

CFPB Grabs for SEC/CFTC Turf

October 13, 2016

In May, the Consumer Financial Protection Bureau (CFPB) proposed a ban on “mandatory arbitration” contract clauses that make financial products consumers waive their right to join class actions. Broker-dealers, commodities firms, and investment advisers that lend for margin trading, remit funds, or use credit reports could fall under the ban, although the proposal contains a specific exemption for SEC-registered broker-dealers that already observe a Financial Industry Regulatory Authority (FINRA) ban on class action waivers. Many of these firms and their regulators—the Securities and Exchange Commission (SEC), the Commodities and Futures Trading Commission (CFTC), and the states—are watching this rule closely, both for its impact on specific firms, and for what future CFPB actions it may portend. The CFPB’s arbitration rule would require investment advisers and CFTC-regulated entities to litigate against class action attorneys if a dispute arose regarding finance-like activities. Careful contract wording might carve out other securities and commodities services from class action exposure. But that could be awkward and confusing for firms and consumers alike, and would invite litigation over the carve-outs. In any event, the CFPB’s turf grab seems like the tip of the spear. The SEC and CFTC have rulemaking and enforcement authority over broker-dealers, large investment advisers, and commodities firms. This authority extends to regulating agreements with consumers, as reflected in the current FINRA rule and in a current CFTC rule about arbitration waivers. And both the SEC and CFTC also extensively regulate extension of credit to consumers who trade on margin. Nevertheless, the CFPB seeks to impose its judgment on its sister agencies. This rule is a strategic move. The CFPB’s arbitration proposal explains that products or services that are subject to both that proposal and the CFTC’s arbitration rule must meet both agencies’ requirements. With this explanation, the CFPB shows that it aims for concurrent authority, notwithstanding the Dodd-Frank Act’s apparent directions to avoid such overlap.

Related Practices

[Securities Litigation and Enforcement](#)

Related Industries

Life, Annuity, and Retirement Solutions

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.