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Prepared Remarks of CFPB Deputy Director Steven Antonakes at The Exchequer Club

BY STEVE ANTONAKES

Good afternoon. It's a pleasure to be here with all of you. I believe that we share common goals: a strong and vibrant consumer financial services market, as well as a highly competitive, sustainable economy that works for the benefit of consumers and business alike. Today, I will seek to provide you with a better understanding as to how the Bureau utilizes a risk-focused supervision program in furtherance of those goals.

By way of background, I am a career financial services regulator. I cut my teeth during the end of the S&L Crisis as an entry-level bank examiner nearly 25 years ago. In the lead up to the mortgage crisis, I witnessed the alarming proliferation of high-risk products and deteriorating underwriting practices which ultimately led to one of the worst economic periods since the Great Depression.

In the wake of the devastation, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act which created the Consumer Financial Protection Bureau. Previously, authority for administering and enforcing the various federal consumer financial laws was strewn across seven federal agencies. For each of those seven agencies, consumer protection was only one of its many responsibilities. As a result, no single agency was primarily focused on protecting the everyday users of financial products and services.

The Bureau does not have a safety and soundness mandate. Nevertheless, we very much care about the financial health of banks and nonbanks. As a veteran of two banking crises, I can tell you unequivocally that, in my view, consumer protection is not in conflict with safety and soundness. Consumers benefit from a healthy, competitive, and diversified financial services system through greater access to credit and competitive pricing.

Ultimately, both financial and consumer compliance performance are dependent on strong management. Seldom do institutions excel in one and not the other. No business built on deceiving its customer base will be sustainable. Moreover, when businesses underinvest in compliance management systems it can pose significant reputational and financial risks.

Our mission is to protect consumers by promoting a consumer financial services marketplace where consumers can understand the costs, benefits, and risks of the financial decisions that they make. Consumers should be able to make these decisions in a marketplace free from unfair, deceptive, or abusive acts or practices – whether they are applying for a mortgage, choosing a credit card, repaying a student loan, cashing a paycheck, or sending money to family members overseas.

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In addition to serving as the Bureau's Deputy Director, I lead the Division of Supervision, Enforcement, and Fair Lending. It is the largest of the Bureau's six divisions, with examiners and enforcement attorneys stationed across the country. It is our responsibility to oversee all banks and nonbanks under the Bureau's jurisdiction and enforce federal consumer protection and fair lending laws. To best achieve our objectives, we actively encourage our staff to demonstrate the following attributes: humility, fairness, and consistency.

We strive to bring an emphasis on humility to all of our work. We understand the enormity of our mission and our responsibility to treat businesses reasonably with an understanding of the burdens associated with regulatory compliance. We know we do not operate in a vacuum, and so our charge to protect consumers requires us to adapt to new economic pressures, products, market participants, and delivery systems.

We aspire to supervise and enforce federal consumer protection laws fairly in a way that protects law-abiding businesses from unfair competition by those companies that seek advantage by breaking the law.

We endeavor to be consistent in the enforcement of the laws within our jurisdiction, across product markets, charter types, and institution sizes. This benefits the entire economy by making consumer financial markets work.

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The Bureau's jurisdiction is unlike any traditional bank regulatory agency. We have supervisory authority over banks, thrifts, and credit unions with assets over $10 billion, as well as their affiliates. These institutions total fewer than 150 but on a combined basis account for $12.5 trillion in assets or nearly 80 percent of the nation's banking market.

In addition, the Bureau has supervisory authority over nonbank mortgage originators and servicers, payday lenders, and private student lenders of all sizes. We also supervise the larger participants of other markets as the Bureau defines by rule. To date this includes debt collectors, consumer reporting agencies, student loan servicers, and foreign money transmitters. We also recently published a proposed rule to include nonbank auto lenders as well. All told, these nonbank markets add well over 15,000 unique institutions to our already significant portfolio of large depository institutions.

It was clear to us from the outset that the traditional approach to supervision wouldn't work at the Bureau. Visiting all of the banks and nonbanks under our jurisdiction on a set, regular schedule, as other federal agencies have in the past, would be impractical given their number, size, and complexity as well as the relatively small size of our examination force. More importantly, adopting a fixed-schedule approach would fail consumers by focusing precious resources on potentially less severe problems, when larger, more pressing consumer protection issues awaited their turn.

There are two key distinctions to how we approach our work. First, given our consumer-protection mandate, we focus on risks to consumers rather than risks to institutions. This drives our strong focus on consumer compliance management systems to ensure that regulated institutions adapt their controls to their business strategies and operational complexity. Second, we conduct our examinations by product line rather than an institution-centric approach. Accordingly, we assess the likely risk to consumers in all product lines, at all stages of a product's life cycle, and across wide swathes of the entire consumer financial marketplace. Our sole focus on consumer financial protection, along with our footprint in both the bank and nonbank space, makes the Bureau unique among federal regulators.

We begin to prioritize our supervisory responsibilities by taking institutions and breaking them down into their distinct product lines that are offered to consumers. For example, a large bank might have several product lines – auto lending, credit cards, deposit accounts, international money transfers, mortgage origination, and mortgage servicing – while a nonbank mortgage company might have just two – mortgage origination and servicing. We refer to each distinct product line at an institution as an "institutional product line". These are the basic units of our prioritization approach.

Once broken down into institutional product line, we can now compare them across institutions, charters, or licenses. This is vital given our jurisdiction over both banks and non-banks, allowing us to evaluate each institutional product line by their activity, rather than the provider's form of organization.

We evaluate each product line based on potential for consumer harm related to a particular market; the size of the product market; the supervised entity's market share; and risks inherent to the supervised entity's operations and offering of financial consumer products within that market.

Accordingly, our prioritization approach assesses risks to the consumer at two levels: the market level and then the institution level. At the market-wide level, we assess the risk to the consumer from the products and practices being followed in a particular market. Some markets have stronger incentives to serve consumers than others. We find that generally when consumers cannot choose their provider of financial products or services their clout is limited and they lose their most important voice, the ability to "vote with their feet." Moreover, when a market's central focus reflects a financial relationship between two businesses, consumers can become collateral damage to the economics that drive such markets.

Take, for example, the market for mortgage servicing where the principal business relationship is between two companies. This can and often has led to a suboptimal customer service experience. Surprises, runarounds, and mistreatment are the byproducts of a lack of investment in customer service that has plagued loan servicing markets for nearly a decade.

Similarly, in the debt collection market, consumers do not choose their collector. They are in an inherently vulnerable position once their account has been referred to collection. This dynamic can also lead to troubling practices resulting in significant consumer harm. Debt collection is the single largest category of complaints received by the Bureau's Consumer Response Office. These complaints and our supervisory and enforcement work show that consumers often face excessive and abusive calls, false threats of legal action, and inaccurate data furnishing to the credit reporting agencies when dealing with debt collectors.

As with debt collectors, consumers do not chose the credit reporting agencies that have information about them and sell it to others. Prospective creditors, for example, pay credit reporting agencies for credit reports and credit scores to assist them in evaluating the risks of offering credit to consumers. Of course, the users of the data want the data upon which they rely to be accurate but they also want it to be cheap. Credit reporting agencies may attempt to balance these competing interests of their customers. But they have no financial incentive to factor in the interests of the consumer who may suffer severe and long lasting harm from one inaccurate report.

Thus, while we there are potential risks to consumers in numerous financial markets, we view some markets, like the ones I just described, as higher risk. In addition to the risks posed to the consumer from the products and practices in the marketplace, we also consider the relative product market size in the overall consumer finance marketplace.

The other part of our prioritization framework focuses on the institution. It recognizes that some institutions' business models within a market are more harmful to consumers than others.

Accordingly, our prioritization efforts assess the relative risks to the consumer from each institution's activity within any given market. This process accounts for a broad range of factors that predict the likelihood of specific consumer harm. We start with institution's market share within an individual product line, which corresponds to the number of consumers affected. We prioritize relatively larger players with a more dominant presence given their ability to impact more consumers than relatively small players.

However, our prioritization approach augments this size consideration significantly with what we call field and market intelligence. Field and market intelligence includes both qualitative and quantitative factors for each institutional product line , such as the strength of compliance management systems, the existence of other regulatory actions, findings from our prior exams, metrics gathered from public reports, and the number and severity of consumer complaints we receive. In addition, given the Bureau's mandate to ensure fair, equitable, and nondiscriminatory access to credit for all consumers, we supplement general field and market intelligence with fair-lending-focused information to ensure that we are appropriately identifying and prioritizing fair lending risks as well.

Taken together, the information that we gather about each institutional product line at the market-level and at the institutional-level allows us to focus our resources where consumers have the greatest potential to be harmed. Relatively higher risk institutional product lines within relatively higher risk markets are our highest priority.

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After we break an institution down by its product lines, we eventually have to put it back together again. For many large and complex institutions, our prioritization efforts will result in several examinations over a period of time. For these institutions, each examination has a distinct start and end date and culminates with issuance of a supervisory letter which summarizes the examination activity, identifies any violations of law, and may include corrective action that the management and board must take to effectuate compliance.

Upon the conclusion of the review period, an institution will receive what we refer to as a roll-up examination report. This is the work product that will summarize the findings from all of the prioritization-driven targeted examinations conducted during the review period. The roll-up examination report will include the overall Federal Financial Institutions Examination Council compliance rating based upon the results of the product line-specific examinations conducted included during the review period.

For less complex or smaller entities, a supervisory plan will include an appropriately scoped single point-in-time examination that will result in a single examination report and assigned compliance rating.

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If we are risk prioritizing our exams correctly, including examining a number of non-banks that have not previously been subject to federal supervision, it is likely that a number of our examinations will yield findings that warrant some form of corrective action.

In certain instances, where there are more significant violations, we refer matters to our action review committee. Our action review committee determines through a deliberative and rigorous process whether matters that originate from our examinations will be resolved through confidential supervisory action, such as a board resolution or memorandum of understanding, or through a public enforcement action. Based upon the severity of examination findings, our field team will make a recommendation to the senior leaders within the Division of Supervision, Enforcement, and Fair Lending whether supervisory or enforcement action is appropriate.

A common set of factors is utilized to ensure determinations are made in a consistent fashion. In general, these factors fall into one of three buckets: violation-focused factors; institution-focused factors; and policy-focused factors.

Let me explain each of these in turn. When we think about the violations themselves, we think about severity in terms of the number of consumers affected, the magnitude of the harm, and the nature of the violation. For example, we are more likely to pursue public enforcement if we identify improper foreclosures than slightly miscalculated APRs. We consider whether the violation has ceased or is ongoing. We also consider the importance of deterrence. If we suspect a troubling practice is widespread, we may want to put the entire industry on notice through public enforcement actions.

We also consider the institution's behavior after the violation occurred. In particular, we consider whether the regulated entity has cooperated with the Bureau and how willing and able it is to comply on a going forward basis. If an institution self-identified or self-corrected the violation, this may tilt the balance in favor of using the supervisory tool, since we can have greater confidence that the informal action will still be carried out. On the other hand, if an institution has been unwilling to take corrective action, or if they have repeatedly been cited by the Bureau or another regulator for similar conduct, public enforcement action may be more appropriate.

Finally, we consider policy-focused factors. These may include how we have treated similar violations in the past, other Bureau activity related to the problematic conduct and how our action fits into the Bureau's broader priorities and goals.

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Our process is continually evolving. By looking back at the growing body of results from our examinations, we will be better informed about various institutions and incorporate that information back into our risk assessment for subsequent years. We are hopeful that our new approach will solidify an incentive system that rewards strong compliance and appropriately identifies those who violate the law, regardless of size, charter type, or industry. We believe that our risk-based and institutional product line-oriented approach to supervision represents a significant step forward for consumer protection regulation. We think our careful and reasoned approach to taking corrective action will result in consistency for industry and fairness for consumers. And, we are hopeful that all of this will reshape markets in consumers' and businesses' interests in the years to come. Thank you.

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.