

MAYER • BROWN

Consumer Finance Monthly Breakfast Briefing

Criminal Enforcement in Consumer Credit and Consumer
Loan Securitization Markets

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Criminal Enforcement in Consumer Credit Markets

- Principal Agencies Involved in Criminal Enforcement

- United States Attorneys Offices
- United States Department of Justice, Criminal Division, Fraud Section
- State Attorneys General

- Multiple Agencies Focused on Civil Enforcement

- US Department of Justice
- Consumer Financial Protection Bureau (CFPB)
- Federal Trade Commission (FTC)
- State and Federal Banking Regulators (OCC, Federal Reserve, NY DFS)
- State Attorneys General
- Legal Services Organizations / Class Action Bar

Criminal Enforcement in Consumer Credit Markets

- Recent Enforcement Cases

- Corporate MBS Settlements
- Advanced Fee Schemes
- Coercive / Fraudulent Debt Collection
- Large-scale Mortgage Frauds
- Credit Card Fraud
- Payday Lenders
- False Statements / Non-Disclosures to Regulators

Criminal Enforcement in Consumer Loan Securitization Markets

- Lessons Learned from the Financial Crisis?

- February 2015, DAG Sally Yates: *“We have also begun to take a more forward-looking approach to financial fraud For example, [we] are taking a hard look at the auto lending industry. . . . We are also in touch with state attorneys general who are examining potential fraud related to securities backed by auto loans. . . . [S]ubprime lending has increased in auto loans and credit cards to nearly the same levels that occurred prior to the financial crisis. While that alone does not signal that fraud is going on, we shouldn’t wait until there is a crisis to pay attention. We can and should use our experience investigating mortgage-backed securities to be on the lookout for, and head off, any potential threat, rather than waiting until after losses have been suffered.”*
- Since February 2015, several companies have disclosed investigations relating to auto lending and securitization of auto loans.

Criminal Enforcement in Consumer Loan Securitization Markets



- Challenges to Bringing Criminal Cases in Securitization Context
 - Compartmentalization of Information and Roles
 - Proof of Criminal Intent
 - Advice of Counsel
 - Sophisticated Parties on Both Sides

Criminal Enforcement in Consumer Loan Securitization Markets

- Reasons for Heightened Concern
 - More Aggressive Enforcement Environment
 - Regulatory Requirements and Disclosure
 - Existence of DPA's and Monitors
 - Careless Statements in Emails, Bloomberg Chats, etc.
 - Trading Issues
 - *E.g., United States v. Litvak*, 800 F.3d 160 (2d Cir. 2015)

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