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Jonathan L. Pompan

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April 30, 2012

### CFPB Investigates Benefit of Arbitration Agreements

The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) has started a process that could lead to the eventual unraveling of recent Supreme Court decisions that have upheld consumer arbitration in class-action lawsuits for consumer financial products and services.

The Bureau has launched a public inquiry into how consumers and financial services companies are affected by arbitration and arbitration clauses, and will assess whether imposing conditions or prohibitions on arbitration would better protect consumers. Comments on the Bureau’s [Request for Information](#) are due on or before June 23, 2012.

The Bureau seeks information in response to specific questions, which are intended to help identify the appropriate scope, methods, and sources of data for a study on the use of pre-dispute arbitration agreements. The questions asked span three categories: (1) the prevalence of use; (2) use and impact in particular arbitral proceedings; and (3) impact and use outside particular arbitral proceedings.

The Bureau is not seeking comment on how, if at all, it should exercise its rulemaking authority to prohibit or impose conditions or limitations on the use of pre-dispute arbitration agreements with respect to consumer financial products or services; or whether any such regulation would serve to protect consumers or otherwise be in the public interest.

Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (the “Dodd-Frank Act”) requires the Bureau to “conduct a study of, and . . . provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.” The Dodd-Frank Act then requires the Bureau to decide whether to issue a regulation which will prohibit the use of arbitration agreements if the study concludes that it is not in the consumer’s interest.

For some background on recent Supreme Court activity related to arbitration agreements and class-action waiver provisions, see the following articles on our firm’s website:

- [Supreme Court Upholds Class-Action Waivers](#)
- [Supreme Court Upholds Use of Arbitration in CROA Lawsuits](#)

*For more information, please contact Jonathan Pompan at 202.344.4383 or [jlpompan@Venable.com](mailto:jlpompan@Venable.com).*