

## Auto Finance Discrimination Enforcement Action Plan

Meeting with DOJ, January 2013

- Goals
  - Discriminatory harm
  - Compliance programs
  - Markup policies
- Bank
  - Supervisory exams
  - Enforcement actions
  - Referrals
- Nonbank
  - Subject mix
  - Phased approach
    - Initial information requests
    - Investigations
  - Enforcement actions
- Outreach
  - Market-wide messaging
  - Escalating message (Jan – Mar)
  - Comprehensive impact
- Market-Driven Approach
  - Voluntary data
  - Market-share monitoring
- Larger Participant Rule
  - Significance
  - Timing

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- Introduction
  - We want to involve you, from the ground floor, on one of our most exciting initiatives.
  - Through a coordinated set of enforcement actions against indirect auto lenders, we seek to eliminate discrimination in auto dealer compensation and possibly eliminate dealer markup altogether.
  - This is going to be a big deal and we want you as a true collaborator.
- Goals
  - Remedy the discriminatory harm at investigated entities
  - Improve the compliance programs at these entities
  - Significantly modify and possibly eliminate markup policies by indirect auto lenders
- [REDACTED]
  - [REDACTED] supervisory exams ([REDACTED] market share)
    - [REDACTED] are already in progress, with conclusions coming soon
    - Preliminary analysis indicates widespread disparities, in the range of 10-40 bps
  - Resources for as many as [REDACTED] enforcement actions
  - We will, of course, refer all pattern/practices to DOJ
- [REDACTED]
  - Subject mix of [REDACTED] lenders ([REDACTED] market share)
    - Includes [REDACTED], as well as [REDACTED] lenders
  - Phased approach
    - Send initial information requests to all [REDACTED]
    - Narrow to [REDACTED] investigations
  - Resources for as many as [REDACTED] enforcement actions
  - We will, of course, refer all pattern/practices to DOJ
- Outreach
  - Market-wide messaging is a key component
    - Although the enforcement actions will be made public seriatim, our outreach will signal our intent to move the market away from dealer markup.
    - Indirect auto lending is a highly liquid, automated market in which dealers choose lenders based on the biggest payout. Thus, dealers will flock to lenders who have not adjusted practices, and there is a big first-mover problem. We must level the playing field.
  - Escalating message in 1Q 2013
    - January: ABA conference — laying out the law
    - February: AFSA Auto Finance conference — emphasizing non/bank jurisdiction
    - March: CBA conference — first public announcement
  - Comprehensive impact
    - Compliance bulletin
    - Each enforcement action framed as part of a market-wide push.
- Market-Driven Approach
  - Negotiating to obtain anonymized voluntary data disclosed by nonbanks
  - Also purchasing Experian Autocount, which allows Markets to monitor market shares in near real-time. We will target nonbanks trying to profit from regulatory arbitrage.
- Larger Participant Rule
  - This rule will define who we can supervise in nonbank auto lending.
  - This will directly affect who we refer to DOJ from the supervisory process.
  - Timing: Probably late 2013

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  - This is going to be a big deal and we want you as a true collaborator.
- Goals
  - Remedy the discriminatory harm at investigated entities
  - Improve the compliance programs at these entities
  - Significantly modify and possibly eliminate markup policies by indirect auto lenders
- Supervision
  - We are looking at this issue in several exams (████ market share)
    - Some are already in progress
    -
  - Those will eventually move to a referral and possible enforcement action as appropriate, depending on the findings.
  - Preliminary findings are revealing significant disparities.
- Enforcement
  - Subject mix of █████ lenders (████ market share)
    - Includes █████, as well as █████
  - Phased approach
    - Send initial information requests to all █████
    - Narrow to █████ investigations
  - Resources for as many as █████ enforcement actions
  - We will, of course, refer all pattern/practices to DOJ
- Outreach
  - Market-wide messaging is a key component
    - Although the enforcement actions will be made public seriatim, our outreach will signal our intent to move the market away from dealer markup.
    - We will reach out to rating agencies to influence the market.
    - Indirect auto lending is a highly liquid, automated market in which dealers choose lenders based on the biggest payout. Thus, dealers will flock to lenders who have not adjusted practices, and there is a big first-mover problem. We must level the playing field.
  - Escalating message in 1Q 2013
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- Market-Driven Approach
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  - Also purchasing Experian Autocount, which allows Markets to monitor market shares in near real-time. We will target nonbanks trying to profit from regulatory arbitrage.
- Larger Participant Rule
  - This rule will define who we can supervise in nonbank auto lending. Until we have a rule, we cannot supervise nonbank auto lenders.

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Attorney Work Product

- This will directly affect who we refer to DOJ from the supervisory process.
- Timing: Probably late 2013
- We would like to proceed with you in the initial information request and investigation of the nonbank lenders.
  - We have not engaged with these lenders yet, so this an opportunity to start together on the ground floor of these investigations.
  - Given the nature of the industry and the challenges outside of mortgage, we think this is an important initiative to partner on at the beginning so that the industry can see that we are working together.

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**Update on Auto Finance Discrimination Initiative**

March 19

Agenda:

1. Update on Individual Actions
  - a. [REDACTED]
  - b. [REDACTED]
  - c. Outreach
  
2. Update on Legal Authority for Global Settlement
  - a. Legal Options
  
  - b. Policy and Legal Issues (Discussion)
    - i. Legal Risk: Availability of Retrospective Relief
    - ii. ~~Headline Risk: Appearance of Rulemaking~~
    - iii. Strategic Risk: Incentives to Participate
    - iv. Legal Risk: Dealer Challenge

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