Green Street
Asset-Backed Alert
THE WEEKLY UPDATE ON WORLDWIDE SECURITIZATION
14-Jun-2024

Ruling Makes Case for Deal Agents

Oakleaf Group is pointing to a court ruling that 15 securitization trusts are subject to consumer-protection laws as evidence of the need for deal agents in such transactions.

In a soon-to-be-released report, the Bethesda, Md., company argues that the decision — involving deals that First Marblehead completed under its National Collegiate Student Loan Trust label — could have been averted if such a service provider had been on board.

The 3rd U.S. Circuit Court of Appeals in Philadelphia ruled on March 19 that the trusts are "covered persons" under the Dodd-Frank Act because they engage in aconsumer-finance product or service. And as such, the Delaware-based vehicles are subject to the ConsumerFinancial Protection Bureau's enforcement authority.

Oakleaf, a leading deal agent, sees the decision as an example of how installing a company to oversee the administration of a transaction's underlying assets would prevent such issues from arising. And if potential violations do emerge, the firm adds, a deal agent could ensure they don't proliferate to the point that the trust becomes liable for fines and other penalties.

Oakleaf further contends that improving deal documents to address governance gaps would help other issues avoid a fate similar to that of the First Marblehead trusts.

The trusts hold more than 800,000 student loans that First Marblehead securitized from 2003 to 2007 while contracting out servicing for the accounts.

The court decision allows the CFPB to proceed with a 2017 lawsuit that seeks to hold the trusts responsible for the actions of the servicer. That complaint, in turn, alleges that the trusts filed tens of thousands of collection lawsuits against borrowers with insufficient documentation to demonstrate ownership of the loans.

A deal agent could help on that front as well by following up on the conveyance and delivery of loan files, according to Oakleaf. As is, the firm said, various parties in each deal often assume that trustees or custodians are maintaining oversight of loan-file reviews — meaning they might not learn if document defects were cured until loan liquidations take place, or in the case of mortgages, after foreclosure.

Oakleaf is highlighting its deal-agent services as securitization professionals have begun taking stock of severe market disruptions that could result from the First Marblehead ruling. The concern is that bond investors could respond by demanding higher yields, while prompting trustees and other parties to increase their fees to offset their exposures to the actions of servicers. The ruling also creates potential exposures for investors that purchase consumer loans without acquiring the receivables' servicing rights.