of interest when mortgage companies are related to their servicers
- Changes you should make to master servicer agreements in light of the *Fairbanks* settlement
- How will concerns about predatory servicing and *Fairbanks* manifest themselves in the structured finance documents and pooling servicing agreements?
- Liability for servicer conduct
 - dealing with the FTC
 - originator liability and secondary market issues
 - discreet servicing
 - separating servicing from origination
 - the tension between servicing and origination

10:45

Morning Coffee Break

11:00

Reducing the Risk of Class Actions Against Servicing Practices

Brian Brooks

Partner, O'Melveny & Myers LLP (Washington, DC)

Benjamin Klubes

Partner, Skadden, Arps, Slate, Meagher & Flom LLP
(Washington, DC)

Joseph Lunnyak

Partner, Reed Smith LLP (Los Angeles, CA)

Moderator:

Jeffrey P. Naimon


Partner, Buckley Kolar LLP (Washington, DC)

- Class action suits on the radar
- Projections on plaintiff bar's use of *Fairbanks* as a platform for suits against other lending institutions
- State AG's who are considering actions

Mortgage Servicing

- Tips to help servicing companies avoid class action suits
 - agency issues: how a class action suit may be avoided by auditing the servicing company on behalf of the mortgage company
 - what can a mortgage company/servicer do to protect themselves from a class action suit?
- Applicable law
 - preemption
 - choice of law consideration
- Defenses once allegations have been made
- Early avoidance strategies
- What are other servicers doing to monitor potential class action suits?
- Costs to the customers for class action suits
 - the charging of fees in relation to class action suits
 - charging customers Fed Ex bills to get the full disclosure
- Strategies used by plaintiffs when preparing class actions in the current environment

- Where the industry is headed
- The impact on industry of previous "top" non-prime servicers imploding
 - supplier capacity and the effect on servicing quality
 - how to dispel the "black eye" on the industry as a result of the *Fairbanks* settlement
- The role of counsel regarding maintenance of a company's best practices
- Should your company be retaining attorneys in preparation for litigation?
- Customer satisfaction
 - who is responsible (servicer or originator)?
 - establishing a team
 - the impact on servicing
- The treatment of newly acquired loans currently in default
 - definition of "currently in default" as it relates to the Fair Debt and Practices act
- "Servicer" vs. "collector" – has the line been blurred?

12:30 Networking Luncheon 

1:45 **Best Practices Roundtable:
Post-Fairbanks Mortgage Servicing**

Jason Grohotolski
Associate Analyst
Moody's Investors Service (New York, NY)

Mark Loewenthal
Sr. VP Corporate Affairs & Chief Privacy Officer
New Century Mortgage Corporation (Irvine, CA)

Frank Madden
Director, Quality Assurance
GMAC (Horsham, PA)

Randal Shields
Associate General Counsel
Bank of America (Charlotte, NC)

Moderator:

Adam J. Bass
Senior Executive Vice President & Vice Chairman
Ameriquest Mortgage Co. (Orange, CA)

- Implementing a best practices procedure – what steps should you take?
- Adopting the FTC-imposed *Fairbanks* standards
- How to train service compliance professionals to act appropriately, review the actual processes, and ensure the *Fairbanks* guidelines are met
 - common-sense and basic business process implementation
 - training HR staff and customer service representatives
 - maximizing quality control, internal audit, and compliance resources
- Uniform best practices among the top non-prime servicers
 - top practices within primary servicing areas
- Mitigating losses once allegations and lawsuits have been initiated

3:00

Servicing Practices and the Secondary Market: The Rating Agencies and GSEs

Carol Evans
Associate General Counsel
Fannie Mae (Washington, DC)

Richard Koch
Director, Structured Finance Ratings
Standard & Poor's (New York, NY)

TBA
Freddie Mac, (McLean, VA)

Questions about your servicing practices can have a damaging effect on your company's overall rating. Richard Koch of Standard & Poor's will show you how a poor servicing rating can lower the value of issued mortgage backed securities. In addition, Carol Evans of Fannie Mae and a representative from Freddie Mac will show you how the GSE's are responding to the Fairbanks guidelines and how their reaction will affect you.

- The impact of the *Fairbanks* settlement on the secondary market
 - dealing with potential conflicts
 - balancing delinquency intervention, credit counseling and foreclosure prevention
 - initiatives with bondholder interests
- How rating agencies play a part in the success of a servicing company
- The rating agencies and public perception of servicers – distinguishing your company from *Fairbanks*
- How do class-action suits affect servicer ratings?
- Fannie Mae and Freddie Mac servicing practices
- The GSEs policies and expectations regarding current "hot button" issues, such as:
 - loss mitigation
 - fees
 - force-placed insurance
 - best practices that are considered potentially unfair or abusive

4:00

End of Conference

EXPERT FACULTY

Chairs

Bennet Koren

Partner
McGlinchey Stafford PLLC

Jeffrey P. Naimon

Partner
Buckley Kolar LLP

Speakers

Adam J. Bass

Senior Executive Vice President
& Vice Chairman
Ameriquest Mortgage Company

David Berenbaum

Senior Vice President, Policy
Director of Civil Rights
National Community
Reinvestment Committee

Michael Blume

Assistant U.S. Attorney
U.S. Attorney's Office

Melanie Brody

Partner
Kirkpatrick and Lockhart LLP

Brian Brooks

Partner
O Melveny & Myers LLP

Michael Bylsma (invited)

Director
Community Law Division
Office of the Comptroller
of the Currency

Carol Evans

Associate General Counsel
Fannie Mae

Jason Grohotolski

Associate Analyst
Moody's Investors Service

Paul F. Hancock

Counsel
Hogan & Hartson LLP

Greg Harmer

General Counsel
Fairbanks Capital Corporation

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Skadden, Arps, Slate,
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Partner
Skadden, Arps, Slate,
Meagher & Flom LLP

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Associate General Counsel
Bank of America

Joseph Smith

Commissioner of Banks
North Carolina Office of the
Commissioner of Banks

William Smith

General Counsel
Option One Mortgage Corporation

William P. Wood

California Corporations
Commissioner
California Department
of Corporations

Jeffrey Zeltzer

Executive Director
National Home Equity
Mortgage Association

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WHO SHOULD ATTEND

- **Counsel for Mortgage Servicers, Financial Institutions & Mortgage Lenders**
- **Operations & Compliance Professionals for Mortgage Servicers & Lenders**
- **Consumer Lenders**
- **Consumer Finance Attorneys**

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MORTGAGE SERVICING

Implementing New Industry Standards Post-Fairbanks
Practical Strategies for Reducing Legal Risks

May 24 and 25, 2004

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