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CFPB and Justice Department Team Up on Enforcement

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On May 7, 2013, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") and the United States Attorney's Office for the Southern District of New York announced a joint law enforcement effort in U.S. District Court for the Southern District of New York involving a debt-settlement business and its principals. This is the first time that the Justice Department has brought criminal charges stemming from a CFPB referral.

The CFPB alleges that the defendants engaged in unfair and deceptive practices and violated the Telemarketing Sales Rule, and the U.S. Attorney unsealed an indictment that alleges that the same defendants engaged in criminal fraud. In a press conference announcing this effort, Director Richard Cordray of the CFPB explained that "[d]uring our investigation, we found evidence of criminal conduct and, accordingly, we referred this information to the United States Attorney for the Southern District of New York while we continued to pursue the civil law violations."

The Consumer Financial Protection Act (Title X of the Dodd-Frank Act) provides that if the CFPB "obtains evidence" of conduct that "may constitute a violation of Federal criminal law, the Bureau shall transmit such evidence" to the Justice Department. This criminal referral and the resulting indictment happened relatively early in the CFPB's history. This timing demonstrates that the Bureau has established a process for working closely with federal criminal prosecutors and that this collaboration is a Bureau priority.

Furthermore, although parallel civil and criminal investigations are relatively common among federal law enforcement agencies, it is less common for these investigations to give rise to simultaneous district court actions. Often, at the insistence of prosecutors, criminal cases precede civil cases into court, and with respect to other agencies, at the very least, the Justice Department usually takes the apparent lead in any parallel investigation. Here, the simultaneous nature of these actions suggests that the CFPB, although a new law enforcement agency, has not taken a "back seat" role.

In fact, this joint enforcement action is also noteworthy because the CFPB's complaint and the Justice Department's indictment involve common operative facts. The indictment necessarily relies – at least in part – on facts that the Justice Department learned from the CFPB.

Finally, this joint enforcement effort underscores a key point: the CFPB's investigational fact finding – whether through civil investigative demands ("CID") or other means – might yield evidence for civil lawsuits brought by the Bureau and potential evidence for criminal matters prosecuted by the Justice Department. Thus, individuals or companies that receive a CID from the CFPB should take these requests seriously and approach them as if they are evidence-gathering mechanisms with far-reaching consequences.

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Allyson Baker, a partner in the Washington DC office of Venable LLP, is a trial attorney and was, until recently, an Enforcement Attorney with the Consumer Financial Protection Bureau (CFPB) where she served as lead counsel on one of the first enforcement actions which also resulted in the largest agency settlement to date. She was a member of the initial team of attorneys hired to stand up the CFPB Office of Enforcement, and she helped formulate policies on litigation, investigations, and Dodd-Frank Act jurisdiction issues. Before joining the CFPB, Ms. Baker was a Trial Attorney with the U.S. Department of Justice, Civil Tax Division where she served as lead counsel in a number of jury and bench trials involving complex financial transactions.

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