

Complaint

IN THE MATTER OF

LOUISIANA REAL ESTATE APPRAISERS BOARDCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket No. 9374; File No. 161 0068
Complaint, May 30, 2017 – Decision, April 1, 2022

This consent order addresses the Louisiana Real Estate Appraisers Board's restraints on price competition for appraisal services in Louisiana. The complaint alleges that the Board's promulgation and enforcement of Rule 31101 displaced competition and introduced a regime of rate regulation and that the Board's actions exceeded the scope of its obligations under the appraisal independence provisions in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. The consent order prohibits the Board from enforcing Rule 31101, or adopting or enforcing any other rule that sets, determines, or fixes compensation levels for appraisal services. The order also prohibits the Board from raising, fixing, maintaining, or stabilizing compensation levels for appraisal services; requiring or encouraging an AMC to pay any specific fee or range of fees for appraisal services; or requiring or encouraging appraisers to request any specific fee or range of fees for appraisal services.

Participants

For the *Commission*: Lisa Kopchik, J. Alexander Ansaldo, Thomas H. Brock, Wesley Carson, Rachel Frank, and Kenneth Merber.

For the *Respondents*: W. Stephen Cannon, Seth Greenstein, Richard Levine, James Kovacs, Allison Sheedy, and Wyatt Fore, Constantine Cannon LLP.

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Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (the "Commission"), having reason to believe that the Louisiana Real Estate Appraisers Board has violated Section 5 of the Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

NATURE OF THE CASE

1. The Louisiana Real Estate Appraisers Board (the "Board"), a state agency controlled by licensed real estate appraisers, has unreasonably restrained price competition for real estate appraisal services provided to appraisal management companies ("AMCs") in Louisiana. AMCs act as agents for lenders in arranging for real estate appraisals.

2. The Board adopted a regulation, effective as of November 20, 2013, purportedly implementing a requirement under federal and Louisiana law that AMCs pay appraisers a "customary and reasonable" fee for real estate appraisal services. In both promulgating and subsequently enforcing that regulation, the Board has unlawfully restrained price competition.

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3. First, by its express terms, the Board's fee regulation unreasonably restrains competition by displacing a marketplace determination of appraisal fees. Under the regulation, AMCs must compensate appraisers at a rate determined by one of three methods: (1) an AMC may use a survey of fees recently paid by lenders in the relevant geographic area; (2) an AMC may use a fee schedule established by the Board; or (3) an AMC may identify recently paid fees and adjust this base rate using six specified factors. By requiring one of these three methods, the Board prevents AMCs and appraisers from arriving at appraisal fees through bona fide negotiation and through the operation of the free market.

4. Second, in subsequently enforcing its regulation, the Board has unlawfully restrained price competition, effectively requiring AMCs to match or exceed appraisal rates listed in a published survey. To that end, the Board commissioned the Southeastern Louisiana University Business Research Center ("SLU Center") to survey recent fees paid by lenders. The SLU Center conducted three annual surveys, in 2013, 2014, and 2015, and produced three reports on fees paid in 2012, 2013, and 2014, respectively. According to the Board, the SLU Center reports identify the median fees paid by lenders for five types of appraisals in nine geographic regions in Louisiana, stated separately for urban, suburban and rural settings. The Board provided AMCs with notice of the SLU Center reports and posted the reports on its website.

5. The Board has effectively required AMCs to pay appraisal fees that equal or exceed the median fees identified in the SLU Center reports. For example, the Board initiated two enforcement actions against AMCs for allegedly violating fee requirements under the Board's regulation. In each case, the Board resolved the enforcement action by securing the AMC's agreement to pay appraisal fees at or above the level set forth in the SLU Center reports. Other AMCs that learned of the Board's enforcement actions, in order to avoid disciplinary action, now use the SLU Center reports to determine the fees that they pay appraisers.

6. Through the promulgation of its regulation and through its investigative and enforcement actions, the Board—controlled at all relevant times by active market participants—has harmed competition through its regulation of fees paid by AMCs for appraisal services.

7. Independent state officials have not supervised the Board's discretionary actions. The actions of the Board restrict price competition among appraisers without any legitimate justification or defense, including the "state action" defense, and therefore violate Section 5 of the Federal Trade Commission Act.

RESPONDENT

8. The Louisiana Real Estate Appraisers Board is organized, exists, and transacts business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 9071 Interline Avenue, Baton Rouge, Louisiana 70809. The Board regulates and licenses both appraisers and AMCs.

9. AMCs are independent companies engaged by lenders to procure real estate appraisals. AMCs generally may not operate in Louisiana without first obtaining a license from the Board. The Board is empowered to discipline an AMC that violates any applicable Louisiana

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statute or regulation, including by revoking or suspending an AMC's license and imposing fines or civil penalties.

10. By statute, the Board consists of eight licensed appraisers and two representatives of the lending industry. One of the eight appraiser members must also be engaged in the business of appraisal management. The Governor of Louisiana appoints each Board member for a three-year term.

11. Collectively, the appraiser members control the operation of the Board. Appraiser members are active market participants because, among other things, appraiser members are licensed by the Board and have private interests in the Board's acts and practices.

JURISDICTION

12. The Board is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

13. The acts and practices of the Board, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. Appraisers offering appraisal services in Louisiana contract with AMCs based outside of Louisiana, including for the transfer of money across state lines. In addition, AMCs that contract for appraisal services in Louisiana act as agents for lenders based outside of Louisiana.

THE PROVISION OF APPRAISAL SERVICES THROUGH APPRAISAL MANAGEMENT COMPANIES

14. Most residential real estate purchases are financed by a mortgage on the real estate that is the subject of the transaction. In most cases, a residential mortgage requires an appraisal of the real estate used as collateral for the loan, performed by an appraiser licensed under state law.

15. Institutions that lend money for residential real estate transactions engage appraisers directly or through an agent, including an AMC. An AMC typically maintains a "panel" of licensed appraisers in each locality in which it does business, negotiates with and engages an appraiser from the panel, pays the appraiser for an appraisal report, reviews and edits the appraisal report, and provides the appraisal report to the lender, in exchange for a fee.

Federal Law Regarding AMCs

16. In the wake of the financial crisis of 2007-2008, policy makers perceived that inflated appraisals had contributed to a housing "bubble," *i.e.*, an unsustainable run-up in housing prices. One concern was that some appraisers experienced undue pressure from, or had ties to, lenders or other parties with financial interests in mortgage transactions.

17. In response to these concerns, Congress included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") provisions intended to ensure that

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appraisers would operate independently, shielded from inappropriate influence exerted by lenders or other interested parties.

18. One set of appraisal independence provisions in Dodd-Frank and its implementing rules prohibits contacts between lender personnel and retained appraisers that might influence an appraiser's independent judgment. In part because of these prohibitions, lenders increasingly turned to AMCs to arrange for required appraisal services. Today, lenders engage AMCs to obtain an appraisal in most residential real estate transactions.

19. Also to promote appraisal independence, Dodd-Frank requires lenders and their agents, in covered transactions, to compensate appraisers "at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised." Covered transactions are loans that extend consumer credit secured by the consumer's principal dwelling, such as mortgages and home equity loans.

20. Dodd-Frank includes a provision known as an "antitrust savings clause." Dodd-Frank provides that "[n]othing in this Act ... shall be construed to modify, impair, or supersede the operation of any of the antitrust laws." In other words, Congress specifically directed that Dodd-Frank was not intended to displace generally applicable antitrust principles, including the prohibition on unreasonable agreements in restraint of trade.

21. Under Dodd-Frank, Congress tasked the Board of Governors of the Federal Reserve System (the "Federal Reserve") with issuing rules on behalf of the Federal Reserve and other federal banking agencies to further specify appraisal independence requirements.

22. In October 2010, the Federal Reserve issued rules implementing Dodd Frank's appraisal independence requirements. In its commentary on the rules, the Federal Reserve interpreted the statutory requirement that lenders pay "customary and reasonable" appraisal fees to mean "that the marketplace should be the primary determiner of the value of appraisal services, and hence the customary and reasonable rate of compensation" for appraisers.

23. The October 2010 rules specify that lenders or their agents presumptively comply with the statutory customary and reasonable appraisal fee requirement in one of two ways ("presumptions of compliance"). A lender or its agent may pay to an appraiser a fee "reasonably related to recent rates paid for comparable appraisal services performed in the geographic market of the property," as informed by six identified factors: (i) the type of property; (ii) the scope of work; (iii) the time in which the appraisal must be performed; (iv) the appraiser's qualifications; (v) the appraiser's experience and professional record; and (vi) the appraiser's work quality. Alternatively, a lender or its agent may pay a fee based on "objective third-party information," including fee schedules, studies, and independent surveys of recent appraisal fees (excluding fees paid by AMCs).

24. In commentary on the October 2010 rules, the Federal Reserve clarified that the two identified presumptions of compliance are not the only permissible ways to comply with the customary and reasonable fee requirement under Dodd-Frank. If a lender or its agent arrives at an

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appraisal fee in another way, whether the fee is customary and reasonable shall depend on all relevant facts and circumstances, without a presumption of either compliance or violation.

25. Another provision in Dodd-Frank directs federal banking agencies to establish minimum requirements for states that choose to regulate AMCs. Among other things, these requirements must ensure that “appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards” set forth in Dodd-Frank. Congress did not require states to delegate regulation of customary and reasonable fee requirements to active market participants.

26. In 2015, federal banking agencies jointly issued rules implementing this Dodd-Frank provision. The rules provide that any state that chooses to regulate AMCs must require any AMC that is not regulated by a federal banking agency to “[e]stablish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with [Dodd Frank’s appraisal independence requirements].” The rules also provide that any state that chooses to regulate AMCs must maintain an AMC licensing program within the state appraiser licensing agency with mechanisms to discipline AMCs for violations of appraisal-related laws. The rules do not require states or state appraiser licensing agencies to impose standards for customary and reasonable fee requirements beyond what federal law provides, or to set customary and reasonable fees at any particular level.

Louisiana Statutes Regarding AMCs

27. In 2009, the Louisiana legislature passed a new law subjecting AMCs to oversight by the Board (the “AMC Law”), and requiring any AMC that wishes to operate in Louisiana to obtain a license from the Board. The Board is empowered to investigate, censure, and discipline AMCs that violate the law.

28. In 2012, the Louisiana legislature amended the AMC Law to require AMCs to “compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law.” The AMC Law authorizes the Board to promulgate regulations necessary for enforcement of the AMC Law. The AMC Law does not require the Board to impose standards for customary and reasonable fee requirements beyond what federal law provides, or to set customary and reasonable fees at any particular level.

THE BOARD’S ACTIONS TO SUPPRESS COMPETITION

29. The Board suppresses competition among appraisers and displaces market forces. The Board’s executive director has stated: “Any semblance of a free market approach went out the window with the exponential growth & power of AMCs as a result of Dodd-Frank.”

30. In 2013, driven by its apparent dissatisfaction with the free market, the Board adopted a regulation purporting to implement the AMC Law, known as Rule 31101. The regulation, which specifies how AMCs must comply with the customary and reasonable fee

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requirement, unlawfully restrains competition on its face by prohibiting AMCs from arriving at an appraisal fee through the operation of the free market.

31. Specifically, Rule 31101 requires AMCs to pay fees set pursuant to one of three prescribed methods. First, an AMC may rely on third-party fee schedules, studies, or surveys of fees paid by lenders. Second, an AMC may rely on a fee schedule formally adopted by the Board. Third, an AMC may rely on rates recently paid in the relevant geographic market, adjusted by the six factors identified in the parallel federal rules (set out in paragraph 23 above). Because Rule 31101 identifies these methods as the exclusive ways for arriving at customary and reasonable fees, it precludes AMCs from arriving at appraisal fees through the operation of the free market.

32. In enforcing Rule 31101, the Board has also unlawfully restrained price competition. Although Rule 31101 identifies three methods of compliance, the Board has effectively required payment of appraisal fees at least as high as median fees listed in fee surveys that the Board itself has commissioned.

33. Beginning in 2013, the Board commissioned the SLU Center to survey recent fees paid by lenders to appraisers in Louisiana. The SLU Center surveyed lenders and, at the Board's request, appraisers. The SLU Center encountered difficulties, however, in getting sufficient responses from lenders and therefore could not generate statistically significant lender data.

34. In contrast, appraisers were eager to participate in the survey. The Board, through its executive director, encouraged appraisers to participate, suggesting that survey results could be used to set future fees. Appraisers responded, generally reporting fees significantly higher than the fees reported by the lenders that participated in the survey.

35. For fees paid in each of 2012, 2013, and 2014, the SLU Center prepared a report identifying median appraisal fees for urban, suburban, and rural areas statewide and in nine geographic regions in Louisiana, for each of five common types of real estate appraisals. For example, the 2014 survey reported that the median statewide fee for the appraisal of an individual condominium unit in a suburban area was \$450. Reported median fees combined survey responses from lenders and appraisers. The Board provided AMCs with notice of the SLU Center survey results and posted them on its website.

36. The Board views the SLU Center survey results as setting a floor for appraisal fees that AMCs must pay appraisers. As the Board's executive director reportedly said at an industry conference, the survey "sets out our expectations regardless of what presumption might be used, regardless of what analytics and magic formulas an AMC might have, this is our expectation." AMCs that do not follow the rates set forth in the SLU Center reports risk investigation and discipline by the Board.

37. One investigation, against an AMC known as CoesterVMS ("Coester"), began after an appraiser complained that the AMC was paying fees "well below a [customary and reasonable] fee for the area." The investigation led to a Board complaint alleging that Coester had violated customary and reasonable fee requirements under Louisiana law. The matter was resolved by a stipulated order under which Coester agreed to "follow the current Louisiana fee schedule," *i.e.*,

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the median fees set forth in SLU Center reports. Coester also agreed to pay the Board \$5,000 in administrative costs.

38. The Board publicized its settlement with Coester. The settlement was closely followed within the industry. Trade press reported that the Board had “made history” with its enforcement against an AMC of the customary and reasonable fee requirement.

39. Another investigation, against an AMC known as iMortgage Services (“iMortgage”), similarly began after an appraiser complained that the AMC had offered low fees. The investigation led to a Board complaint alleging that scores of appraisal fees paid by iMortgage failed to meet the customary and reasonable fee requirement under Louisiana law. Over the course of proceedings, the Board dropped allegations about most of these transactions. Among others, the Board dropped all allegations related to appraisal fees that it could not directly measure against SLU Center survey results, and allegations related to fees that were equal to or exceeded median fees reported in the survey. In the end, the Board limited the proceeding to nine appraisal fees that were lower than corresponding median fees set forth in the SLU Center report.

40. After a hearing, the Board entered findings and an order against iMortgage. The Board determined that iMortgage violated the customary and reasonable fee requirement under Louisiana law in each of the nine instances addressed at the hearing. The Board censured iMortgage, fined it \$10,000 plus administrative costs, and conditionally suspended iMortgage’s license to operate as an AMC. The Board stayed the suspension pending iMortgage’s submission of an acceptable plan to comply with the Board’s ruling. The Board rejected iMortgage’s first proposed compliance plan and accepted iMortgage’s compliance plan only when iMortgage agreed to pay fees consistent with the most recent SLU Center report.

41. The Board’s proceeding against iMortgage was public and closely followed within the industry. Trade press reported on the Board’s ruling that iMortgage had not paid customary and reasonable appraisal fees and on the sanctions that the Board imposed on the AMC.

42. The Board investigated other AMCs in response to appraiser complaints about low fees. In at least two other instances, the Board discontinued investigations after AMCs agreed to adhere to median fees set forth in SLU Center reports.

43. The conduct of the Board constitutes concerted action among the Board and its members.

EFFECTS ON COMPETITION OF THE BOARD’S ACTIONS

44. The Board’s actions have unreasonably restrained competition and harmed consumers. The Board’s actions tend to restrain significantly appraisal fee negotiations between appraisers and AMCs, and to raise prices paid by AMCs for appraisal services in Louisiana above competitive levels.

45. As a result of the Board’s actions, Louisiana appraisers have demanded that AMCs pay appraisal fees at least as high as the median fees reported in Board-commissioned SLU Center

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surveys. In one case, the Board's Chairman, acting in his capacity as an active appraiser, wrote to an AMC:

I am not willing to accept and/or complete your application for your appraisal panel.... The fee(s) schedule that [the AMC] is offering does not meet Customary and Reasonable fee(s) for the state of Louisiana.... See attached Louisiana Residential Real Estate Appraisal Fees 2014 Study.... The Louisiana real estate appraisers board is taking these issues very seriously.

Other appraisers sent similar letters to AMCs.

46. In another case, an appraiser explicitly demanded the corresponding median fee set forth in a Board-commissioned SLU Center survey: "I am requesting a fee increase to \$450 which is the R&C [reasonable and customary] fee that is indicated in the fee survey for this type of product."

47. In another case, an appraiser advised an AMC: "Appraisers in Louisiana have gone to great lengths to establish customary and reasonable fees statewide. You can find a list of reasonable and customary fees by area in the state of Louisiana on the appraisal board's website."

48. As a result of these demands and the Board's enforcement campaign, AMCs operating in Louisiana have increasingly used median fees reported in SLU Center surveys to set appraisal fees. Several AMCs that have been the target of Board investigations and enforcement actions, including Coester and iMortgage, have explicitly agreed with the Board to use the SLU Center reports to set appraisal fees. Other AMCs have decided to use SLU Center reports to set fees after learning of the Board's enforcement campaign, in an effort to avoid Board scrutiny and sanctions.

49. The relevant market for purposes of analyzing the Board's conduct consists of real estate appraisal services sold to AMCs in Louisiana. While appraisal fees may vary by region or metropolitan area within Louisiana, the Board possesses and has exercised the power to raise fees paid by AMCs statewide through its regulation of AMCs.

50. The Board possesses and has exercised the power to restrain competition among appraisers in the relevant market. The Board's actions have tended to suppress, and will continue to suppress, price competition among appraisers for the provision of real estate appraisal services to AMCs in Louisiana.

51. Neither Congress nor the Louisiana legislature has required the Board to set customary and reasonable fees at a particular level. Rather, the Board, acting in its discretion, has effectively required AMCs to pay appraisal fees that equal or exceed the median fees identified in SLU Center survey reports.

52. The Louisiana AMC Law does not clearly articulate an intention to displace competition in the setting of appraisal fees.

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53. A controlling number of Board members are active market participants. The Board's actions have not been supervised by independent state officials, that is, by persons who are not participants in the Louisiana appraisal industry.

54. Congress did not, through Dodd-Frank or any other statute, require, authorize, or intend that unsupervised active market participants shall regulate appraisal fees. States may comply with Dodd-Frank requirements without violating the antitrust laws.

VIOLATION OF THE FTC ACT

55. The acts and practices of the Board described above constitute concerted action that unreasonably restrains trade and are unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, and the effects thereof, are continuing and will continue or recur in the absence of appropriate and effective relief.

NOTICE

Notice is hereby given to the Respondent that the thirtieth day of January, 2018, at 10:00 a.m., is hereby fixed as the time, and Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Washington, DC 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in the complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearing as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46 of said Rules.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint, and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

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The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after an answer is filed by the Respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within five days of receiving the Respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Board has violated or is violating Section 5 of the Federal Trade Commission Act, as alleged in the complaint, the Commission may order such relief as is supported by the record and is necessary and appropriate, including, but not limited to:

1. Requiring the Board to rescind and to cease and desist from enforcing Rule 31101, any order based on an alleged violation of Rule 31101, and any agreement with an AMC or other person resolving an alleged violation of Rule 31101.
2. Requiring the Board to cease and desist from raising, fixing, maintaining, or stabilizing prices or price levels, rates or rate levels, or engaging in any other pricing action in connection with the sale of real estate appraisal services.
3. Requiring the Board to cease and desist from adopting, promulgating, or enforcing any regulation, rule, or policy relating to the determination of compensation levels for real estate appraisal services.
4. Requiring the Board to provide appropriate notice of the Commission's order, including by:
 - a. placing a prominent notice on the Board's website stating that the Board has been ordered to rescind and cease and desist from enforcing Rule 31101, together with a link to the Commission's order;
 - b. sending by mail or email to each AMC licensed in Louisiana a copy of the notice placed on the Board's website, together with a link to the Commission's order; and
 - c. distributing a copy of the Commission's order to every current and future Board member; and every officer, manager, representative, agent and employee of the Board.
5. Such additional relief as is necessary to correct or remedy, or prevent the recurrence of, the anticompetitive acts alleged in the complaint.

Decision and Order

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirtieth day of May, 2017, issues its complaint against the Board.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) issued its complaint charging Respondent Louisiana Real Estate Appraisers Board (“LREAB” or “Respondent”) with violation of Section 5 of the Federal Trade Commission Act, as amended. The Commission served Respondent with a copy of the complaint, together with notice of contemplated relief, and Respondent filed its answer to the complaint denying said charges.

The Respondent, its attorney, and counsel for the Commission have executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by the Respondent of all the jurisdictional facts set forth in the complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the complaint, or that the facts alleged in the complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R §2.34. Now in further conformity with the procedure prescribed in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent Louisiana Real Estate Appraisers Board is an industry regulatory board of the State of Louisiana with its office and principal place of business located at 9071 Interline Avenue, Baton Rouge, Louisiana 70809.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

Decision and Order

ORDER**I. Definitions**

IT IS ORDERED that, as used in this Order, the following definitions, shall apply:

- A. “LREAB” or “Respondent” means Louisiana Real Estate Appraisers Board, its members, officers, committees, subcommittees, representatives, district review members, employees, agents, consultants, successors, and assigns.
- B. “Appraisal Fee Survey” means any survey of fees paid for Real Estate Appraisal Services.
- C. “Appraisal Management Company” means any person or entity that (1) administers a network of independent contract appraisers to perform real estate appraisal services for lenders or other clients or (2) receives requests for residential appraisal services from clients and enters into agreements, written or otherwise, with one or more independent appraisers to perform the real estate appraisal services contained in the request.
- D. “ASC” means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.
- E. “Clear and Conspicuous Notice” means a visual communication that, by its size, contrast, location, and other characteristics, stands out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- F. “LREAB Employee” means a person employed by Respondent’s Administrative Division, Investigative Division, or any future division to which comparable duties and responsibilities are assigned.
- G. “Real Estate Appraiser” means any person or entity that performs Real Estate Appraisal Services.
- H. “Real Estate Appraisal Services” means residential valuation services, including appraisal, appraisal review, and appraisal consulting, as these services are defined under the Uniform Standards for Professional Appraisal Practice.
- I. “Rule 31101” means subparts A, B, and C of Rule 31101 of Title 46 Part LXVII of the Professional and Occupational Standards of the Louisiana Administrative Code, La. Admin. Code tit. 46, pt. LXVII, §31101 (A, B, and C) (2013, 2017).

II. Prohibitions

IT IS FURTHER ORDERED that Respondent, in connection with its activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall cease and desist from, directly or indirectly:

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- A. Adopting, promulgating, or enforcing any regulation or rule that sets, determines, or fixes compensation or compensation levels for Real Estate Appraisal Services, including enforcing Rule 31101 or any order entered against any person or entity based on an alleged violation of Rule 31101;
- B. Raising, fixing, maintaining, or stabilizing prices or price levels, compensation or compensation levels, rates or rate levels, or payment terms, or engaging in any other action relating to pricing for Real Estate Appraisal Services, including:
 - 1. Adopting, promulgating, or enforcing a fee schedule for Real Estate Appraisal Services;
 - 2. Requiring, encouraging, or advising an Appraisal Management Company to pay any specific fee or range of fees for Real Estate Appraisal Services, including but not limited to a fee reported in an Appraisal Fee Survey; or
 - 3. Requiring, encouraging, or advising any Real Estate Appraiser to request a specific fee or range of fees from an Appraisal Management Company for Real Estate Appraisal Services; or
- C. Discriminating against an Appraisal Management Company based, in whole or part, on the fees the company pays for Real Estate Appraisal Services, including by requesting information from, conducting audits or investigations of, or holding enforcement hearings concerning, the company.

Provided, however, that this Paragraph II.C. shall not prohibit Respondent from taking any action necessary to comply with specific written instructions to the Board from the ASC pursuant to an ASC Compliance Review of the Louisiana Appraisal Management Company compliance program and identified by the ASC as necessary to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, provided further, that no later than 15 days after receiving such instructions, Respondent shall provide Commission staff with a copy of the instructions and a description of how Respondent will comply with them.

III. Additional Obligations

IT IS FURTHER ORDERED that:

- A. No later than 30 days from the date this Order is issued, Respondent shall rescind (1) Rule 31101 and (2) any enforcement order that Respondent has entered against any person or entity based on an alleged violation of Rule 31101.
- B. No later than 60 days after the date of implementation, Respondent shall notify the Commission of a new rule or an amendment to an existing rule relating to compensation or compensation levels for Real Estate Appraisal Services.

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Respondent shall send the notification electronically to bccompliance@ftc.gov and include the text of the rule or amendment and a statement of the reasons for adoption of the rule or amendment.

IV. Notice

IT IS FURTHER ORDERED that Respondent shall:

- A. No later than 30 days from the date this Order is issued:
 - 1. Post and maintain for one year on the homepage of LREAB's website a Clear and Conspicuous Notice that states "IMPORTANT: The Federal Trade Commission has ordered LREAB to rescind and cease enforcing the customary and reasonable fee rule, LAC 46:LXVII.31101 (A, B, and C). The Order is available at [hyperlink to Order on ftc.gov];"
 - 2. Send a copy of this Order and the Commission's complaint by first-class mail with delivery confirmation or electronic mail with return confirmation to each LREAB member and each LREAB Employee; and
 - 3. Send a letter on LREAB's official letterhead containing only the text shown in Appendix A of this Order, by first-class mail with delivery confirmation or electronic mail with return confirmation, to each Appraisal Management Company licensed by the state of Louisiana. If sent by first-class mail, the letter shall be placed in an envelope containing only the text shown in Appendix B of the Order. If sent by electronic mail, the subject line of the electronic mail shall contain only "Important Information About Louisiana's C&R Fee Rule."
- B. For a period of 5 years from the date this Order is issued, send a copy of this Order and the Commission's complaint by first-class mail with delivery confirmation or electronic mail with return confirmation to each new LREAB member and each new LREAB Employee, no later than 10 days from the date that such new member or person assumes his or her position with LREAB.

V. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent shall submit verified written reports ("compliance reports") in accordance with the following:
 - 1. Respondent shall submit an interim compliance report 60 days after the date this Order is issued; annual compliance reports one year after the date this Order is issued, and annually for the next 4 years on the anniversary of that

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date; and additional compliance reports as the Commission or its staff may request; and

2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is in compliance with the Order. Conclusory statements that Respondent has complied with its obligations under this Order are insufficient. Respondent shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondent has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of this Order.
- B. For a period of 5 years after filing a compliance report, Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under this Order during the period covered by such compliance report. Respondent shall provide copies of these documents to Commission staff upon request.
- C. Respondent shall verify its compliance reports in the manner set forth in 28 U.S.C. § 1746 by the Executive Director of the Board or the Chairman of the Board. Respondent shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a).

VI. Change in Respondent

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Respondent; or
- B. Any other change in Respondent if such change may affect compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondent made to its principal place of business as identified in this Order, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

Decision and Order

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview members or employees of the Respondent, who may have counsel present, regarding such matters.

VIII. Term

IT IS FURTHER ORDERED that this Order shall terminate on April 1, 2042.

By the Commission.

Appendix A Notice

[Louisiana Real Estate Appraisers Board Letterhead]

To Appraisal Management Companies licensed in Louisiana:

The Federal Trade Commission has alleged that our customary and reasonable fee rule, 46:LXVII.31101, subparts A, B, and C (“Rule”), and our enforcement of those parts of the Rule violate federal antitrust laws. We deny the charges.

As part of a settlement with the FTC, we are contacting Appraisal Management Companies licensed in Louisiana to tell them that the Rule, and any Order based on an alleged violation of the Rule, have been rescinded and will no longer be enforced.

If you have questions about this lawsuit or the settlement, you can contact Federal Trade Commission staff:

Lisa B. Kopchik, Attorney
PMcDermott@FTC.gov

or Patricia M. McDermott, Attorney
LKopchik@FTC.gov

202-326-3139

202-326-2569

Analysis to Aid Public Comment

Sincerely, [Signature]

Bruce Unangst, Executive Director

Appendix B Envelope

Louisiana Real Estate Appraisers Board
[Return address or printed text as found
on the Board's usual business stationery]

[Postage]

**FORWARDING AND RETURN POSTAGE GUARANTEED
ADDRESS CORRECTION SERVICE REQUESTED**

[Appraisal Management Company]
Attn: [Contact Name]
Street Address
City, State and Zip Code]

IMPORTANT INFORMATION ABOUT LOUISIANA'S C&R FEE RULE

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

I. INTRODUCTION

The Federal Trade Commission ("Commission") has accepted, subject to final approval by the Commission, an Agreement Containing Consent Order ("Consent Agreement") with the Louisiana Real Estate Appraisers Board ("the Board"). The Consent Agreement resolves allegations against the Board in the administrative complaint issued by the Commission on May 31, 2017.

Analysis to Aid Public Comment

The Commission has placed the Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or issue the proposed Order.

The proposed Order is for settlement purposes only and does not constitute an admission by the Board that it violated the law, or that the facts alleged in the complaint, other than jurisdictional facts, are true.

II. CHALLENGED CONDUCT

This matter involves allegations that the Board unreasonably restrained price competition for appraisal services in Louisiana. The Board is a state regulatory agency controlled by Louisiana-licensed appraisers. The Commission's complaint challenges the Board's promulgation and enforcement of subparts A, B, and C of Rule 31101 of Title 46 Part LXVII of the Professional and Occupational Standards of the Louisiana Administrative Code ("Rule 31101").

The complaint alleges that the Board's promulgation and enforcement of Rule 31101 displaced competition and introduced a regime of rate regulation. The Board's actions had the effect of requiring appraisal management companies ("AMCs") to pay rates for appraisal services consistent with median fees identified in fee surveys commissioned and published by the Board. Specifically, the Board investigated and issued complaints against AMCs that paid fees below the rates specified in the surveys, and entered into settlement agreements with AMCs that required those companies to pay fees at or above the median fee survey levels.

The complaint alleges that the Board's actions exceeded the scope of its obligations under the appraisal independence provisions in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The complaint further alleges that the Board's conduct resulted in anticompetitive harm in the form of higher appraisal fees paid by AMCs in Louisiana, and that this harm is not outweighed by any procompetitive benefits.

III. LEGAL ANALYSIS

The factual allegations in the complaint support a finding that the Board violated Section 5 of the FTC Act, 15 U.S.C. § 45, by promulgating and enforcing Rule 31101.

Section 5 of the FTC Act prohibits unfair methods of competition, including unlawful agreements in restraint of trade prohibited by Section 1 of the Sherman Act, 15 U.S.C. § 1.¹ Under Section 1, a plaintiff must show (1) concerted action that (2) unreasonably restrains competition.²

1 15 U.S.C. § 45; see, e.g., *FTC v. Cement Inst.*, 333 U.S. 683, 693–94 (1948).

2 15 U.S.C. § 1; see, e.g., *Arizona v. Maricopa Cnty. Med. Soc.*, 457 U.S. 332, 342–343 (1982).

Analysis to Aid Public Comment

A state regulatory board that consists of market participants with distinct and potentially competing economic interests engages in concerted action when it adopts or enforces rules that govern the conduct of its members' separate businesses.³ Rule 31101, adopted and enforced by the Board, regulates the fees paid by AMCs to appraisers in Louisiana, including those appraisers that serve as members of the Board.

Price regulation practiced by market participants is a form of price fixing and is per se unlawful.⁴ In the alternative, a restraint on price competition may be judged inherently suspect: that is, the agreement is presumed to be anticompetitive because the anticompetitive nature of the challenged conduct is obvious.⁵

The state action defense is not applicable here. On a motion for partial summary decision, the Commission concluded that: (1) the Board is controlled by active market participants; (2) therefore, in order to constitute state action, the Board's conduct must be actively supervised by the State; and (3) the Board's promulgation and enforcement of Rule 31101 were not actively supervised by the State of Louisiana.⁶

The Dodd-Frank Act also does not give rise to a defense to antitrust liability. Exemptions from the antitrust laws are to be narrowly construed,⁷ and the general rule is that, except where federal statutes impose conflicting obligations, courts will give effect to both statutes.⁸ The "good faith regulatory compliance defense" to antitrust liability is a narrow, rarely invoked defense. The defense applies only when there is an inconsistency between the antitrust laws and the imperatives imposed on the respondent by federal regulation, such that the respondent is not able to comply

3 See *N.C. Bd. of Dental Exam'rs v. FTC.*, 574 U.S. 494, 510–12 (2015); *In re N.C. Bd. of Dental Exam'rs*, 2011 FTC LEXIS 290 at *38–39, 2011-2 Trade Cas. (CCH) P77,705 (Comm'n Op. and Order, Dec. 7, 2011); see also *Mass. Bd. of Registration in Optometry*, 110 FTC 549, 1988 WL 1025476 at *47–48 (Comm'n Op. and Order, June 13, 1988).

4 *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 639 (1992) (equating price regulation by market participants with per se unlawful price fixing); *Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 103–106 (1980) (same); *Goldfarb v. Va. State Bar*, 421 U.S. 773, 781–82 (1975) (same); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 386–390 (1951) (same); *Ky. Household Goods Carriers Ass'n, Inc. v. FTC*, 199 F. App'x 410, 411 (6th Cir. 2006) (same).

5 *N. Tex. Specialty Physicians v. FTC*, 528 F.3d 346, 359–63 (5th Cir. 2008); *Polygram Holding, Inc. v. FTC*, 416 F.3d 29, 35–36 (D.C. Cir. 2005).

6 *In the Matter of La. Real Est. Appraisers Bd.*, No. 9374, Op. and Order of the Comm'n, at 19–20 (Apr. 10, 2018).

7 *Union Labor Life Ins. Co., v Pireno*, 458 U.S. 119, 126 (1982).

8 See *Pom Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 107 (2014) ("When two statutes complement each other, it would show disregard for the congressional design to hold that Congress nonetheless intended one federal statute to preclude the operation of the other."); *Morton v. Mancari*, 417 U.S. 535, 551 (1974) ("The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective."); *United States v. Borden Co.*, 308 U.S. 188, 198 (1939) ("When there are two acts upon the same subject, the rule is to give effect to both if possible.")

Analysis to Aid Public Comment

with both laws.⁹ “The defense does not insulate anticompetitive conduct that a respondent freely chooses to undertake; the conduct must be necessitated by regulatory and factual imperatives.”¹⁰

With regard to the Board’s conduct at issue here, there is no conflict or inconsistency between the Board’s obligations under the Dodd-Frank Act and its obligations under the antitrust laws; the Board may readily comply with both laws. The Dodd-Frank Act invites States (and not private actors such as the Board) to cooperate with federal authorities in regulating the real estate appraisal industry. The antitrust laws constrain the actions of private actors (such as the Board), but do not apply to states acting in their sovereign capacity.¹¹ It follows that, if the State of Louisiana wishes to use a regulatory board as its instrument for implementing Dodd-Frank responsibilities, it can avoid antitrust complications by complying with the requirements of the state action doctrine. This assures that the resulting regulatory regime furthers the governmental interests of the State, and not the private interests of market participants.¹²

IV. THE PROPOSED ORDER

The proposed Order remedies the Board’s anticompetitive conduct by requiring rescission of Rule 31101 and prohibiting the Board from regulating or fixing appraisal fees in Louisiana.

Sections II and III of the proposed Order address the core of the Board’s anticompetitive conduct.

Paragraph II.A prohibits the Board from enforcing Rule 31101, or adopting or enforcing any other rule that sets, determines, or fixes compensation levels for appraisal services.

Paragraph II.B prohibits the Board from raising, fixing, maintaining, or stabilizing compensation levels for appraisal services; requiring or encouraging an AMC to pay any specific fee or range of fees for appraisal services; or requiring or encouraging appraisers to request any specific fee or range of fees for appraisal services. Prohibited conduct includes adopting a fee schedule for appraisal services or requiring AMCs to pay fees consistent with a fee survey or schedule of appraisal fees.

Paragraph II.C prohibits the Board from discriminating against any AMC based on the fees that the company pays for appraisal services except in the limited circumstance described below. Prohibited discrimination includes requesting information, conducting audits or investigations, or

9 In the Matter of La. Real Est. Appraisers Bd., No. 9374, Op. and Order of the Comm’n, at 5–7 (May 6, 2019) (“May 6 Comm’n Order”); see also *PhoneTele, Inc. v. Am. Tel. & Tel. Co.*, 664 F.2d 716, 737–38 (9th Cir. 1981) (defendant must establish that “at the time the various anticompetitive acts alleged here were taken, it had a reasonable basis to conclude that its actions were necessitated by concrete factual imperatives recognized as legitimate by the regulatory authority”).

10 May 6 Comm’n Order at 7 (citing *PhoneTele*, 664 F.2d at 737–38).

11 *Parker v. Brown*, 317 U.S. 341, 350–51 (1943).

12 See *N.C. Dental*, 574 U.S. at 505–12.

Analysis to Aid Public Comment

holding enforcement hearings based on the AMC's fees. The non-discrimination provision includes a proviso that permits the Board to take actions necessary to comply with specific written instructions it receives in conjunction with a compliance review by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, which monitors States' implementation of minimum requirements for registration and supervision of AMCs under the Dodd-Frank Act. A copy of these instructions must be provided to Commission staff no later than 15 days after receipt, together with a description of how the Board will comply with them. The proviso does not apply to or limit the broad prohibitions on interfering with price competition set forth in Paragraphs II.A and II.B of the proposed Order.

Paragraph III.A requires the Board to rescind Rule 31101, and any enforcement order based on an alleged violation of Rule 31101, within 30 days of the issuance of the Order.

Paragraph III.B requires the Board to notify the Commission within 60 days any time the Board adopts a new rule or amends an existing rule relating to compensation levels for appraisal services.

Section IV requires the Board to provide notice of the Order to the Board's members and employees, as well as each AMC licensed by the Board.

Section V requires the Board to file with the Commission verified written compliance reports.

Section VI requires the Board to notify the Commission in advance of changes in the Board's structure that would affect its compliance obligations.

Section VII requires that the Board provide the Commission with access to certain information for the purpose of determining or securing compliance with the Order.

Section VIII provides that the Order will terminate 20 years from the date it is issued.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed Order. It does not constitute an official interpretation of the proposed Order or in any way modify its terms.

Complaint

IN THE MATTER OF

DUN & BRADSTREET, INC.**D/B/A****D&B**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT*Docket No. C-4761; File No. 172 3196
Complaint, April 6, 2022 – Decision, April 6, 2022*

This consent order addresses Dun & Bradstreet, Inc.’s sale of paid CreditBuilder and related products. The complaint alleges that several of D&B’s CreditBuilder sales and renewal practices are deceptive, and that certain conduct was unfair in violation of Section 5(a) of the Federal Trade Commission Act. The consent order prohibits D&B from misrepresenting: (1) that using D&B’s product is likely to allow a business to have its previously unreported commercial payment experiences added to its credit report; (2) that D&B will actively assist a business in adding its unreported commercial payment experiences to its credit report; (3) that using D&B’s product is likely to help a business build or improve its credit report; (4) the ease with which information or payment experiences can be added to a business’s credit report; and (5) that D&B’s product is needed when it is not, and that a product will enable a prospective customer to have a “complete” file.

Participants

For the *Commission*: Dana C. Barragate, and Harris A. Senturia.

For the *Respondents*: Rachel Mossman, Richard Schwed, and Christina Urhausen,
Shearman & Sterling LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Dun & Bradstreet, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Dun & Bradstreet, Inc. (“D&B”), also doing business as D&B, is a Delaware corporation with its principal office or place of business at 101 John F. Kennedy Parkway, Short Hills, NJ 07078. D&B is a wholly owned subsidiary of The Dun & Bradstreet Corporation.

2. From at least May 2015, Respondent has advertised, marketed, offered for sale, sold, and distributed products to small and mid-sized business consumers, including products Respondent claims will help a business monitor, manage, and build its business credit report. Respondent claims that the products offer a business an easy way to provide D&B with positive payment history, otherwise unreported by D&B, to improve the business’s credit report. In fact, Respondent rejects a majority of the submissions, and thousands of businesses that have paid for these products cannot get even a single payment experience added to their credit reports.