Consumer Financial Protection Bureau

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Prepared Remarks of CFPB Director Richard Cordray at the Meeting of the Consumer Advisory Board

BY RICHARD CORDRAY

I want to welcome you all to this meeting of the Consumer Advisory Board. I am sorry that my attendance at the FDIC's Board meeting caused me to miss this morning's session; I heard it was a lively discussion. I especially want to extend a warm welcome to the newest members of the CAB, who are joining us for the first time this year since their appointment. We look forward to working together with each and all of you.

I am glad to be able to join you to talk about arbitration's role in resolving consumer disputes. Earlier this month, we launched a rulemaking process on arbitration clauses, or more precisely, "mandatory pre-dispute arbitration clauses." These clauses are often buried deeply in the fine print of many contracts for consumer financial products and services, such as credit cards and bank accounts. Companies use them, in particular, to block class action lawsuits, providing themselves with a free pass from being held accountable by their customers in the courts.

Companies have been able to use these obscure clauses to rig the game against their customers to avoid group lawsuits. Group lawsuits can result in substantial relief for many consumers and create the leverage to bring about much-needed changes in business practices. But by inserting the free pass into their consumer financial contracts, companies can sidestep the legal system, avoid big refunds, and continue to pursue profitable practices that may violate the law and harm consumers on a large scale.

Our proposal under consideration would prohibit companies from blocking group lawsuits through the use of arbitration clauses in their contracts. This would apply generally to the consumer financial products and services that the Bureau oversees, including credit cards, checking and deposit accounts, certain auto loans, small-dollar or payday loans, private student loans, and some other products and services as well.

One approach we might have taken would be a complete ban on all pre-dispute arbitration agreements for consumer financial products and services. Our proposal would not do that. Companies could still have an arbitration clause, but they would have to say explicitly that it does not apply to cases brought on behalf of a class unless and until the class certification is denied by the court or the class claims are dismissed in court. This means we are not proposing at this time to limit the use of arbitration clauses as they apply to individual cases.

This approach is consistent with the conclusions reached in our multi-year study, the most rigorous and comprehensive study of consumer finance arbitration ever undertaken. What we learned in the course of our study – which we completed in March – is that very few consumers of financial products and services are seeking relief individually, either through the arbitration process or in court. Moreover, there are also an unknown number of cases that are never filed because of the mere presence of an arbitration clause. And millions of other consumers who may not even realize that their rights are being violated might have obtained relief if group lawsuits were permissible.

Although we are not proposing to prohibit the use of pre-dispute arbitration clauses, we will continue to monitor the effects of such clauses on the resolution of individual disputes. To enable us to do so, the proposals we have under consideration would require companies to send to the Bureau all claims made by or against them in consumer financial arbitration disputes and any written awards that stem from those filings. By developing comprehensive data on these matters, over time we will be able to refine our evaluation of how such proceedings may affect consumer protection, if at all. In order to create more transparency and spur broader thinking by researchers and other parties, we are considering publishing this information so the public can analyze it as they see fit, consistent with appropriate privacy considerations.

So the essence of the proposals we have under consideration is that they would get rid of this free pass that prevents consumers from holding their financial providers directly accountable for the harm they cause when they violate the law. Doing so would produce three general benefits.

First, consumers would have the opportunity to get their day in court. This is a core American principle. Under the U.S. Constitution, each one of us is entitled to seek justice through due process of law. As noted U.S. Court of Appeals Judge Richard Posner has convincingly observed, “The realistic alternative to a class action is not 17

million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30." That is, in fact, the main reason why procedures allowing for group lawsuits have been widely adopted in virtually all of our federal and state courts in the last century. By joining together to pursue their claims as a group, all of the affected consumers would be able to seek and, when appropriate, obtain meaningful relief that as a practical matter they could not get on their own.

Second, the proposals being considered would deter wrongdoing on a broader scale. Although many consumer financial violations impose only small costs on each individual consumer, taken as a whole these unlawful practices can yield millions or even billions of dollars in revenue for financial providers. Arbitration clauses that bar group lawsuits protect these ill-gotten gains by enabling companies to avoid being held accountable for their misdeeds. Thus, companies are likely to take less care to ensure that their conduct complies with the law than they would have taken if they did not have a free pass from group lawsuits. The potential to be held accountable in a group lawsuit changes this dynamic. And the public spotlight on these cases can influence business practices at other companies that become aware of the need to make similar changes to avoid facing the ire of their customers and the risks of similar lawsuits.

Third, by requiring companies to provide the Bureau with arbitration filings and written awards, which might be made public, the proposals we are considering would bring the arbitration of individual disputes into the sunlight of public scrutiny. This would provide a safeguard against arbitration proceedings that are unfair or otherwise harmful to consumers.

The central idea of the proposals we are considering is to restore to consumers the rights that most do not even know had been taken away from them. Companies should not be able to place themselves above the law and evade public accountability by inserting the magic word "arbitration" in a document and dictating the favorable consequences. Consumers should be able to join together to assert and vindicate their established legal rights. Under the approach we are considering, companies would not be able to tip the scales in their favor by writing their own free pass to the detriment of consumers. Everyone benefits from a market where companies are held accountable for their actions.

I look forward to today's conversation. Thank you.