The Role of the FTC, the States, and the New Bureau of Financial Consumer Protection in Today's Marketplace

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Thank you for that kind introduction. And thanks very much for inviting me to speak here today.

I'm particularly pleased and honored to be addressing this group because I see so many of my good friends around the room — friends from AARP, CFA, CRL, Consumers Union, NACA, and all the other consumer advocacy groups who are in the trenches every day, doing amazing and absolutely critical work. I also want to acknowledge my former colleagues and good friends from the State AGs' offices as well as my new federal colleagues here today.

A special thanks to the industry representatives attending. You are some of the fiercest allies consumers have; you understand that pro-consumer is, by definition, pro-customer. And that is good for business.

A common refrain heard in this town from politicians giving speeches is, "I'm one of you." I don't get to say that too often because I am not a politician. But today is different because I am one of you.

I have been doing consumer protection work since — well, since the Roosevelt administration. Teddy Roosevelt.

When I first started doing consumer protection work, which seems like 100 years ago, one of the greatest challenges was making sure that every household got their annual "Sears, Roebuck and Company" catalogue in time to mail in the order for the holidays.

And one of our greatest fears was whether the famous "Dr. Hite's Pain Cure for Man and Animals" was going to kill more consumers than it cured.

Ah, those were simpler times.

Not, of course, that there was any shortage of scammers and thieves at the turn of the last century — which was when Richard Sears and Alvah Roebuck were sending catalogues to 90 percent of Americans households and Dr. Hite was poisoning the rest. That was an era in which out-of-town newspapers warned travelers to New York City to avoid "smooth gentlemen who sell the Brooklyn Bridge or sections of Central Park to guileless foreigners"[1] — an era in which a lurid, but widely read, account of the lives of "eminent scoundrels" talked about cities "infested" with "thieves, pickpockets, footpads, housebreakers, shoplifters, highwaymen, disorderly women, [and] keepers of houses of ill fame."[2]

There have always been scoundrels trying to part consumers from their money. It is just that today, they come at us from so many different directions.

In the early 1900s, a consumer who moved his wallet to his inside vest pocket, steered clear of dark alleys, and armed himself with a healthy dose of moral fortitude could probably navigate the marketplace relatively intact.

Today's consumer is vulnerable online, over the phone, and at her ATM. Scams come hidden in emails, disguised as government programs, and dressed as beloved Aunt Molly — complete with social security number and signature bad wig. Crooks don't just pick pockets —

1 *Newport (RI) Daily News,* Sept. 11, 1914, pg. 4,col. 1.
2 Thomas Seccombe, ed., *The Lives of Twelve Bad Men*: *original studies of eminent scoundrels by various hand,* 1894

they pocket pictures, chat with children, purloin pin numbers, phish for passwords, and crush credit ratings. They are in your computer, on your smartphone, at your doctor's office, in your kids' schools, and at your bank.

There aren't more scammers. There are just so many more avenues for them to pursue their scams.

Today, those of us in government who are charged with consumer protection have to adopt a multi-level, multi-pronged approach if we are going to throw-up roadblocks to scammers on every one of those avenues. I'd like to spend my time today talking about how we in the law enforcement community can best do that in our fast paced, technologically advanced marketplace.

As we all start to smell spring in the air, many of us are thinking about baseball's opening day, just two weeks away. The anticipation of that first crack of the bat makes it difficult not to think in sports metaphors, so I would like to talk about the need to approach modern consumer protection with the teamwork, coordination, and fluidity of that great double-play combination — Tinker to Evers to Chance.

Now, for those of you not steeped in early 20th century baseball trivia, Joe Tinker, Johnny Evers and Frank Chance were Chicago Cubs, back when the Cubs actually won championships. They became famous for their flawless execution of the classic 6-4-3 double-play.

The first step was for the shortstop, Joe Tinker, to catch the ball. As Leo Durocher said, "Nobody ever won a pennant without a star shortstop." The position requires lightning fast reactions, a keen sense of where the batter is going to put the ball next, deep understanding of the strategy of the game, and the ability to field anything they hit at you.

I cut my consumer protection teeth in the Vermont AG's office, and I can tell you first hand, state AGs are the shortstop of the consumer protection game. Like the shortstop, the AGs are often the first to reach the ball — that is, to get consumer complaints about everything from home repair scams to deceptive telemarketers to shady mortgage servicers. Through their complaint handling and mediation services, the AGs try to resolve each case, getting a refund here, requiring a contractor to complete work there, or stopping a foreclosure down the block. And as the first to get in the game, the AGs often hear about problems consumers are facing before we do here in Washington.

Multiple state AGs will often work together to tackle widespread, nationwide problems. For example, state AGs worked together to take on

- the tobacco companies that marketed to kids and failed to disclose the health threats cigarettes pose
- the pharmaceutical firms that hid the risks associated with their products and told consumers the drugs could do much more than they really could (our modern-day Dr. Hites)
- the mortgage brokers that sold to consumers loans they couldn't afford and charged fees that couldn't be justified.

I was privileged to lead the states in a number of these efforts, with the help of folks like you, my consumer protection family.

For the past year, I've been honored to serve as a Commissioner at the Federal Trade Commission, the nation's leading consumer protection agency. And I'm pleased to say that my consumer protection family is still right here with me, helping me and my FTC colleagues take on the tough issues that impact consumers throughout the country.

I'm often asked about the difference between working with the state AGs and with the

FTC. Well, if the state AGs are the shortstop Joe Tinker, then the FTC is second baseman Johnny Evers.

The second baseman's role in the classic double play is complex. We catch what consumers and the state AGs toss us by following up on local trends in consumer scams and taking the campaigns against them national — campaigns on issues such as online privacy, credit reporting, advertising substantiation, green marketing, telemarketing, debt collection, and competition in health care and high-tech industries. We are fighting to end abusive sweetheart deals between pharmaceutical companies that keep low cost generics off the market, costing consumers $ 3.5 billion per year in higher drug costs. And we give consumers the tools and information they need to protect themselves from the cheats trying to steal second base — programs like our Do Not Call list, which Dave Barry has called the most popular government program since the Elvis stamp.

One thing every second baseman has to watch out for is the runner who takes advantage of a near-sighted ump or a cloud of dust to come at second base, spikes up. The economic downturn has provided just that sort of opportunity for scammers who try to squeeze the last dime out of financially strapped and desperate families. At the FTC, one of our core goals is to take these cheats out of the game.

Last June, the FTC announced an action against Countrywide Home Loans, a mortgage servicing subsidiary of Bank of America. We claimed that Countrywide's loan servicing operation charged homeowners who were behind on their mortgage payments outrageous, inflated fees — fees that often added up to hundreds or even thousands of dollars — for such routine services as property inspections and lawn mowing, meant to protect the lender's interest in the property. The more the mortgage market imploded and the more homeowners fell into delinquency, the more Countrywide improperly profited. The FTC got $108 million of those tainted gains back from Countrywide, and we are now working to return the money to consumers.

And just this December, the FTC broke up a massive Internet-based marketing ring that targeted consumers who were desperate for cash. The ringleader, Jeremy Johnson, created a tangled web of over 60 shell companies that lured consumers into "trial" memberships for bogus government grant-getting and work-at-home money-making schemes. He charged monthly fees for memberships never ordered and services never rendered, bilking consumers out of approximately $275 million. All the while, Johnson led a life of luxury. In addition to a garage full of expensive cars, Johnson had six helicopters, three airplanes, several high-end properties — including an extravagant 22,000 square foot home that cost $8 million to build — and a taste for high-stakes gambling, online and in Las Vegas.

I am happy to report, we definitely got the "out" in this case. A federal judge has entered a preliminary injunction against Johnson's operation, shutting it down, appointing a receiver, and freezing Johnson's assets for future distribution to his victims.

But, of course, the second baseman will frequently make his out with the help of his shortstop. And the FTC fights some of its biggest battles with the help of our partners in the states.

Two weeks ago we announced Operation Empty Promises, an enforcement sweep that targeted scammers, like Jeremy Johnson, who falsely promise consumers they can make thousands of dollars in allegedly guaranteed jobs and work-at-home opportunities. Operation Empty Promises included three new enforcement actions by the FTC, 28 actions by 10 states and the District of Columbia, 48 criminal actions by the Department of Justice, and seven civil actions by the U.S. Postal Inspection Service.

We have also worked with our state partners in Illinois, Iowa, Nevada, North Carolina, North Dakota, Ohio, and Vermont to win a final judgment in a case against a payment processor responsible for funneling tens of millions of dollars from consumers into the coffers of scam artists. And last August, the FTC and 24 states carried out Operation Healthcare Hustle, a coordinated law enforcement sweep involving a total of 54 lawsuits and regulatory actions against sellers of phony “medical discount plans” that masqueraded as health insurance.

Together, the FTC and the states have also targeted mortgage modification and foreclosure rescue scams that prey on desperate consumers who are in fear of losing their homes. These fraudsters collect large upfront fees in exchange for false promises that they can prevent foreclosures. Since February 2008, the FTC has brought over 30 enforcement actions targeting foreclosure rescue and mortgage modification frauds, the states have brought over 200, and there are more in the works.

And we have cooperated with our state partners to shut down the scammers who claim they can help consumers erase their credit card debts and more. Over the past decade, the FTC and state enforcers have brought a combined 260 cases to stop debt relief providers’ deceptive and abusive practices focused on consumers in financial distress.

Because we’ve seen such a spike in the amount of harm to consumers from these types of schemes, last year the FTC promulgated regulations that require those who pitch mortgage assistance and debt relief services to deliver on their promises before they can collect one dime from consumers.

I’ve been particularly impressed with the value placed on cooperation with the states throughout the FTC — by my fellow Commissioners, and by our competition and consumer protection attorneys at both the management level and the staff level. On many occasions over the past year, friends from the state enforcement community have complimented FTC staff efforts to coordinate with the states in our enforcement initiatives. This is exactly how it should be, and it is an accomplishment of which I am very proud.

Of course, it is great when the shortstop and second baseman work together, but mostly that gets the team only one out. Lucky for consumers, there is a new player on the team. The Dodd-Frank Wall Street Reform and Consumer Protection Act has given us our new first baseman, our Frank Chance: A new agency charged with protecting consumers in the credit and financial markets, the Bureau of Consumer Financial Protection.

Now I know some of you fans out there are going to argue that playing first base is for big hitters who can't handle the outfield. I humbly disagree. As the first baseman of the St. Louis Nationals wrote nearly 100 years ago, the "clever first baseman will need all the speed, the arm, and the head he can press into service."[3] And let me add to that: the reach — an effective first baseman should have long arms.

The new Bureau will possess all that. It will have rulemaking authority with regard to unfair, deceptive, or abusive practices by banks and pretty much anyone else providing consumer financial products or services, with a few key exceptions. The Bureau will have the right to examine the books of most of these institutions and enforce the laws against them if they are found to be in violation. And most importantly in this town, the Bureau will have a substantial budget — equal to ten percent of the Federal Reserve's budget and automatically delivered without having to go through the appropriation process. That gives every other governmental

[3] *How to Play First Base*, Spaulding Athletic Library, Group 1, No. 225, (New York: American Sports Publishing Company, 1914), 3.

agency, including mine, budget envy. The Bureau will also inherit hundreds of consumer protection employees from other agencies and will hire hundreds more new ones.

But that doesn't mean the Bureau will be working the infield alone. The state AGs and the FTC will continue in our positions, playing to our strengths, and – with the help of a smart and powerful Bureau at first base – keep turning those double plays for consumers.

For example, the states are particularly well-equipped to take an active role in resolving individual disputes between consumers and businesses in their communities. And the state AGs are best poised to go after certain types of companies — such as insurers, common carriers and nonprofit organizations — that may be outside the jurisdiction of the FTC and the Bureau.

And the Bureau can reach some of the players that the FTC and the states cannot — in particular, large federally chartered banks. With respect to the other arenas in which scammers lurk, the FTC retains its entire enforcement jurisdiction, as do the state AGs.

In addition, Dodd-Frank grants the FTC enhanced rulemaking authority with regard to automobile dealerships. Several of you here today have told me that you are seeing abuses in the auto financing industry that mirror many we saw in the mortgage industry — things like unfair yield spread premiums and undisclosed add-ons and fees. The FTC recently announced that we'll be taking a good, hard look at those sorts of practices in order to protect car-buying consumers.

Some in the business community are worried that, in the many areas in which the Bureau, the FTC and the states will have overlapping jurisdiction, the agencies will unfairly overwhelm industry players. And while I understand these concerns, I believe everyone — consumers and producers — has a strong interest in ensuring a fair marketplace, with ample choices, fair prices, and accurate information.

Businesses playing by the rules don't want scammers to pick the pockets of consumers; that is money their customers won't have to spend on their products. The actions of consumer protection agencies are not aimed at shutting down business; we are clearing the thieves, cheats, and frauds out of the marketplace so that honest businesses playing by the rules can continue to serve their customers. And so consumers can feel safe and secure when they shop on the corner, at the mall, or online.

Unfortunately, there are so many scam artists that we need to take out that the FTC and the new Bureau will be far too busy to double team legitimate business. But just to make sure, Dodd-Frank requires the FTC and the Bureau to put a Memorandum of Understanding in place to make certain that neither government nor business resources are wasted.

In other words, we are not going to be turning any double plays against businesses that play fair, because they are on our team.

These are hard times for American consumers. The economic downturn has saddled too many families with the misery of unemployment, foreclosure, and poverty. The wave of technological innovations that has brought so many exciting ways to communicate and work and recreate also carries with it a plenitude of new opportunities for scammers to take the last dollar from these consumers.

Protecting vulnerable consumers is not a game. But baseball has served as a metaphor for American life for almost as long as apple pie. And I believe consumers could do no better than be served by a team as coordinated, as powerful, and as successful as the double-play trio of Joe Tinker, Johnny Evers, and Frank Chance. We at the FTC, and our partners in the State AGs' offices and at the new Bureau of Consumer Financial Protection, can be that team.

Thank you again for the invitation to speak to you today, thank you for listening, but most importantly, thank you again for the work that you do. I look forward to working with you all in the months and years to come.