

Client Alert

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CFPB and New York Attorney General Announce Settlement with Retailer for Violations of TILA and CFPA

By Rick Fischer, Obrea Poindexter, Crystal Kaldjob, and Jennifer Talbert

On January 16, 2019, the Consumer Financial Protection Bureau (CFPB) and the New York Attorney General announced a settlement with a retailer for alleged violations of the Consumer Financial Protection Act of 2010 (CFPA) and the Truth in Lending Act (TILA), as well as New York State law arising out of the retailer's sales practices for its store credit cards; in particular, the alleged misrepresentation by the retailer in connection with opening of credit accounts on behalf of customers and misrepresentation of the credit financing terms. As part of the settlements, the retailer is required to pay \$10 million in civil money penalties to the CFPB and \$1 million in civil money penalties to the State of New York.

ALLEGED VIOLATIONS

The CFPB alleged in its complaint that the retailer engaged in unfair and deceptive acts or practices in violation of the CFPA and New York State law by (i) submitting credit applications and opening accounts for store credit card accounts without the customer's knowledge or consent; (ii) signing customers up for credit insurance products without the customer's knowledge or consent; and (iii) misrepresenting credit terms (e.g., interest rate, payment amount) and promotional financing terms. In particular, the CFPB alleged that, when asking customers to provide their personal information, the retailer's employees misrepresented to customers that the customers were providing their personal information in connection with being enrolled in the retailer's rewards program or completing a survey. Often, according to the CFPB, customers found out that they had submitted credit card applications or had accrued fees in connection with promotional financing or payment protection insurance on their accounts only after receiving the credit card in the mail or finding an inquiry on their credit reports. The CFPB also highlighted that the payment protection plan allegedly sold to customers without their consent generated "significant revenues" for the retailer.

In addition to imposing its \$10 million civil money penalty, the CFPB ordered the retailer to "maintain policies and procedures related to sales of credit cards and any add-on products ... that are reasonably designed to ensure" that the retailer obtains consumer consent before a credit card is issued or an add-on product is sold to the consumer. Notably, the retailer was not required to pay restitution as part of the settlement.

CONCLUSION

The settlement with the retailer comes at a time of heightened regulatory scrutiny regarding sales practices of consumer credit products, and follows a 2016 enforcement action by the CFPB against a national bank for similar sales practices violations. The settlement also demonstrates the continued focus by federal and state regulators on corporate policies related to increasing revenue. In particular, the CFPB claimed that the retailer's corporate culture "pressured" employees to enroll consumers in the retailer's credit card program and sell its promotional

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financing plans and payment-protection insurance, since performance reviews and pay raises were based on meeting sales quotas for these products.

The CFPB and New York Attorney General settlement with the retailer is a reminder that both federal *and* state regulators are still focused on the sales practices of financial institutions and other companies for consumer financial products and services. While the retailer was not required to pay restitution as part of the settlement, the CFPB focused on the revenues generated by the retailer in connection with its credit card program and the add-on product sales in determining the amount of civil money penalties the retailer is required to pay.

Contact:

Rick Fischer

(202) 887-1566

rfischer@mofo.com

Obrea Poindexter

(202) 887-8741

opoindexter@mofo.com

Crystal Kaldjob

(202) 887-1687

ckaldjob@mofo.com

Jennifer Talbert

(202) 887-1563

jtalbert@mofo.com

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Financial Services Team

California

Alexis A. Amezcua	(415) 268-6557
Elizabeth Balassone	(415) 268-7585
Roland E. Brandel	(415) 268-7093
Sarah N. Davis	(415) 268-7478
Henry M. Fields	(213) 892-5275
Joseph Gabai	(213) 892-5284
Angela E. Kleine	(415) 268-6214
Jim McCabe	(415) 268-7011
James R. McGuire	(415) 268-7013
Mark David McPherson	(212) 468-8263
Ben Patterson	(415) 268-6818
Sylvia Rivera	(213) 892-5734
Kathleen C. Ryan	(213) 892-5418
William L. Stern	(415) 268-7637
Nancy R. Thomas	(213) 892-5561
Lauren Lynn Wroblewski	(415) 268-6458

New York

Robert J. Baehr	(212) 336-4339
James M. Bergin	(212) 468-8033
Meghan E. Dwyer	(212) 336-4067
David J. Fioccola	(212) 336-4069
Marc-Alain Galeazzi	(212) 336-4153
Adam J. Hunt	(212) 336-4341
Jessica Kaufman	(212) 336-4257
Mark P. Ladner	(212) 468-8035
Jiang Liu	(212) 468-8008
Barbara R. Mendelson	(212) 468-8118
Michael B. Miller	(212) 468-8009
Jeffrey K. Rosenberg	(212) 336-4130
Mark R. Sobin	(212) 336-4222
Joan P. Warrington	(212) 506-7307

Washington, D.C.

Marcie Brimer	(202) 887-6932	Steven M. Kaufmann	(202) 887-8794
Rick Fischer	(202) 887-1566	Jeremy R. Mandell	(202) 887-1505
Adam J. Fleisher	(202) 887-8781	Elyse S. Moyer	(202) 778-1616
Natalie A. Fleming Nolen	(202) 887-1551	Obrea O. Poindexter	(202) 887-8741
Calvin D. Funk	(202) 887-6930	Sean Ruff	(202) 887-1530
Susan I. Gault-Brown	(202) 887-1597	Trevor R. Salter	(202) 887-1527
Julian E. Hammar	(202) 887-1679	Nathan D. Taylor	(202) 778-1644
Oliver I. Ireland	(202) 778-1614	Jennifer S. Talbert	(202) 887-1563
Crystal N. Kaldjob	(202) 887-1687		

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