



Scott A. Stengel  
General Counsel

440 South Church Street  
Sixteenth Floor  
Charlotte, NC 28202

August 31, 2017

Hon. Elizabeth A. Warren  
United States Senate  
Washington, D.C. 20510-2105

*By Hand  
Delivery*

Re: *Consumer Financial Protection Bureau's Final Rule on Arbitration Agreements*

Dear Senator Warren:

I am writing in response to your letter of August 10, 2017, addressed to Jeffrey J. Brown, Chief Executive Officer of Ally Financial Inc., requesting information in connection with the final rule on arbitration agreements (the **Arbitration Rule**) that was recently promulgated by the Consumer Financial Protection Bureau (the **CFPB**).

Ally is proud to share your passion for protecting and, even more, relentlessly focusing on the financial well-being of consumers. Placing our customers at the center of everything we do is core to how we operate at Ally. We are pleased to have been named in 2017 as "Best Internet Bank" and "Best Millennial Bank" (*Kiplinger's Personal Finance*), "Gold Choice Award for Direct Banking" (*Kantar TNS*), and "Best Comprehensive Online Bank" (*MyBankTracker*). We also were honored when The Pew Charitable Trusts recognized Ally in December 2016 as one of five banks to have instituted all of Pew's recommended overdraft practices and in May 2015 as the only bank to have instituted all of Pew's recommended consumer checking account practices—including in connection with dispute resolution.

Our standard contracts for consumer deposit products and services do not include pre-dispute arbitration clauses. We also do not generally seek to include these clauses in agreements when extending credit directly to consumers and do not prioritize them when evaluating retail installment sales contracts for purchase from automotive dealers.

Instead, we concentrate on resolving the concerns of consumers informally, swiftly, and—most important—fairly.

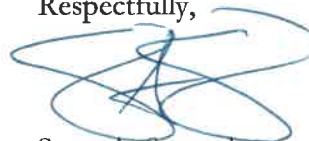
Rarely do we find this possible, however, when the economic incentives of trial lawyers come into play. In reviewing the arbitration study that the CFPB had conducted and reported to Congress in March 2015 (the **Arbitration Study**), we were troubled to find confirmation of how little consumers tend to benefit from class-action litigation.

- Over 60% of class actions were settled individually, withdrawn, or dismissed for failure to serve or prosecute—resulting in no relief at all for putative class members—and only 13% ended with a final class-wide settlement or judgment.<sup>1</sup>
- While the data sets do not exactly line up across its findings, the CFPB identified \$1.1 billion of cash payments in 251 class-wide settlements and 34 million recipients of cash payments in 236 class-wide settlements. Using these figures, the average cash payment to each consumer was roughly \$32.<sup>2</sup>
- In contrast, the trial lawyers in the 251 class-wide settlements received, on average, \$1.3 million in fees.<sup>3</sup>

Two years later, when the Arbitration Rule was published, we were equally concerned to learn how much class-action litigation is expected to skyrocket. Specifically, the CFPB estimates that the Arbitration Rule will result in 3,020 additional class actions being filed in federal court during the next five years, with a projected cost of \$2.6 billion—including \$332 million in fees for trial lawyers.<sup>4</sup>

We hope that you find these perspectives helpful and appreciate your advocacy on behalf of consumers across our national footprint.

Respectfully,



Scott A. Stengel

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<sup>1</sup> Arbitration Study, Section 6, Pages 37 and 39.

<sup>2</sup> Arbitration Study, Section 8, Pages 27 and 28.

<sup>3</sup> Arbitration Study, Section 8, Page 36.

<sup>4</sup> Arbitration Rule, 82 Fed. Reg. 33,210, 33,403-05. These figures do not account for an expected but unspecified increase in class actions filed in state court.



**American Express Company**  
801 Pennsylvania Avenue, N.W.  
Suite 650  
Washington, DC 20004

September 1, 2017

The Honorable Elizabeth Warren  
United States Senate  
317 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Warren,

This letter is in response to your letter of August 10, 2017 to Ken Chenault, Chairman and Chief Executive Officer of American Express.

American Express utilizes arbitration as an element of a holistic approach to make it easy for our customers to raise complaints and disputes and to resolve them effectively and efficiently. It starts with our extensive customer service process in which the vast majority of cases are resolved. If a dispute is not resolved through our customer service channel, it is followed by individual discussions, non-binding mediation and then arbitration as the last option. Because of the effectiveness of this process, arbitration is used in a relatively small number of cases.

For context, American Express fields over 1.4 million consumer inquiries a year. Of these inquiries, less than 0.5% escalate beyond service groups within the company. Arbitration is a rarely utilized yet critical component of the system American Express employs to insure first class service. Of the relatively small number of disputes that do escalate beyond service groups to American Express' claims resolution process, more than 97% are resolved without going to arbitration.

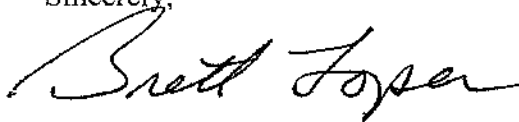
American Express believes arbitration is an important tool that, as part of this overall process, provides our consumer customers with an accessible, fair, convenient and efficient resolution mechanism. Importantly, our consumer customers are given the opportunity to opt-out of the relevant provision of their contracts (<https://www.americanexpress.com/us/content/cardmember-agreements/all-us.html>) as they become Card Members. If the regulation issued by the

Consumer Financial Protection Bureau (CFPB) were to be implemented, American Express would ultimately stop offering arbitration to our consumer customers.

When the CFPB proposed the arbitration rule in 2016, American Express joined with Discover Financial Services and Barclays Bank in submitting comments. For your benefit, a copy of that joint letter is attached. In it, the companies state their view that, "...the Bureau should allow supervised entities that adopt a consumer friendly arbitration provision to continue to use class action waivers." Importantly, the comment letter recommends two proposals for narrowing the scope of the regulation. If these were adopted as part of the final regulation, American Express would continue to utilize arbitration as part of its consumer complaint and dispute resolution system.

Because the final regulation failed to address the recommendations made in our public comments, American Express has advocated that the United States Senate adopt S.J. 47.

Sincerely,

A handwritten signature in black ink, reading "Brett Loper". The signature is fluid and cursive, with the first name "Brett" and last name "Loper" clearly distinguishable.

Brett Loper  
Senior Vice President, Global Government Affairs  
American Express

Federal Government Relations  
Public Policy

September 1, 2017

The Honorable Elizabeth Warren  
United States Senate  
Washington, D.C. 20510-2105

Dear Senator Warren:

This letter responds to your August 10, 2017 correspondence regarding Bank of America's use of mandatory arbitration clauses and the arbitration process. Thank you for your inquiry. We welcome the opportunity to provide you with our perspective on the issue of mandatory arbitration clauses in our consumer agreements covered by the recent CFPB rule.

At Bank of America we are dedicated to improving the financial lives of our customers. To that end, we are committed to ensuring our policies, practices, products, and programs all align to this purpose. This includes, among other things, maintaining complaint resolution programs designed to address disputes quickly and efficiently in order to preserve the valuable relationships we have with our customers.

The CFPB's arbitration rule does not significantly impact the overwhelming majority of Bank of America's consumer products and services because we either removed or no longer enforce such clauses in consumer agreements. As you may be aware, in 2009 Bank of America discontinued the use of mandatory arbitration in our consumer agreements for credit card and deposit accounts. We also eliminated mandatory arbitration in our mortgage and home equity agreements several years ago, and dramatically reduced its application in credit card collection actions before 2009. As a result of these changes, customers seeking to resolve disputes with us related to automobile loans, recreational vehicles loans, marine loans, credit cards, and deposit accounts are no longer subject to mandatory arbitration and class action waivers.

Our High Net Worth lending group does offer a marketable securities line of credit (similar to margin loans offered by broker dealers which are exempt from the rule) that contains a mandatory arbitration clause. If the client designates such line as consumer purpose, it would be subject to the CFPB's rule. This lending group also offers loans to our High Net Worth clients that are customized (as to terms and collateral) to the clients' individual requests. Although we

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Fax: 202.661.7110

Bank of America, DC8-455-09-01  
1455 Pennsylvania Avenue, NW, 9th Floor, Suite 950, Washington, DC 20004-1043



generally removed mandatory arbitration from these customized lending documents some years ago, it was retained in a limited number of jurisdictions. Consequently, we do have some customized loan agreements with High Net Worth borrowers designated as consumer purpose loans that contain mandatory arbitration provisions encompassed by the CFPB's rule.<sup>1</sup>

In your letter, you note that although a number of lobbying groups representing big banks and financial firms (among many others) have criticized the final arbitration rule, our institution has remained silent. Since Bank of America no longer enforces mandatory arbitration and class action waivers in the vast majority of consumer agreements potentially covered by the final rule as discussed in this letter, we take no position on whether the CFPB's arbitration rule should be reversed, because it will at most have a *de minimis* impact on us and our customers.

Moreover, we recognize that whether the use of mandatory arbitration is an appropriate means for both consumers and providers of consumer financial products and services to resolve disputes is a complex issue, driven by a variety of factors affecting banking organizations of diverse sizes and capabilities. We understand that the experience of other companies is that arbitration can, in many cases, offer a simple, cost-effective process for consumers to resolve disputes with their financial institutions. For example, the Independent Community Bankers of America ("ICBA") recently released a statement noting among other things that it "isn't economically feasible under the new rule for community banks to continue to pay the costs associated with arbitration for customers if banks are forced to carry the high legal costs associated with class-action lawsuits."<sup>2</sup> The ICBA concluded that "arbitration is a cost-effective and much more efficient option for the customer and the bank over judicial litigation."<sup>3</sup> Both the Credit Union National Association and the National Association of Federally-Insured Credit Unions issued similar statements on the final rule.<sup>4</sup>

Your letter further notes that a number of trade associations that we maintain membership in have advocated against the CFPB arbitration rule. While it is the case that Bank of America often shares interests with other companies and groups that advocate and shape public policy

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<sup>1</sup> Bank of America also acquires Retail Installment Sales Contracts ("RISCs") from automobile dealers and other third party credit originators. Some RISCs include mandatory binding arbitration clauses with class action waivers, which we again do not enforce with consumers.

<sup>2</sup> <https://www.icba.org/news-events/press-releases/2017/07/11/icba-strongly-opposes-cfpb-arbitration-agreements-final-rule>

<sup>3</sup> *Id.*

<sup>4</sup> <http://news.cuna.org/articles/112581-cuna-disappointed-in-arbitration-rules-application-to-cus> and [https://www.nafcu.org/News/2017\\_News/July/CFPB\\_issues\\_final\\_arbitration\\_rule\\_NAFCU\\_reviewing\\_for\\_CU\\_impact/](https://www.nafcu.org/News/2017_News/July/CFPB_issues_final_arbitration_rule_NAFCU_reviewing_for_CU_impact/)

positions on issues that are important to the financial services industry, our membership in specific trade associations or other organizations does not mean that we endorse every position that these organizations take. We are members of trade associations that represent thousands of banks, credit unions, and other companies that vary in size and complexity as well as interests and priorities.

We strived to be as responsive as possible to your letter. In some instances we were limited in our ability to provide certain proprietary, confidential, and competitively sensitive information. This included your request for the number of customers covered by each contract, data on how customers fare in arbitration, and any internal analyses or memoranda showing the impact of the CFPB's arbitration rule.

In conclusion, Bank of America implemented revisions to our arbitration policies and procedures almost ten years ago because we believe it is the right business practice for us to maintain relationships with our clients and customers. While we are not in a position to make the same assessment for other institutions, particularly given the diversity of size and complexity of the financial services industry, our actions have not materially impacted our mission to provide suitable financial products and services to improve the financial lives of those we serve.

Please let me know if you have any further questions or concerns.

Sincerely,



John Collingwood  
Director  
Federal Government Affairs

September 1, 2017

The Honorable Elizabeth Warren  
United States Senate  
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter of August 10th inquiring about the Consumer Financial Protection Bureau's (CFPB or Bureau) final arbitration rule. In response to the CFPB's proposed arbitration rule (81 Fed. Reg. 3289, May 24, 2016) (Proposed Rule), Barclays submitted a comment letter along with Discover Financial Services and American Express Company suggesting a number of ways in which the Proposed Rule could be improved to benefit consumers, avoid unnecessarily imposing the costs and inefficiencies of class-actions in cases where they outweigh the benefits, and better advance the Bureau's public policy goals. A copy of that letter is attached.

As set out in more detail in the attached comment letter, we proposed two narrow exceptions to the Proposed Rule's prohibition on the use of class-action waivers: first, where existing government intervention (e.g., supervision or enforcement action) or a company's corrective action already provides remedy for the affected group of consumers, and, second, where statutory damages and fee-shifting provisions already provide sufficient incentives for consumers to bring individual claims. The Bureau has pursued and continues to pursue rigorous supervision and enforcement activities, particularly to investigate and remedy conduct that presents significant risk of consumer harm. The Bureau and other regulators seek to provide a full remedy to the entire class of affected consumers, both in terms of requiring companies to provide redress and demanding behavioral change. Moreover, the Bureau itself has emphasized the importance of companies' responsible conduct and self-policing, explaining that it "has concrete and substantial benefits for consumers and contributes significantly to the success of the Bureau's mission." Responsible Business Conduct: Self-Policing, Self-Reporting Remediation, and Cooperation, CFPB Bulletin 2013-06 (2013). Companies have strong incentives to implement effective compliance management systems and to provide effective remedies for the entire base of affected customers when problems are identified. Class-action lawsuits directed at the same conduct would be counter-productive and less effective and would likely result in a significant portion of funds being diverted to transaction costs and class-action attorneys rather than directly benefitting consumers. See, e.g., Proposed Rule at 32855, 32849-50 (average recovery per prevailing consumer in arbitrations studied was nearly \$5,400, while average recovery per prevailing



member of class-actions studied was only \$32, and weighted average claims rate was only 4%) (citing CFPB Arbitration Study § 5 at 41, § 8 at 27, 35-36).

We also suggested in our comment letter on the Proposed Rule that the Bureau should provide an exception to the prohibition on class-action waivers in circumstances where statutory damages provisions are available and fee-shifting provisions allow prevailing plaintiffs to recover attorneys' fees. Neither the CFPB Arbitration Study nor the Proposed Rule provided evidence to support the proposition that attorneys would lack sufficient motivation to pursue meritorious claims even where Congress has specifically provided statutory damages and fee-shifting provisions to protect consumers. Although the Bureau declined to incorporate either of these narrow recommendations into the final arbitration rule, we believe that they would have been effective in striking the right balance between allowing class-actions to proceed in circumstances where adequate means of consumer redress are otherwise unavailable while preserving the benefits of arbitration in appropriate circumstances, allowing consumers to resolve their claims expeditiously, at modest costs, and with higher recoveries for consumers than in class-actions. See, e.g., Proposed Rule at 32855, 32849-50.

Thank you,

A handwritten signature in black ink, appearing to read "Lawrence S. Drexler", written in a cursive style.

Lawrence S. Drexler

LSD/cm

200 West Second Street  
Winston-Salem, NC 27101-4019  
(336) 733-2180  
Fax (336) 733-2189  
RJJohnson@bbandt.com

**Robert J. Johnson, Jr.**  
Senior Executive Vice President  
General Counsel, Secretary and  
Chief Corporate Governance Officer

September 1, 2017

The Honorable Elizabeth Warren  
United States Senate  
Washington, D.C. 20510-2105

Dear Senator Warren:

Thank you for your August 10, 2017 letter to BB&T CEO, Kelly King, regarding the use of arbitration clauses in certain financial contracts.

Since its founding in rural eastern North Carolina in 1872, BB&T has remained uncompromisingly committed to a corporate mission focused on helping clients achieve economic success and financial security and making the communities we serve better places to live and work. BB&T's client service culture revolves around day-to-day retail banking needs, and management's steady attention to client satisfaction has supported BB&T's rapid growth and development of a loyal customer base.

The CFPB's recent study attributing significant consumer benefits to the use of arbitration is curiously at odds with the Bureau's rule to restrict the use of arbitration agreements. In short, the CFPB's study reports that absent arbitration, consumers will recover smaller settlements relative to class actions and will pay higher costs for financial services. Supporting that conclusion are facts illustrating a staggering disparity: consumer benefits from arbitration total, on average, \$5,389 versus \$32.35 in class actions. Moreover, the study indicates that consumers who engage in arbitration receive settlements up to 12 times faster than through litigation; typically 2-8 months versus an average of 1 year (and often over 2 years) for completion of a class action lawsuit.

The CFPB further acknowledges that higher litigation costs resulting from restrictions on the use of arbitration will be passed on to consumers, either through higher prices or reduced quality or availability of products and services. Those costs will flow primarily to the benefit of trial attorneys, incited by large payouts for themselves, but with little to no litigation benefit for individual aggrieved customers. Indeed, in the 12% of class action suits where there was any award, individual consumers average \$32 while their attorneys receive \$1 million per case. Trial attorneys take, on average, 21 percent (and sometimes up to 63 percent) of all class action recoveries.

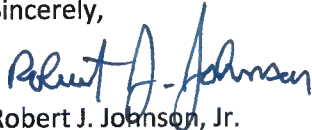
In an attempt to quantify higher litigation costs, the Bureau estimated an additional 1,208 lawsuits each year at an estimated total cost of over \$1 billion. To the extent banks absorb that cost, lending or services to individuals and small businesses will decline proportionately. Higher costs passed on to a bank's customer base will hurt low income customers disproportionately and set back efforts to bring more low-income customers out of the shadows and into the regulated banking system. Our experience

with the Durbin Amendment, where price controls on interchange led to a pull-back of free checking and low-cost banking services at many institutions is instructive.

The public interest would have been better served if the CFPB had taken steps to address legitimate concerns about consumer confusion related to arbitration before rushing to a rule restricting its use. The Bureau heard recommendations to that effect from small businesses participating in the small entity review process, but rejected more cost-effective and consumer-friendly solutions centered on public education and refinements to make arbitration easier to understand and to use.

Arbitration has historically provided faster, more cost-effective and higher recovery resolutions for harmed consumers. The CFPB's final rule hurts the people it purports to help. We appreciate your interest in our thoughts and experience.

Sincerely,

A handwritten signature in blue ink, reading "Robert J. Johnson, Jr." with a stylized, cursive script.

Robert J. Johnson, Jr.  
Senior Executive Vice President, General Counsel,  
Secretary and Chief Corporate Governance Officer



Capital One Financial Corporation  
1680 Capital One Drive  
McLean, VA 22102

August 31, 2017

The Honorable Elizabeth Warren  
317 Senate Hart Office Building  
Washington, D.C. 20510

Dear Senator Warren,

I am writing in response to your letter, dated August 10, 2017, regarding the Consumer Financial Protection Bureau's final arbitration rule.

Capital One does not originate, incorporate or enforce arbitration clauses that would be prohibited by the CFPB's new arbitration rule. This has been Capital One's policy since 2009. Because we have not used arbitration clauses that would be prohibited by the CFPB's new rule since 2009, and have no intention of doing so in the future, the rule will not affect the forum in which we resolve consumer credit disputes with customers.

In our auto finance line of business, we purchase consumer credit contracts from auto dealers unaffiliated with Capital One. Some of those contracts include an arbitration clause. However, in those cases, we immediately send a letter informing our new customer that we will not seek to enforce the arbitration provision. The customer may nevertheless choose to initiate arbitration against us to resolve a dispute or may choose to pursue a claim in court. In addition, if the customer chooses to name the original auto dealer and Capital One as joint defendants in a claim, the auto dealer may elect to have the dispute resolved in arbitration. In any such case, however, Capital One does not force a customer to arbitrate a claim.

Sincerely,

A handwritten signature in black ink, appearing to read "J. G. Finneran, Jr.", written in a cursive style.

John G. Finneran, Jr.  
General Counsel and Corporate Secretary





**Walter W. Bettinger II**  
President and CEO

211 Main Street  
San Francisco, CA 94105  
Tel (415) 667-9776  
walt.bettinger@schwab.com

August 28, 2017

The Honorable Elizabeth Warren  
317 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter of August 10, 2017 seeking my perspective on the recent Consumer Financial Protection Bureau (CFPB) rule limiting the use of mandatory arbitration clauses in certain financial contracts.

We understand and appreciate the viewpoints on both sides of this debate. Supporters of a ban on arbitration argue that the threat of class action lawsuits serves as a more effective deterrent to bad corporate behavior, while supporters of arbitration argue that the net recovery by consumers is higher under arbitration than under class action litigation. Arguably, both viewpoints have basis in fact and, as a result, we have chosen not to take sides in the debate. Rather, our goal at Schwab is to act in the best interests of our clients and the firm, while fully complying with the laws and regulations governing this issue both today and in the future.

Sincerely,

A handwritten signature in blue ink, appearing to be "W. Bettinger II", written over the word "Sincerely,".

Walter W. Bettinger II  
President & Chief Executive Officer

Copies to:

David Garfield

Jeff Brown

Lisa Hunt



September 1, 2017

The Honorable Senator Elizabeth Warren  
317 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter of August 10, 2017 requesting our views on the new arbitration rule issued by the Consumer Financial Protection Bureau ("CFPB"). Citi takes both the mission and authority of the CFPB seriously and regularly engages with the Bureau in both a supervisory and policy arena.

Citi includes elective arbitration provisions in many of our consumer agreements. These provisions, which are publicly available, provide that either party may elect to arbitrate a dispute subject to certain limitations. Citi believes that the arbitration process is fair and benefits our customers by allowing them to cost-effectively and expediently resolve disputes in a manner that provides significant, demonstrable benefits over litigation, especially class action litigation. We have concerns that the CFPB's arbitration rule could constrain our ability to continue to offer this convenient, simple, and efficient dispute resolution process to our customers.

Given the substantial benefits of arbitration, the arbitration rule's inherent promotion of class action lawsuits would not be in the public interest, even based on the CFPB's own findings. Customers who prevailed in arbitration recovered an average of \$5,389, compared to the \$32.35 obtained by the average class member in class action settlements.<sup>i</sup> At the same time, trial attorneys received \$1,000,000 on average per class action case.<sup>ii</sup> According to the CFPB, the rise in litigation costs will be passed through to consumers, either through higher prices or reduced quality of products or services.<sup>iii</sup>

As noted above, arbitration provides numerous benefits to our customers, including the following:

- Customers can assert the same individual claims that they could bring in court, including claims for all types of damages or injunctive relief.
- The customer's cost is generally less than if filing in court. The American Arbitration Association's (AAA) filing fee for consumer matters is limited to \$200 (as opposed to \$400 in federal court), and we typically pay the customer's filing fees. Citi is obligated by the AAA's consumer rules to cover all other arbitration fees and costs, including the arbitrator's compensation.<sup>iv</sup>
- The arbitration process is easier than filing in court. Customers can file an arbitration demand online without an attorney.<sup>v</sup> The forms are clear and simple with no specific pleading requirements (as opposed to court proceedings).

- Citi customers can actually get their proverbial “day in court.” Unlike court proceedings, customers are not required to have an attorney to handle procedural motions and discovery. After the arbitrator is selected, a preliminary hearing is held by telephone for convenience where the arbitrator and the parties decide what type of hearing will be held – in-person, telephonic, or document only. The informal proceedings allow customers to fully tell their story without being required to satisfy strict evidentiary requirements or hire an expert.
- Unlike most court proceedings, customers have the ability to object to the arbitrator selected by the forum. A customer is also not bound by unilaterally-set court dates and can negotiate deadlines and hearing dates and times with the arbitrator and Citi, allowing the customer to resolve their dispute conveniently based on his or her schedule.
- Citi customers also have the right to appeal any arbitration award to a panel of three AAA arbitrators.
- Arbitration proceedings protect our customers’ privacy. Unlike public court proceedings, customers do not have to share their financial records and transactions in arbitration.
- Furthermore, Citi’s current credit card and bank customers have the choice to reject or “opt out” of an arbitration provision within a limited time period after opening their account.
- Citi’s customers who choose not to opt out of arbitration still retain their right to go to small claims court if they so choose – the arbitration agreement expressly does not apply to disputes that proceed in small claims court.

Citi strives to serve as a trusted partner to our customers. While our goal is to flawlessly serve our customers, we are committed to resolving any dispute that should arise in an expeditious and customer friendly way.

Sincerely,



Bill Johnson  
Executive Vice President, Citibank, N.A.

<sup>i</sup> See CFPB’s Study on Consumer Arbitration (March 10, 2015) (“Study”), § 5, pp. 13 and 41 and § 6, p. 49.

<sup>ii</sup> See Study, § 8, p. 33.

<sup>iii</sup> See Preamble to CFPB Final Rule, Arbitration Agreements, 82 Fed. Reg. 33210, 33408 (July 19, 2017).

<sup>iv</sup> AAA’s Consumer Arbitration Rules, pp. 33 (available at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>)

<sup>v</sup> See <https://www.adr.org/Support>





**Susan J. Steinthal**  
Deputy General Counsel &  
Head of Consumer Banking Legal

CFG Legal  
\*NJ1110  
30 Montgomery Street  
13<sup>th</sup> Floor  
Jersey City, NJ 07302  
Telephone: 1201 356 5536  
Facsimile: 1844 851 2957  
Susan.Steinthal@citizensbank.com

Dear Senator Warren:

On behalf of Citizens Financial Group, I write in response to your letter dated August 10, 2017 regarding the new arbitration rule issued by the Consumer Financial Protection Bureau ("CFPB").

Your letter asks whether Citizens uses "forced arbitration clauses in any of the kinds of contracts covered by the CFPB rule." While many of Citizens' covered contracts include arbitration provisions, consumers are not required to accept them. Rather, consistent with pre-existing regulations, consumers can choose to opt out of these arbitration provisions. In addition, the arbitration provisions included in the bank's covered contracts also include a small claims carve-out, so that consumers with smaller dollar disputes can elect to pursue a remedy in small claims court, and many include fee-shifting provisions pursuant to which the bank agrees in certain circumstances to cover filing and other fees that might otherwise be payable by the consumer.

In fact, Citizens believes that permitting consumers to resolve disputes with us via arbitration is in our customers' best interest. For example, the CFPB study behind the new rule shows that arbitration is up to 12 times faster than litigation, particularly class action litigation. The study also shows that arbitration provides consumers with recoveries that are, on average, 166 times higher than class actions where the average payout to the consumer is \$32. And statutory damage awards that are available to consumers in arbitration can greatly exceed the consumer recovery of statutory damages in a class action, which are limited by statute. Consumers also pay less for arbitration than they would in court; according to the CFPB's study plaintiffs' lawyers received \$424,495,451 in attorneys' fees in the class actions studied.

The benefits of arbitration for our customers informs our response to your question whether there is "any reason that having more legal options to hold your bank accountable," including by use of a class action lawsuit, "is not in your customers' best interest?" This is because, while the new arbitration rule will undoubtedly give rise to more class action litigation against banks, it may not provide customers with more legal options, because it may lead some banks to eliminate arbitration provisions entirely. This would limit the legal options available to customers to resolve their disputes, and given the benefits of arbitration for consumers, it would not be in their best interest.

In addition to the foregoing, your letter requests confidential data and analyses. Please contact Kenneth Robinson, Head of Government Relations for Citizens Financial Group, if you wish to discuss these requests further.

Very truly yours,

Susan Steinthal  
Deputy General Counsel &  
Head of Consumer Banking Legal



September 1, 2017

The Honorable Elizabeth Warren  
United States Senate  
317 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Warren:

We write in response to your August 10, 2017 letter to HSBC North America Holdings Inc. regarding the use of arbitration over the past five years and the Consumer Financial Protection Bureau ("CFPB") rule prohibiting the use of class action waivers in the arbitration clauses of certain consumer financial agreements. HSBC North America Holdings Inc. operates in the United States through its subsidiaries, including HSBC Bank USA, National Association and HSBC Finance Corporation (collectively, "HSBC").

Consistent with its strategic plan announced in 2011, HSBC has not engaged extensively in providing consumer financial products and services over the past five years. As detailed in HSBC's public filings, its Consumer Lending and Mortgage Services businesses have operated in run-off since 2009 and 2007, respectively. Among other transactions, in 2010, HSBC sold its auto finance receivable servicing operations and auto finance receivables portfolio to Santander Consumer USA. In 2012, HSBC sold its Card and Retail Services business to Capital One Financial Corporation and a portion of its credit card receivables associated with HSBC's legacy credit card program to First Niagara Bank, N.A. HSBC has continued to issue credit cards on a limited basis to customers of HSBC Bank USA. In 2016, HSBC stated that it no longer had the intent to hold for investment various portfolios of residential mortgage loans, and sold its remaining mortgage servicing rights (already in run-off for several years) and related servicing advances to a third party.

In reviewing HSBC's consumer financial agreements over the last five years, to date we have identified only one agreement which provides for arbitration of disputes. Specifically, HSBC Bank USA, National Association's Electronic Bank Transfer Service agreement, which authorizes the use of service provider CashEdge, Inc. to effect such electronic transfers, provides that, "If either of us has any dispute or disagreement with the other regarding this Service that we cannot resolve amicably, both parties agree that the sole and exclusive remedy shall be binding arbitration in accordance with the then-current rules and procedures of the American Arbitration Association." This agreement makes no reference to class actions.



The findings of our review are consistent with those in the report of Pew Charitable Trusts, *Checks And Balances* (2015 Update) (the "Pew Report"). The Pew Report examines checking account agreements of financial services institutions for the following dispute resolution practices:

- "Best practices": (1) a binding arbitration clause; (2) a class-action waiver clause; and (3) a loss, costs and expenses clause; and
- "Good practices": (1) an arbitration opt-out provision; (2) a jury trial waiver clause; and (3) a small-claims exemption clause.

The Pew Report concluded that HSBC's agreements follow "best practices" because they do not have mandatory arbitration and class-action waiver clauses and "good practices" because they contain arbitration opt-out and small-claims exemption provisions.

We trust that the foregoing is responsive to your inquiry. Please be assured that HSBC will continue to comply fully with governing law concerning arbitration in consumer financial services agreements.

Sincerely,

A handwritten signature in black ink, appearing to read "Pablo Sanchez", with a stylized flourish underneath.

Pablo Sanchez  
Head of Retail Banking and Wealth Management, United States and Canada

# JPMORGAN CHASE & Co.

Stephen Simcock  
CCB General Counsel

September 1, 2017

The Honorable Elizabeth Warren  
United States Senator  
United States Senate  
Washington, DC 20510-2105

Dear Senator Warren:

I am the General Counsel for Consumer & Community Banking at JPMorgan Chase and am responding to your August 10, 2017, letter to Jamie Dimon. You have asked about our views and practices with respect to arbitration agreements in consumer financial services contracts, and I am happy to provide the following information.

To begin, we believe that arbitration has been and should continue to be a viable and effective option for consumers to pursue their legal claims and to be fairly compensated. As found in the arbitration study conducted by the Consumer Financial Protection Bureau (CFPB), claims in arbitration typically proceed more quickly and result in individual awards that are much greater than awards to individual members in a class action. When an arbitration process is designed appropriately, there are fewer barriers to bringing a claim in arbitration than bringing a claim in court, and it can be more convenient for claimants to obtain a hearing and to achieve a resolution of their claims. To the contrary, the CFPB's study found that class action lawsuits are inefficient. Among other concerns, most class actions end up providing no benefit at all to class members, and even when class actions are settled, the majority of eligible class members typically receive no compensation.

Additionally, class actions are not the sole or best way to positively influence the behavior of corporations and banks. Companies are incentivized for reputational, economic, regulatory and other reasons to maintain positive relationships with consumers, to have robust internal control and compliance regimes, to resolve customer complaints and remedy past errors or omissions, and to comply with the law. When it comes to influencing the activities of regulated entities, blanket endorsement of class actions is not an optimal remedial tool, as class actions do not necessarily serve the public's or consumers' best interests. Regulated entities are already positively influenced by other forces – such as the desire and incentive to avoid supervisory actions and negative publicity. These forces deter potential harm to consumers and drive responsible behavior and changes to business practices – without the inefficiencies of class action lawsuits as documented in the CFPB's study and elsewhere.



# JPMORGAN CHASE & Co.

Stephen Simcock  
CCB General Counsel

With regard to Chase, we are committed to addressing and resolving our customers' concerns, complaints and claims in a fair and efficient manner. Arbitration is just one way Chase addresses customer complaints when it is an appropriate and effective way to adjudicate disputes that cannot otherwise be resolved. To be specific, Chase utilizes contractual arbitration clauses in certain consumer banking and deposit account agreements and auto finance contracts. For example, Chase's current consumer Deposit Account Agreement (DAA) (effective August 27, 2017) is enclosed. Among other provisions, Chase's consumer-oriented DAA allows customers to opt out of the arbitration clause; provides that customers have the right to go to small claims courts instead of arbitration; establishes a customer's right to appeal an arbitration award; and commits Chase to reimburse up to \$500 for any initial filings fees paid by a customer and to pay the expenses for at least a two-day hearing near the customer's address of record.

Furthermore, in passing the Federal Arbitration Act, Congress determined that pre-dispute arbitration agreements such as this should generally be found valid and enforceable. Indeed, the FAA strongly endorses arbitration – the Act has been called a “liberal federal policy favoring arbitration” by a variety of courts. Under the FAA, the courts have consistently found that the arbitration clause in Chase's DAA is valid and enforceable.

Lastly, to the extent your concerns relate to Chase initiating arbitrations concerning products and persons covered by the CFPB rule, Chase generally does not initiate claims in arbitration in connection with attempting to collect consumer debt. And, Chase has not conducted a formal analysis of the impact of the CFPB's rule on its profits.

In conclusion, when regulated entities utilize arbitration agreements that ensure an efficient and fair process, we believe they should be allowed to include class action waivers.

Sincerely,



Stephen Simcock  
General Counsel  
Consumer & Community Banking



September 1, 2017

The Honorable Elizabeth Warren  
Suite SH-317  
Hart Senate Office Building  
Washington, DC 20510-2105

Dear Senator Warren:

The PNC Financial Services Group, Inc. ("PNC") is pleased to respond to your letter, dated July 17, 2017, concerning arbitration clauses in consumer agreements. PNC is a Main Street banking organization focused on traditional banking activities, including retail banking, consumer and residential mortgage lending, corporate and institutional banking, and asset management. Our business model is focused on serving our customers and communities.

We provide consumers a wide range of products and services to assist them in conducting their day-to-day financial transactions, as well as meeting both their short-term and long-term financial goals. Every day, we interact with our customers through a variety of channels—including our branches, our toll-free Customer Care Center, and through our online banking applications and website—to answer questions they may have about our products and services or their individual accounts. We actively work with our customers to address any concerns they may have about their accounts. We resolve the overwhelming majority of customer questions and issues through these informal means.

PNC includes an arbitration provision in certain of its consumer agreements for those rare situations when a customer issue cannot be resolved promptly and amicably in the ordinary course of business. Arbitration provides a convenient and inexpensive way for consumers to resolve these disputes.

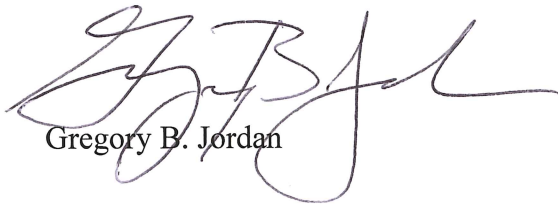
Importantly, PNC does not force consumers to accept arbitration. Rather, PNC provides consumers the ability to opt-out of any arbitration provision. Consumers may opt out simply by notifying PNC of their election by a toll-free call or mail within 45 days of the consumer's account opening or being sent the arbitration provision. We call our customers' attention to the arbitration provision in our account agreements through a variety of means.

We also take several steps to make it easier and less expensive for consumers who do not opt-out of these provisions to pursue their claims and receive a decision. For example, we work to make arbitration hearings convenient for our customers by having them take place in the

county where the customer resides, unless the customer and PNC agree otherwise. Additionally, PNC will pay or reimburse a customer for their filing, administrative and arbitrator's fees for claims up to \$75,000, and will consider customer requests to pay or reimburse these fees where the claim is greater than that amount regardless of whether the customer's claim is successful. PNC also pays the customer's reasonable attorney, witness and expert fees and costs if the customer prevails in arbitration.

We appreciate the opportunity to respond to your inquiry and we hope you find this information useful.

Sincerely,

A handwritten signature in dark ink, appearing to read 'G. B. Jordan', with a stylized, flowing script. The signature is positioned above the printed name 'Gregory B. Jordan'.

Gregory B. Jordan



September 1, 2017

The Honorable Elizabeth Warren  
U.S. Senate  
317 Hart Senate Office Building  
Washington, D. C. 20510-2105

Dear Senator Warren:

Thank you for your letter regarding SunTrust Banks, Inc.'s use of arbitration clauses in its contracts with its clients. I appreciate the opportunity to discuss this important topic.

SunTrust engages in business for the Purpose of Lighting the Way to Financial Well-Being for our clients and communities. As a purpose-driven company, our approach is to talk with clients, understand their needs and suggest solutions that are best suited to help them achieve their financial goals. Our policies reflect and support that approach and we have ongoing reviews for continuous improvement of our client-focused procedures.

Furthermore, our entire team is bound by our Code of Conduct which sets forth clear standards regarding our service to our clients:

Teammates must try to provide information that is clear, factual, relevant and honest to help clients select services that meet their needs.

SunTrust will be honest and fair in relations with clients, competitors and suppliers.

Teammates must not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Integrity and high ethical standards are essential in our business. SunTrust expects teammates to be conscientious and do quality work.

Our Purpose and Code of Conduct standards are directly reflected in our policies and procedures for client account management. We recognize the fundamental importance of providing our clients with the information and the means to successfully manage their accounts.

There are times however, when disputes arise between SunTrust and our clients and we believe that a consumer should have a choice as to how his or her disputes should be resolved.





Currently, when SunTrust directly enters into an agreement with a consumer, we do not force such clients to agree to arbitrate a dispute. Rather, at the formation of a contract, we allow our clients to reject arbitration clauses and determine that both sides should be required to settle any disputes arising under the contract in court. As such, providing our clients with an arbitration option adds to, rather than reduces, the number of legal options available to them.

Although we do not mandate arbitration, SunTrust believes there are a number of benefits to resolving disputes through arbitration instead of through litigation. These include reduced expenses, speed and convenience to all parties involved. As a result, SunTrust believes that utilizing arbitration is beneficial to all of our clients, including those who never pursue arbitration, because it reduces costs on all the products and services we offer.

For those clients who do choose to accept arbitration, our standard arbitration agreement includes a number of provisions that provide certain options and protections:

- Limits on fees. For claims by a consumer under \$75,000, the total the consumer would have to pay for arbitration fees is up to the amount to file a case in state or federal court (whichever is less) and such averages around \$200. In addition, the arbitration administrator used in SunTrust's agreements limits the amount a consumer will ever have to pay to \$250 even for larger claims.
- Right to recover fees. An automatic right for a consumer to recover its attorneys' fees, witness fees and costs if the consumer prevails. In court, only a handful of statutes allow such a recovery.
- Set minimum recovery. A provision that allows a client, prior to initiating arbitration, to serve a demand on SunTrust stating their claim and what amount they would accept to resolve it. If SunTrust fails to pay such amount and the client is required to file arbitration and prevails, the client is entitled to a minimum of damages of \$7,500 in addition to the attorneys' fees, witness fees and costs stated above. For example, if a client has a dispute about a \$10 fee, SunTrust refuses to pay it and the consumer prevails at arbitration, they will receive \$7,500 in damages, instead of just \$10, in addition to their attorneys' fees, witness fees and costs. Such a provision gives a consumer a simple, quick and efficient way to resolve a small dispute without a lawyer and if SunTrust is not willing to do so, make the potential recovery large enough to incentivize a consumer to bring an action in arbitration.
- Right of appeal. The right for the consumer to appeal any decision in arbitration if the amount of the claim exceeds \$50,000.



- Access to small claims court. Even if a consumer initially agreed to resolve their claims in arbitration, the consumer always maintains the right to take their case to small claims court which has expedited rules and usually allows a consumer to represent themselves without an attorney. Therefore, even if a consumer has a small-value claim and later decides it would not prefer arbitration, despite the benefits listed above, they can always pursue their case cheaply in court.

While it is SunTrust's goal to provide our clients with the optimal means to meet their financial goals, we do recognize that there are instances where disputes arise. We believe that arbitration is one of many viable options for handling such situations – it is fair to all parties, cost effective and expeditious.

Thank you again for your recent correspondence. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark F. Oesterle".

Mark F. Oesterle

Senior Vice President and Director, Government Relations



Stephan Schenk | President and CEO  
TD Group US Holdings LLC  
1701 Route 70 East, Cherry Hill, NJ 08034  
Ph: 856-470-2275 | stephan.schenk@td.com

September 1, 2017

**VIA OVERNIGHT DELIVERY**

The Honorable Elizabeth Warren  
United States Senate  
317 Hart Senate Office Building  
Washington, DC 20510-2105

Dear Senator Warren:

Thank you for your letter dated August 10, 2017. We at TD Bank, N.A. ("TD") recognize the importance of a responsible approach to banking services, and have devoted considerable time and resources to designing practices that are right for our customers and in keeping with our overall philosophy as a bank. We provide access, service, convenience, and a wide range of products and services.

As of July 2017, TD had more than 1,300 bank branches from Maine to Florida, including nearly 150 in Massachusetts. And TD employs more than 25,000 people—including more than 1,700 in Massachusetts—who serve our diverse population of retail customers.

TD offers a variety of financial products to our retail banking customers, and also issues several cobrand and private label credit cards that include top retailers. TD's retail consumer loan and deposit agreements do not include arbitration provisions, nor do our credit card agreements. However, certain financing agreements that TD enters into with consumers via third-parties—such as auto dealers in the auto finance space—may contain arbitration provisions that are standard in those industries, and are based upon the form of contract utilized by the third-party.

Again, thank you for your letter. We value our relationship with you, and welcome the opportunity for dialogue regarding financial services issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephan Schenk".

Stephan Schenk  
President and CEO  
TD Group US Holdings LLC



Tim Welsh  
Vice Chairman,  
Consumer Banking Sales and Support  
800 Nicollet Mall | BC-MN-H23L  
Minneapolis, MN 55402

[usbank.com](http://usbank.com)

September 1, 2017

Senator Elizabeth Warren  
United States Senate  
Washington, D.C. 20510-2105

Dear Senator Warren:

I am in receipt of your letter of August 10, 2017, related to the Consumer Financial Protection Bureau's rule on the use of arbitration clauses in certain financial contracts. U.S. Bank serves the needs of its customers through more than 3,100 branches located in communities of all sizes and the Bank strives every day to provide these services in a fair and responsible manner.

U.S. Bank is dedicated to providing the highest level of customer service, and that includes working with customers to address and resolve any issues. However, when disputes arise that cannot be resolved, they may be addressed in a variety of other ways, including through small claims courts, litigation, and arbitration (for transactions with an arbitration agreement).

U.S. Bank has arbitration clauses in its consumer deposit agreements, certain consumer-purpose loan agreements, and payment product agreements. The arbitration clauses in these agreements allow either party to choose to arbitrate any dispute, and in the event arbitration is chosen by either party, require U.S. Bank to advance the initial charges associated with the arbitration proceedings.

While we are not in a position to share the confidential information requested in your letter, the data in the CFPB study leading to the rule is consistent with U.S. Bank's experience and perspective that arbitration often offers a quicker dispute resolution option that yields larger average recoveries for consumers than class action recoveries.

I hope that this information is helpful to understand U.S. Bank's perspective on arbitration. Again, thank you for your letter and the opportunity to address this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Timothy A. Welsh".

Timothy A. Welsh  
Vice Chairman  
Consumer Banking Sales and Support



**David Moskowitz**  
Executive Vice President &  
Head of Government Relations  
and Public Policy

**Wells Fargo & Co.**  
MAC R0135-061  
1750 H St NW  
Washington, DC 20006-4600  
(202) 303-2957  
david.moskowitz@wellsfargo.com

September 1, 2017

VIA ELECTRONIC MAIL

The Honorable Elizabeth Warren  
United States Senate  
Washington, DC 20510

Dear Senator Warren:

I write in response to your August 10, 2017 letter to Tim Sloan, regarding Wells Fargo's views on using arbitration to resolve disputes with our customers.

Whenever a customer raises a concern, we first try to resolve the issue informally. Wells Fargo's goal is to make things right for our customers so that formal dispute resolution proceedings are unnecessary for as many of our customers as possible. The overwhelming majority of customer concerns are resolved to the customer's satisfaction informally, without the need for any dispute resolution procedures.

Our arbitration agreements are embedded in certain account agreements which can be found at: <https://www.wellsfargo.com/credit-cards/agreements/> (credit cards); <https://www.wellsfargo.com/online-banking/consumer-account-fees/> (consumer deposit accounts) <https://www.wellsfargo.com/debit-card/terms-and-conditions/> (debit and ATM cards).

Arbitration is broadly recognized as a less expensive, quicker, and simpler way to resolve disputes than litigating in court; federal law empowers courts to ensure the fairness of arbitration proceedings. Those advantages benefit consumers and businesses alike.

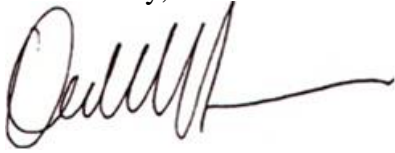
Under Wells Fargo's customer agreements, arbitrations are administered by the American Arbitration Association ("AAA"), a nationally known and respected non-profit organization. Arbitration proceedings are conducted pursuant to the AAA's Consumer Arbitration Rules and the AAA's Consumer Due Process Protocol. The AAA rules specify a number of protections for consumers including: limits on the fees paid by consumers; selection of the arbitrator by the AAA with the requirement that the arbitrator be "impartial and independent" and perform his or her duties "carefully and in good faith"; the conducting of any in-person arbitration proceedings at a location that is convenient for the customer; the right of the consumer to be represented by



counsel; and the consumer's ability to choose to pursue a claim in small claims court rather than through arbitration.

Thank you for the opportunity to present our views.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David Moskowitz', with a long horizontal flourish extending to the right.

David Moskowitz  
Executive Vice President  
Head of Government Relations and Public Policy