



October 2, 2017

Hon. Mike Crapo, Chairman
Hon. Sherrod Brown, Ranking Member
U.S. Senate Banking Committee
Washington, D.C. 20510

Re: For the hearing scheduled for October 3, 2017 titled, *Wells Fargo: One Year Later*

Dear Chairman Crapo and Ranking Member Brown:

The National Association of Consumer Advocates writes to share its views for the upcoming hearing titled "*Wells Fargo: One Year Later.*" In September 2016, the Consumer Financial Protection Bureau (CFPB) fined Wells Fargo Bank, N.A. \$100 million for illegally opening millions of accounts without its customers' permission. Since then, the continued revelations and allegations of the bank's years-long, systemic mistreatment and defrauding of customers to reap profit has been astounding. Indeed, the level of Wells Fargo's offenses is reminiscent of the recklessness that led to the 2008 financial crisis when profitable but predatory financial schemes were accepted despite their devastating threat to American consumers' financial security. It is in the Committee's hands to support and uphold policies, including the CFPB's arbitration rule, that will ensure Wells Fargo and other bad actors in the financial sector, such as the credit reporting agency Equifax,¹ are not only held fully accountable for damage they cause but that they are also deterred from engaging in pernicious business practices in the first instance.

In the last year, Wells Fargo has been accused of a slew of misconduct and even admitted various acts in its own internal report²:

(1) As late as August 2017, the number of potentially fraudulent accounts reportedly had grown from the originally reported 2 million deposit and credit card accounts to 3.5 million accounts.³

(2) Also in August 2017, it was reported that Wells Fargo was being investigated for failing to refund money owed to customers with GAP insurance who had paid off their car loans early.⁴

(3) In July 2017, more than 800,000 people who took out car loans from Wells Fargo reportedly were charged for unneeded auto collision insurance.⁵

(4) In June 2017, it was reported that Wells Fargo was facing allegations that it had changed the mortgage terms of customers in bankruptcy without their consent.⁶

¹ Jim Puzzanghera, *Former Equifax CEO apologizes for data breach and details ways the company messed up*, LOS ANGELES TIMES, Oct. 2, 2017.

² *Independent Directors of the Board of wells Fargo & Company Sales Practices Investigation Report*, April 10, 2017.

³ Stacey Cowley, *Wells Fargo Review Finds 1.4 Million More Suspect Accounts*, THE NEW YORK TIMES, Aug. 31, 2017, <http://nyti.ms/2khdYRq>.

⁴ Gretchen Morgenson, *Wells Fargo, Awash in Scandal, Faces Violations Over Car Insurance Refunds*, THE NEW YORK TIMES, Aug. 7, 2017, <http://nyti.ms/2wsZf7l>.

⁵ Gretchen Morgenson, *Wells Fargo Forced Unwanted Auto Insurance on Borrowers*, THE NEW YORK TIMES, July, 27, 2017, <http://nyti.ms/2uHZfkc>.

The disturbing pattern and evidence of Wells Fargo's apparently ruthless conduct in the marketplace is facilitated by its ability to use its fine-print contracts to block consumer lawsuits, including class actions, and force its customers to resolve disputes in private, secret, and costly arbitration proceedings on an individual basis, referred to as forced arbitration. Wells Fargo's ability to limit its responsibility through forced arbitration delayed timely exposure of its risky practices, most notably in the fake-account scandal, until the widespread harm became untenable and was exposed. Even with its recent settlement of a single class action related to the unauthorized accounts, Wells Fargo has continued to invoke its forced arbitration clause to avoid responding to these and other allegations, including over its deceptive overdraft fee practices.⁷

A CFPB rule issued in July 2017 that limits forced arbitration can help restore much-needed accountability for Wells Fargo and other bad actors in the financial services sector. The rule does not eliminate forced arbitration outright. It bars arbitration clauses in financial contracts that ban class actions. It ensures that consumers harmed by widespread or systemic misconduct can once again band together in court to seek remedies. The arbitration rule is crucial to hold financial institutions accountable for unlawful practices and to encourage them to comply with the law.

The past year has demonstrated how Wells Fargo (and other financial institutions') ability to block customers' access to court drives reckless and damaging behavior in the marketplace and can potentially harm millions of people. Lawmakers should not ignore the lessons of Wells Fargo's numerous scandals, or the recent Equifax data breach, or even the wide-ranging financial misconduct that triggered the financial crisis a decade ago. Lawmakers should protect millions of consumers and consequently the vitality of the marketplace and the U.S. economy by rejecting any effort to undermine the arbitration rule.

Sincerely,

Christine Hines
Legislative Director

⁶ Gretchen Morgenson, *Wells Fargo Is Accused of Making Improper Changes to Mortgages*, THE NEW YORK TIMES, June 14, 2017, <http://nyti.ms/2kgIRtr>.

⁷ See, e.g. *Garcia v. Wachovia Bank, N.A. (In re Checking Account Overdraft Litig. MDL No. 2036)*, No. 1:09-MD-02036-JLK, 2016 U.S. Dist. LEXIS 145813 (S.D. Fla. Oct. 17, 2016)(Wells Fargo has appealed the court's denial of its motion to compel arbitration).