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New York City

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Preface

Contrary to the breathless speculation of some members of the punditry, the regulation of consumer financial services did not end with the results of the 2016 election. In fact, as the industry flourished with technological advances and a continually improving economy, the agencies, legislators and courts charged with its oversight remained as active and vigilant as ever. While the Trump Administration has promised significant curtailment of the seminal Dodd-Frank Act and its offspring, and the Financial CHOICE Act loomed on the horizon as this edition went to press, the foundational consumer protection laws regulating consumer credit (such as the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Debt Collection Practices Act, the Telephone Consumer Protection Act, and many others) will continue to present challenges for those whose business is connected with the extension of consumer credit unless and until Congress alters that framework. As this book went to press, proposed legislation could greatly reduce the CFPB's powers but an agency with some of its current powers would remain.

In this, the Sixth Edition of the leading desk reference for consumer financial services lawyers and compliance professionals, we present our readers with a substantial revision of those chapters relating to the bedrock laws and regulations affecting consumer financial services. This effort includes first-time contributions from the financial services teams at Manatt, Phelps & Phillips, and McGlinchey Stafford, who offer a fresh perspective on these laws. Likewise, this edition also includes an entirely new chapter on Marketplace Lending, one of the latest product developments to impact consumer lending.

The 2017 Edition provides updated chapters on the primary federal laws affecting practitioners in the field, including the Truth in Lending Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Electronic Signatures in Global and National Commerce Act (ESIGN), the Telephone Consumer Protection Act, the consumer

provisions of the Bankruptcy Code, and the Fair Debt Collection Practices Act. For those focused on mortgage lending and servicing, the book has enhanced chapters on the Real Estate Settlement Procedures Act, Mortgage Loan Servicing, Licensing, and Residential Foreclosures and Evictions. For those who deal with automotive finance, we offer an expanded chapter on that topic that includes fair lending issues. And our chapters on Credit Cards, Military Lending, and Short-Term Lending address three other sources of consumer credit. Likewise, numerous other chapters have received substantial updates, including the chapters devoted to CFPB enforcement, which includes a first-time discussion on the CFPB's enforcement manual, and vendor management, which has received updated guidance from a key regulator.

Whether our reader is a seasoned practitioner or someone just entering the world of consumer finance, this book is intended to provide some basic answers to the many questions facing lawyers in this field. While the authors have attempted to offer a reasonably comprehensive treatise, no single-volume desk reference could possibly cover the entire law of consumer financial services. In addition to federal law, the legislatures of the fifty states and the District of Columbia—and even some local governments—have enacted myriad laws and ordinances affecting consumer lending; these state and municipal laws and ordinances are largely beyond the scope of this book.

The Dodd-Frank Act created a brave new world, one that has already resulted in major changes in the way consumer credit is offered to consumers, and the manner in which the relevant laws are enforced. Today, the structures created in response to the 2008 recession face an uncertain future in which the CFPB may not survive in its original form—the jury was still out when this edition went to press. Nevertheless, consumer financial services professionals would be remiss to ignore the myriad protections that will remain and that will continue to be the subject of prudential regulation and enforcement. Simply put, political questions offer no comfort to those whose job—today, tomorrow and for the foreseeable future—requires them to stay on the cutting edge of consumer finance issues. The authors are

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pleased that this treatise has already allowed so many practitioners, compliance professionals, and other readers to advance their understanding of, and compliance with, the various laws affecting consumer financial services.

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Michael Gilman

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Thomas M. Hanson and Brett J. Natarelli

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Brett J. Natarelli

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Theodore W. Seitz and Kyle M. Asher

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Todd Gale and Michael F. Derksen

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Benjamin P. Saul, Katherine Lamberth, and Jeffrey R. Fine

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