

Settlements in brief: US justice authorities pursue rating agencies

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Enforcement actions by criminal and supervisory authorities are settled regularly. In light of these developments, companies are advised to take appropriate measures. We provide a brief overview of the most important settlements every month. This month, we highlight a second settlement entered into by Standard & Poor's in the US in connection with its rating of commercial mortgage-backed securities. We also briefly discuss the effect this settlement has had on an ongoing investigation into Moody's, another large rating agency.

As we reported briefly in [February 2015](#), Standard & Poor's (S&P) reached a USD 1.375 [settlement](#) with the US Department of Justice. Approximately half of the settlement amount – USD 687.5 million – will be divided among 19 states and the District of Columbia which also took S&P to court.

S&P allegedly engaged in a scheme to defraud investors in structured financial products known as Residential Mortgage-Backed Securities (RMBS) and Collateralized Debt Obligations (CDOs). Many of these financial products were based on mortgage debts of customers who were not creditworthy, but were assessed as safe investment instruments by S&P. As a result, institutional investors, which can only invest in low-risk securities, were exposed to high risks. According to the Department of Justice, S&P knowingly and wilfully misled investors by suggesting that securities were assessed in an independent and objective manner.

The settlement is comprised of several elements:

- S&P acknowledged that its ratings of RMBS and CDOs from 2004 to 2007 were affected by business concerns
- S&P agreed to retract an allegation that the complaint against it was filed in retaliation for its 2011 decisions on the credit status of the United States
- S&P also agreed to comply with consumer protection laws of the settling states and the District of Columbia, and to respond to requests from any of the settling states and the District of Columbia for information or material concerning any possible violation of those laws.

In exchange, S&P did not have to acknowledge any violations of law by the company. This will protect the credit-rating agency against future lawsuits.

Following this recent settlement, US authorities are now turning their sights on Moody's and are intensifying their probe into this large rating agency. Like S&P, Moody's is investigated over its conduct in the years leading up to the financial crisis. Moody's

allegedly gave an overly positive rating to complex financial products that were based on subprime mortgages. Investigations into Moody's are still at an early stage.