

Congress of the United States
Washington, DC 20510

June 27, 2019

Jamie Dimon
Chief Executive Officer and President
Chase & Co.
270 Park Avenue
New York, NY 10017

Dear Mr. Dimon:

JPMorgan Chase (“Chase”) is reportedly reintroducing forced arbitration clauses into its contracts for nearly 50 million credit card accounts.¹ Forced arbitration clauses ban customers who have been cheated from banding together and vindicating their rights in court. This practice allows banks and other companies to get away with scamming large numbers of customers out of relatively small amounts of money, because, as one prominent judge has said “only a lunatic or a fanatic sues for \$30.”² In 2009, Chase agreed to remove forced arbitration clauses from its credit card agreements as part of a legal settlement. We write to express our strong concern with reports that Chase has decided to reverse course and to urge you to reconsider your plans to resume exploiting its customers.

Forced arbitration clauses, generally buried deep in the fine print of contracts for credit cards and other financial products, require consumers to give up their rights to go to court and seek redress for damages they have suffered as a result of unlawful practices by corporations. Instead of going to court, wronged consumers who have signed contracts with forced arbitration clauses must use private, arbitration forums. These forums do not have the same protections as courts, and their proceedings are often secret. As a result, corporations win the overwhelming majority of the cases, and they are able to hide their misconduct from the public. Forced arbitration clauses also typically prevent individuals from joining with other consumers in class actions, an extremely important tool for those who cannot afford to go after large banks on their own. As a result, few consumers with claims against a company worth \$1,000 or less even move forward with arbitration.³ When consumers do enter arbitration, the process is extremely unfavorable to them. Compared to filing lawsuits in court, consumers in arbitration are less likely to have legal counsel and more likely to have to pay additional fees.⁴ In 2010 and 2011, companies won 93% of arbitrated disputes where the company made claims against consumers. During the same timeframe, consumers collected only a mere 13 cents on every dollar in claims against

¹ The New York Times, “Chase Seeks to Prohibit Card Customers From Suing,” Emily Flitter, June 4, 2019, <https://www.nytimes.com/2019/06/04/business/jpmorgan-chase-credit-card-arbitration.html>.

² The Consumer Financial Protection Bureau, “Prepared Remarks of CFPB Director Richard Cordray at the American Constitution Society,” Feb 18, 2016, <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-american-constitution-society/>.

³ Consumer Financial Protection Bureau, “Arbitration Study,” Section 5, p. 10, March 2015, https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

⁴ *Id.* at Sec. 5, p. 28; *Id.* at Sec. 2, p. 57.

companies where they did not dispute debts, resulting in far less money recovered by consumers than what they receive from class actions.⁵

In 2010, Chase removed forced arbitration clauses from its credit card contracts in order to settle a lawsuit accusing your company of illegally colluding with other banks to deny consumers their rights to bring claims in court.⁶ Now, Chase is reintroducing forced arbitration for 47 million credit card accounts.⁷ The new section of Chase's credit card agreement will require customers to "give up your right to go to court" and that "arbitration will proceed on an individual basis, so class actions and similar proceedings will not be available to you."⁸ Not only will this far-reaching clause force disputes based on active accounts into arbitration, but it will also apply to "any prior account."⁹

Chase has justified this change by suggesting that it is in the best interests of customers, arguing that arbitration "is often faster, less expensive and provides better outcomes for our customers."¹⁰ This claim is belied by virtually all available data on the impact of forced arbitration on consumers,¹¹ as well as the significant sums that consumers have recovered from Chase through class action lawsuits in the past, such as one in 2012 in which the company agreed to pay \$110 million for overcharging overdraft fees.¹²

If Chase really thought that arbitration was in the best interest of its customers, it would give them the choice of whether to use arbitration or go to court—but you are not giving them a meaningful choice. Chase is making it hard for customers to opt out of the forced arbitration clause. In order to opt out, Chase is requiring customers to mail them a letter informing the company that they reject the forced arbitration clause and including a certain set of personal information. If a customer informs the company of his or her preference orally, mails the letter to the wrong address (even the wrong Chase address), tries to use email, includes the wrong account number, forgets to sign the letter, or simply does not find out about this provision until it is too late, the consumer will be barred from going to court.¹³ In addition, some customers have

⁵ *Id.* at Sec. 8, p. 24.

⁶ The Wall Street Journal, "J.P. Morgan Drops Card-Dispute Arbitration Rule," Jay Miller, November 22, 2009, <https://www.wsj.com/articles/SB10001424052748704888404574547991052980108>.

⁷ The New York Times, "Chase Seeks to Prohibit Card Customers From Suing," Emily Fitter, June 4, 2019, <https://www.nytimes.com/2019/06/04/business/jpmorgan-chase-credit-card-arbitration.html>.

⁸ Fast Company, "Chase bank is quietly adding a forced arbitration clause to some credit cards," Cale Guthrie Weissman, May 30, 2019, <https://www.fastcompany.com/90357331/chase-adds-forced-arbitration-clause-to-slate-credit-cards>.

⁹ The New York Times, "Chase Seeks to Prohibit Card Customers From Suing," Emily Fitter, June 4, 2019, <https://www.nytimes.com/2019/06/04/business/jpmorgan-chase-credit-card-arbitration.html>.

¹⁰ MarketWatch, "Chase is bringing forced arbitration clauses back to its most popular credit cards," Jacob Passy, June 5, 2019, <https://www.marketwatch.com/story/chase-is-bringing-forced-arbitration-clauses-back-to-its-most-popular-credit-cards-2019-06-04>.

¹¹ Consumer Financial Protection Bureau, "Arbitration Study," March 2015, https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

¹² The New York Times, "Chase Agrees to Settle Lawsuit on Overdraft Fees," Ann Carns, February 6, 2012, <https://bucks.blogs.nytimes.com/2012/02/06/chase-agrees-to-settle-lawsuit-on-overdraft-fees/>.

¹³ Fast Company, "Chase bank is quietly adding a forced arbitration clause to some credit cards," Cale Guthrie Weissman, May 30, 2019, <https://www.fastcompany.com/90357331/chase-adds-forced-arbitration-clause-to-slate-credit-cards>.

reported receiving mixed messages from Chase customer service agents about whether their accounts would be closed if they opted out of the forced arbitration provision.¹⁴

In order to better understand your company's reasons for reinstating this harmful policy and its potential impact on consumers, we request that you provide answers to the following questions no later than July 12, 2019.

1. Why did Chase choose to reinsert a forced arbitration clause in its credit card contracts?
2. How much money did consumers recover in disputes with Chase involving Chase credit card accounts in the five years before it agreed to remove its forced arbitration provision in 2010?
 - a. How much money did consumers recover such disputes in the five years afterwards?
3. Why will Chase not allow credit card holders to opt out of the forced arbitration clause after August 7, 2019?
4. Why will Chase not allow credit card holders to opt out over the phone, by email, or on the company's website?
5. If Chase truly believes that arbitration leads to "better outcomes for our customers," why will it not allow card holders bringing claims against the company to *choose* whether or not to enter arbitration?
6. In a September 2017 letter to Senator Warren regarding the Consumer Financial Protection Bureau's arbitration rule, your General Counsel Stephen Simcock wrote that "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."¹⁵ Based on that belief, does Chase plan to *force* credit card holders to use arbitration to bring claims against the company if they have a dispute, or merely offer it as an option?
7. In the same letter, Simcock wrote that "class actions are not the sole or best way to positively influence the behavior of corporations and banks" and that "companies are incentivized for reputational, economic, regulatory and other reasons to maintain positive relationships with consumers...remedy past errors or omissions, and to comply with the law."¹⁶ He went on to remark that "regulated entities are already positively influenced by...the desire and incentive to avoid...negative publicity."¹⁷ In order to maintain these "reputational incentives," does Chase plan to publicly disclose the number, nature, and

¹⁴ MarketWatch, "Chase is bringing forced arbitration clauses back to its most popular credit cards," Jacob Passy, June 5, 2019, <https://www.marketwatch.com/story/chase-is-bringing-forced-arbitration-clauses-back-to-its-most-popular-credit-cards-2019-06-04>.


¹⁵ Letter from Stephen Simcock to Senator Elizabeth Warren, September 1, 2017.

¹⁶ *Id.*

¹⁷ *Id.*

damages recovered of claims that card holders bring against the company? If not, how do you imagine that these reputational incentives are maintained?

Sincerely,



Elizabeth Warren
United States Senator



Jesús G. "Chuy" García
Member of Congress