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***The Consumer Finance Podcast: Understanding the CFPB's Rules for Nonbank Supervision***

**Host: Chris Willis**

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**Chris Willis:**

Welcome to *The Consumer Finance Podcast*. I'm Chris Willis, the co-leader of Troutman Pepper's Consumer Financial Services Regulatory Practice. And today I'm going to be talking about what to make of, or at least what I make of, the recent changes that the CFPB made in its rules for designating nonbanks subject to supervision because they pose risks to consumers.

But before I jump into talking about that topic, let me remind you to visit and subscribe to our blogs, [TroutmanPepperFinancialServices.com](https://TroutmanPepperFinancialServices.com) and [ConsumerFinancialServicesLawMonitor.com](https://ConsumerFinancialServicesLawMonitor.com). And don't forget about our other podcasts. We have lots of them. We have the [FCRA Focus](#), all about credit reporting. We have [The Crypto Exchange](#), all about crypto. We have [Unauthorized Access](#), which is our privacy and data security podcast. And finally, our newest podcast, [Payments Pros](#), which is all about the payments industry. All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your podcast platform of choice and let us know how we're doing.

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Now, as I said, today I'm by myself, just giving my thoughts about a recent news item relating to the CFPB's procedures for designating individual nonbanks as being subject to supervision because they pose risks to consumers.

Let me start with a little background on this issue. Dodd Frank has always provided this authority to the CFPB to designate on a one-off basis a particular nonbank that's otherwise not subject to its supervisory authority because the Bureau believes that it poses risks to consumers. But the Bureau really didn't use that authority for many years after its inception.

And then, a year or so ago, the director of the CFPB made an announcement that the Bureau would start making greater use of this so-called dormant authority. And that's the catchphrase that the Bureau used to describe it, and what a lot of industry writers used to describe it as well, and basically announced that it would be making greater use of this ability to designate individual non-banks for supervision under this provision of Dodd Frank dealing with risks to consumers.

Interestingly, at that time, the Bureau also updated a set of rules that had originally been promulgated in 2013, dealing with this process, but which, as I said, we don't think had ever

been used, to provide for a number of changes to the rules, but most importantly, the idea that if a nonbank was subject to supervision by the Bureau's determination that it was posing risks to consumers.

The Bureau reserved the right to publicize the finding that it had made subjecting that entity to supervision. That was a controversial thing that the Bureau did because many people in the industry felt that this should be treated just like any other confidential supervisory information, but the Bureau was essentially saying that it would not do so in these instances, or at least it retained the discretion not to do so.

So, for a long period of time, we were watching to see how extensively the Bureau was going to be using this ability to identify particular nonbanks and subject them to supervision, even though they're not a type that's listed in Dodd Frank, or they're not a larger participant under one of the CFPB's larger participant rules.

And we became aware of a number of instances in which the Bureau had approached various nonbanks not a large number of them, but some. Asserting that they would be subject to jurisdiction because the Bureau believed that they pose risk to consumers, and asking them, essentially, whether or not they wanted to contest that finding.

Our understanding was that a number of those entities did not contest the finding. They were subjected to supervision and no public announcement was made about that whole process. So it all happened behind the scenes. But the Bureau's statements in those instances were, if you choose to contest our designation, then we may or we will make our determination public once it is made.

And earlier in 2024, we saw the first instance of the Bureau actually making public a contested determination of risks to consumers subjecting a particular nonbank to supervisory authority. And if you all read that designation order which we certainly did with great interest, it made a whole lot of allegations about the company's conduct and why it posed risks to consumers and, didn't read in a very favorable way from the company's standpoint.

So, we had that one public development and then the private developments that I'd mentioned a moment ago where there were confidential instances where individual companies agreed to be supervised by the CFPB. The most recent chapter in the story is that the Bureau has now updated its rules again.

The same ones that it updated in 2022, but now updating them again for this process for designating individual banks as being subject to supervision, because of, the risks that they allegedly pose to consumers. Now the rule changes for the most part are pretty procedural in nature. They have to do with changing time periods and who within the CFPB will make which determination at which time and what filings and what responses will be provided and how they can be filed and served and the time within which it will happen and even a word limit for responding to a Bureau's Notice that it may subject an entity to supervision. All of that stuff is sort of interesting if you find yourself in one of these proceedings. But to me, the big takeaway from the change in the rules was the fact that the CFPB confirmed in the rules now that if an entity consents voluntarily to be subject to supervisory jurisdiction, in response to one of these notices, then that determination will not be made public, but if it contests it, then it may be made

public by the Bureau, as it did with the example earlier in 2024, which of course we wrote about on our blog.

This, of course, just really codifies the practice that we had already seen the Bureau engaging in over the preceding year. But it's interesting that they've now signaled to the market essentially the same thing that they had signaled privately to these other entities that they subjected to jurisdiction on a voluntary basis.

And that is, you can keep your confidentiality as long as you don't fight our designation. And so I think it's interesting that the Bureau made that public in the new version of its rules. And now, of course, the whole industry is on notice, that whenever they get one of these notices, they know what will happen if they choose to contest the Bureau's determination that the company poses risks to consumers.

I think also the fact that the rules were updated would have to suggest to us as observers that the Bureau continues to intend to use this authority. That the relatively small number of entities that have been designated for supervision thus far weren't the end of the road with respect to this issue, but rather were really just the start.

And that the Bureau intends to continue using this so-called previously dormant authority to designate particular nonbanks for supervision when they otherwise aren't subject to the bureau's supervisory authority. I think what it means is for non-banks who aren't subject to supervision they need to sort of be on the lookout for this to potentially happen to them.

Particularly if they have a higher profile in the industry because of market position, or number of complaints, or private litigation, or interaction with state regulators, or the other things that might bring them to the attention of the Bureau in a way that would lend support to a bureau conclusion that they pose risks to consumers.

And if you happen to be in a non-bank like that, then I think it's a good idea to prepare for what supervision might be like for you that would be a worthwhile investment if you end up being supervised, but also a worthwhile investment in making sure you build the kind of compliance management system that can catch complaints, engage in internal monitoring, and fix problems before they ripen into regulatory enforcement proceedings, which of course is in the company's best interest in the first place, whether you're subject to supervisory jurisdiction of the CFPB or not.

So we'll of course be keeping our ears to the ground to see how much more we see the Bureau using this authority to designate nonbanks for supervision. We'll comment on it when we can on our blogs or on this podcast. But we wanted to cover this development and tell you what we thought of it in terms of its importance to the industry.

And as I said, it doesn't tell us much new that we didn't already know. But it reinforces what we already knew and reinforces the importance to the Bureau of continuing to use this authority, which again is granted to it right there in the text of Dodd Frank.

I appreciate everybody listening today. As I said, don't forget to visit and subscribe to our blogs, [TroutmanPepperFinancialServices.com](https://www.troutmanpepper.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.consumerfinancialserviceslawmonitor.com). And while you're at it, why not visit us over at [Troutman.com](https://www.troutman.com) and add yourself to our Consumer

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