Debt Collection Roundtable Report, **Matter No. P094806**

Concurring Statement of Commissioner Julie Brill

July 12, 2010

Today, the Commission has issued a report that does an outstanding job of identifying serious consumer protection problems in the debt collection industry, particularly with regard to debt collection litigation and arbitration. The report makes clear that the debt collection system is broken, and that the current situation is untenable. I wholeheartedly support the report's recommendations calling for improvement in industry practices, enforcement of current laws, and modifications of those laws where needed, in the areas of collection on time-barred debt and debt that is not properly documented. I write separately to express my views on the mandatory arbitration of consumer debt collection disputes.

As explained in the report, there are a number of major issues with debt collection arbitration. In 2009, the Minnesota Attorney General sued the country's largest provider of consumer debt arbitration services, the National Arbitration Forum (NAF), alleging that NAF had engaged in fraud, deceptive trade practices, and false advertising. In settling that case, NAF agreed to cease providing arbitration services in consumer debt collection matters.[1]

In the wake of the NAF case, the American Arbitration Association — the nation's second largest provider of consumer debt arbitration services — decided to impose a moratorium on such services until concerns regarding the fairness of the system are addressed.[2] A number of major creditors have also announced that they will not seek to enforce otherwise binding arbitration clauses in consumer credit agreements.[3] This has resulted in a de facto moratorium in the arbitration of consumer debt collection matters.

While I appreciate industry's sensitivity to the serious problems with mandatory pre-dispute arbitration of consumer debt collection matters, and its attempt to address these concerns through this self-imposed moratorium, the debt collection industry is, of course, free to lift that moratorium at any time and return to its old ways. I would therefore urge Congress to formalize the voluntary moratorium currently in place, by

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[1] *See* Press Release, Minnesota Office of the Attorney General, National Arbitration Forum Barred from Credit Card and Consumer Arbitrations Under Agreement with Attorney General Swanson (July 20, 2009), *available at* www.ag.state.mn.us/Consumer/PressRelease/090720NationalArbitrationAgremnt.asp.

[2] *See* Letter from William K. Slate II, American Arbitration Association, to Lori Swanson, Minnesota Attorney General (July 20, 2009), at 2, *available at* www.nclc.org/images/pdf/arbitration/testimonysept09-exhibit4.pdf (announcing moratorium until "there is some consensus on how concerns about the administration of debt collection arbitrations might be successfully addressed").

[3] *See*, *e.g.*, NATIONAL CONSUMER LAW CENTER, FORCED ARBITRATION — CONSUMERS NEED PERMANENT RELIEF 13 (Apr. 2010), *available at* www.nclc.org/images/pdf/arbitration/report-forced-arbitration.pdf (stating that JPMorgan Chase, Bank of America, Capital One, and HSBC reached tentative settlements to stop enforcing existing mandatory arbitration clauses and to refrain from including such clauses in their contracts until at least 2013).

enacting a temporary ban on the mandatory arbitration of consumer debt collection disputes. Such a ban should remain in place until the arbitration process can be shown to be fair, transparent, and as affordable as traditional litigation, and until consumers have a meaningful opportunity to opt out of pre-dispute arbitration without losing access to the credit services they seek. Once these conditions have been met, Congress could lift the ban itself, or it could delegate that authority to the Federal Trade Commission or another appropriate consumer financial protection agency or bureau established in the future.