



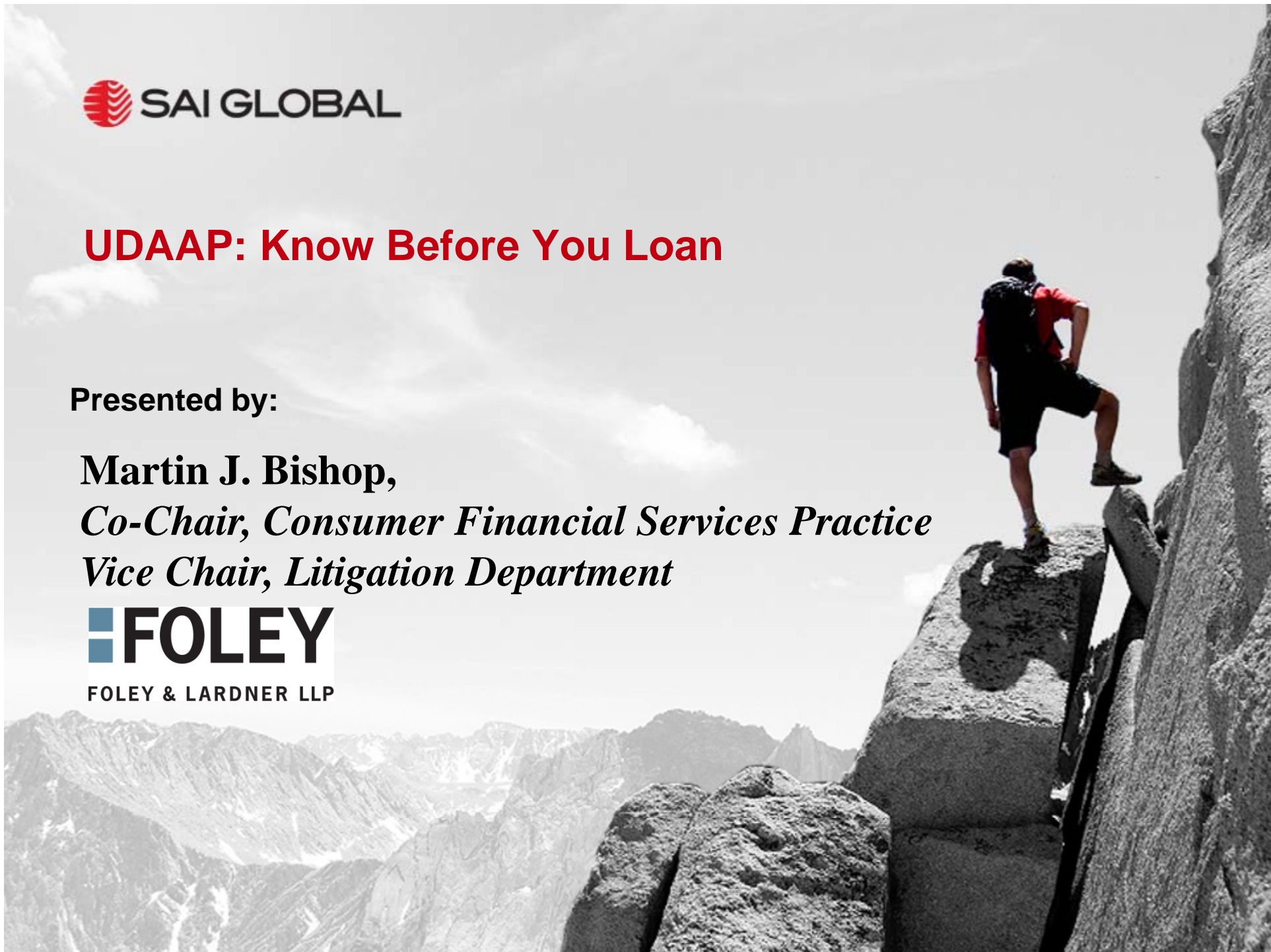
UDAAP: Know Before You Loan

Presented by:

Martin J. Bishop,
Co-Chair, Consumer Financial Services Practice
Vice Chair, Litigation Department

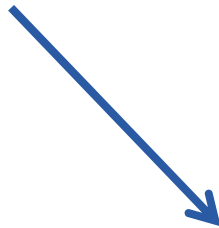
 **FOLEY**

FOLEY & LARDNER LLP



Compliance 360[®]

- GRC Software Applications



- Compliance and Ethics Training
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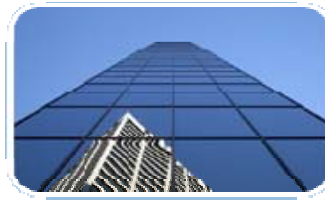
Chief Compliance Officer

Chief Risk Officer

CEO/ Board

General Counsel

Internal Auditors



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INTRODUCTION

UDAAP: Know Before You Loan

Unfair, Deceptive, or Abusive
Acts or Practices





THE TRUFFLE ESSENCE ANALOGY



UDAAP = FAIRNESS

Are Your Products and Services Fair?

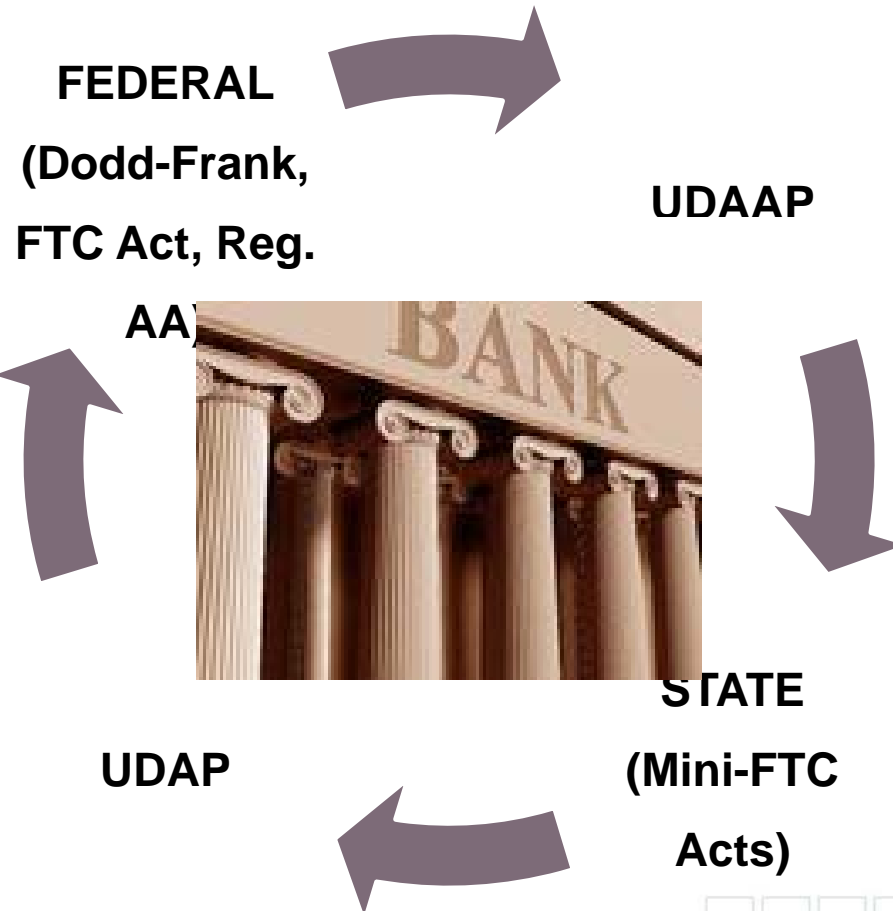


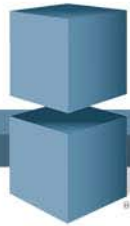
- Equal Outcomes?
- Equitable Treatment?
- Comparable Opportunities?
- Absence of Predictive Bias?





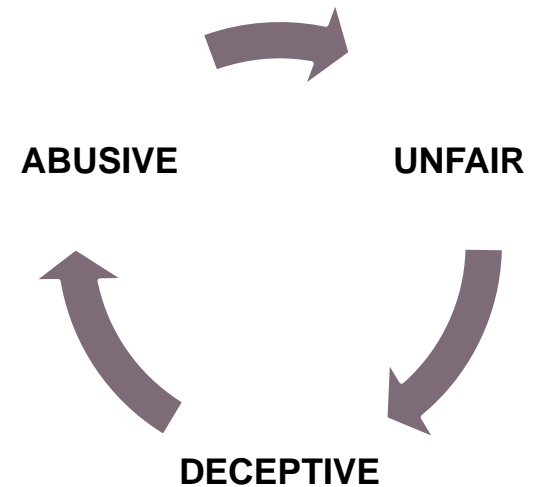
WHAT IS UDAAP?





UDAAP

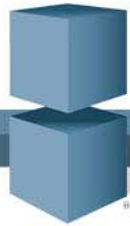
Section 1031 of the Dodd-Frank Act empowers the Bureau “to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.”



Audience Polling Question

How has the creation of the CFPB and the changes in UDAAP affected your company?

(select all that apply)



UNFAIR - Definition

- The act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and
- Such substantial injury is not outweighed by countervailing benefits to consumers or to competition.





UNFAIR

- Taking Advantage
- “There is no limit to human inventiveness in this field.”
- “Substantial Injury:”
 - Small Harm to Many Consumers
 - Significant Risk of Concrete Harm
- “Reasonably Avoidable”
 - Lack of Free and Informed Choice

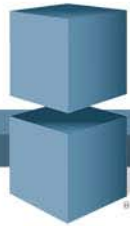




UNFAIR

- Case Study:
FTC v. Neovi, Inc., et al. (“Qchex”)

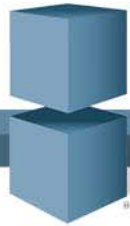




DECEPTIVE - Definition

- Material representation, omission or practice that, from the perspective of a consumer acting reasonably under the circumstances, misleads, or is likely to mislead, the consumer.

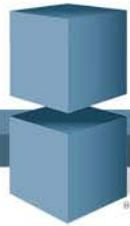




DECEPTIVE

- Fraud, but less stringent.
- Actual deception not required.
- Misleading a consumer by words, silence, or action.
- Good faith is not a defense.

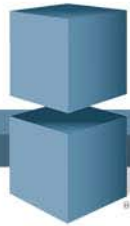




DECEPTIVE

- Case Study:
Richard Cordray v. Mortgage Servicers





ABUSIVE - Definition

- Material interference with the ability of a consumer to understand a term or condition of a consumer financial product or service; or
- Taking unreasonable advantage of –
 - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or
 - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.



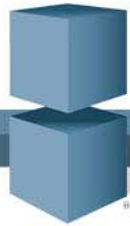
ABUSIVE

The Most Feared Word in Dodd-Frank?



- Unconscionability?
- Predatory Lending?
- Suitability?
- Age-Specific Products?
- Financial Illiteracy?





ABUSIVE – From the Bureau

- “Although abusive acts may be unfair or deceptive, examiners should be aware that the legal standards for abusive, unfair, and deceptive each are separate.”





Richard Cordray on Abusive

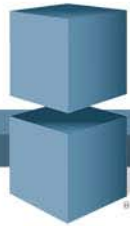
- Bureau unlikely to define
- Presumptive
- “We could perhaps clarify.”
- The Bureau’s guidance on the term is in the examination manual.
- “[T]here could be a practice that would not be unfair but that would be abusive.”
- Abusive “is something that we’re going to have to measure on a facts and circumstances basis as we go.”
- “There’s a gray area and a core.”



Audience Polling Question

What is your organization doing to demonstrate compliance with UDAAP?

(select all that apply)



CAPITAL ONE BANK SETTLEMENT

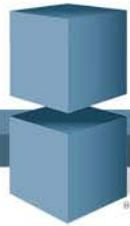
- UDAAP/Deceptive Marketing Enforcement Action
- \$140 MM Refund
- \$25 MM Penalty
- CFPB: You Have Been Warned!





REALLY??





Is UDAAP Really Such A Big Deal?

The Bureau's Vision:

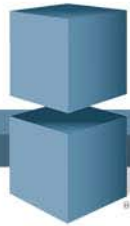
A consumer finance market place:

...where customers can see prices and risks up front and where they can easily make product comparisons;

...in which no one can build a business model around unfair, deceptive, or abusive practices;

...that works for American consumers, responsible providers, and the economy as a whole.





SOLUTIONS TO MANAGE THE RISK

- Bring Compliance and Legal Into the Room
- Incentivize Compliance and Ethical Conduct
- Facilitate Informed Choice
- Suitability
- Be Proactive
- Focus on Consumer Complaints

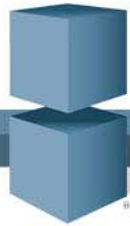




SOLUTIONS TO MANAGE THE RISK

- UDAAP Audit
- Training
- Monitoring
- Partners With “Skin in the Game”
- Analyze Revenue
- Statement on UDAAP
- Industry Collaboration



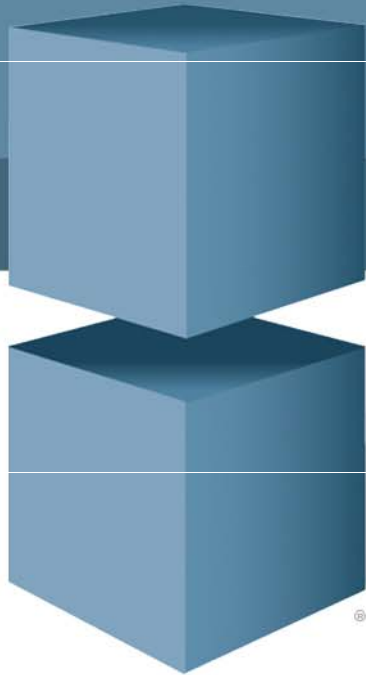


UDAAP Rulemaking?

“We have given some exam guidance around these concepts, and I think maybe we’ll have more to say over time.

I don’t anticipate us writing a rule around UDAAP. Again, I think a lot of the law is really clear in that area, and what is maybe not clear to people because they haven’t had experience with it has been specifically defined by Congress, so that is what it is. We’ll continue to develop as we go.”





Martin J. Bishop



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Audience Polling Question

Would you like to learn how Foley & Lardner or SAI Global can assist with your regulatory compliance initiatives?

(select all that apply)

Additional Resources

www.compliance360.com/webdemos

- Banking Demo Series - Part 2: CFPB / UDAAP Risk Assessments Automated in Compliance 360
- Banking Demo Series - Part 1: CFPB / UDAAP Compliance Self-Assessments Automated in Compliance 360



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