

**SCHWARTZ & BALLEN LLP**

1990 M STREET, N.W. • SUITE 500

WASHINGTON, DC 20036-3465

WWW.SCHWARTZANDBALLEN.COM

TELEPHONE  
(202) 776-0700

FACSIMILE  
(202) 776-0700

**MEMORANDUM**

May 18, 2016

To Our Clients and Friends

Re: CFPB Proposes Rule Prohibiting Mandatory Arbitration Clauses

The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) has proposed a rule that would prohibit mandatory arbitration clauses in contracts for consumer financial products or services that block consumer class actions against financial companies. Comments on the proposed rule are due 90 days from publication in the *Federal Register*, which is expected shortly.

The proposed rule would apply to most consumer financial products and services the CFPB oversees, including those related to lending money, storing money and moving or exchanging money. Congress already has prohibited mandatory arbitration clauses in residential lending contracts.

Financial institutions and companies would be permitted to include arbitration clauses in contracts. However, the clauses would have to explicitly state that they cannot be used to stop a consumer from being a part of a class action. Companies that choose to have an arbitration clause would be required to submit claims, awards and certain related material to the CFPB, which the CFPB would monitor for fairness to consumers. The Bureau also is considering disclosing such arbitration information.

The proposal follows a CFPB study required by the Dodd-Frank Act and released in March 2015, which concluded class actions are a more effective means for consumers to challenge practices of financial companies than individual suits. The CFPB states the proposal is intended to provide a day in court for consumers, provide an incentive for companies to comply with laws designed to protect consumers, and increase transparency for individual arbitration processes.

The CFPB cites its authority under Dodd-Frank Act Section 1028 to prohibit or impose conditions or limitations on the use of pre-dispute arbitration agreements if it is in the public interest and for the protection of consumers.

A copy of the proposed rule is available on our website at <http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.