

Thoughts on Suit to Vacate CFPB Arbitration Rule

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Many have commented on the suit filed last week challenging the CFPB's arbitration rule, but few have considered what impact, if any, the suit could have on the fast-approaching compliance date of March 19, 2018.

As a reminder, the Chamber of Commerce and other trade associations filed a long-anticipated suit last week seeking to vacate and set aside the CFPB's arbitration rule. In their complaint, the industry representatives have claimed that (1) the CFPB's adoption of the rule fell short of statutory requirements because it was premised on a flawed and inadequate study; (2) the CFPB's decision to issue the rule was arbitrary and capricious; (3) the rule is contrary to law because it is not "in the public interest and for the protection of consumers"; and (4) the CFPB itself is unconstitutionally structured, a claim that reprises arguments made in the PHH suit against the CFPB currently pending in the D.C. Circuit.

Of key importance, but less noticed, is that the complaint includes—among its numerous requests for relief—a request for a stay or preliminary injunction of the final rule pending a final judgment in the case. No motion has yet been filed, however, and it is not clear when the plaintiffs will move for preliminary relief, much less when the Court will rule. In the absence of a stay or injunction, the filing of the complaint does not alone delay the March 19, 2018 compliance date.

Meanwhile, the outcome of the Senate's Congressional Review Act resolution to overturn the arbitration rule remains uncertain. The Senate has yet to schedule a vote on the resolution and it is unclear if Senate Republicans will have the votes to pass it. The suit and any possible changes to the compliance date are also likely to play out against the backdrop of changing leadership at the CFPB.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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