

# Still Threatened: Arbitration Clauses in Securities Customer Agreements

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In a report to Congress released in March, the Consumer Financial Protection Bureau (CFPB) takes aim at consumer agreements that require disputes to be resolved by arbitration. The CFPB generally does not have jurisdiction over securities customers' agreements with broker-dealers or investment advisers, and the report concerns only agreements for checking accounts, credit or prepaid cards, payday or private student loans, and mobile wireless services. Nevertheless, the report, which was mandated by the Dodd-Frank Act, maintains pressure for the SEC or Congress to prohibit investment advisers and broker-dealers from requiring their customers to arbitrate disputes. See "Blue Sky Regulators Attack Pre-Dispute Arbitration Agreements" in the Summer 2013 edition of *Expect Focus*. While not actually taking a position *pro* or *con* requiring consumers to arbitrate, some of the report's key findings are ominous:

- Consumers, as a group, obtain little in the way of recoveries from arbitrations.
- The overwhelming preponderance of consumer recoveries come from class action settlements.
- Most arbitration provisions prohibit consumers from participating in class actions, and this can act as a significant barrier to class actions.
- Most consumers are unaware of the existence or implications of any arbitration provisions.
- Consumers have not been shown to obtain lower prices as a result of being required to arbitrate their disputes.

As to the arbitration forum that it operates for broker-dealers and investment advisers, FINRA has been implementing a series of reforms that may help stave off some critics' persistent calls for FINRA to prohibit broker-dealers from requiring their customers to arbitrate any disputes. For example, in March, FINRA obtained SEC approval of a proposal to make its so-called "public"

arbitrators more free of any securities industry connections. For background, see "FINRA Continues Investor-Friendly Arbitration Reforms" in the Spring 2014 edition of *Expect Focus*.

## Authored By

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