FedFin Client Report

Tuesday, December 20, 2022

# CFPB Crafts New-Style, High-Impact Enforcement Construct

**Client Report: CONSUMER46**

## Executive Summary

In this report, we provide an in-depth assessment of the CFPB's unprecedented $3.7 billion settlement earlier today with Wells Fargo (WFC). In its release, the Bureau notes that it worked with the FRB and OCC to craft this consent agreement; in his remarks, Director Chopra makes it clear that, settled or not, he wants to penalize a "corporate recidivist" by retaining or even tightening the Fed's 2018 asset-cap (see *Client Report* **CORPGOV26**) and doing the same with the OCC's 2021 mortgage-servicing settlement. The case has also reopened calls to revoke WFC's status as a financial holding company, action authorized in Dodd-Frank (see FSM Report **FHC19**) that would sharply constrain the company's non-traditional securities and insurance activities and establish precedent for this penalty in other large-BHC consumer actions. Although WFC does not admit or deny the Bureau's charges beyond accepting those specific to its jurisdiction, the Bureau has mandated agreement to several provisions that heighten the settlement's cost to the bank.

## Analysis

The WFC consent agreement includes a detailed list of consumer-finance actions in which the Bureau finds the bank to have taken improper action in areas such as auto/mortgage loan servicing and customer deposit account "suspect" practices and account fees. Each of violations is detailed in the order, which also sets restitution amounts for specific customer classes, with product specifics a guide to practices the Bureau may find to be UDAP or UDAAP at other consumer-finance companies. Consumer acceptance of restitution may not be conditioned on waiving any other rights, meaning that litigation may continue.

Notably, the order states that the fines and payments under this order may not be accounted for in any way that would reduce WFC taxes. This is doubtless intended to address complaints that even large fines may be treated by firms as a "cost of doing business" due to limited after-tax earnings impact. Indemnification from other sources (e.g., insurance) is also barred. The order also contains an unusually-swift schedule by which consumer payments must be issued and documented.

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In addition to findings regarding improper or illegal practice and setting fines, the order also stipulates an extensive set of governance remediation tasks for WFC's board of directors.

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