April 25, 2017

Chairman Jeb Hensarling
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Ranking Member Maxine Waters
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hensarling and Ranking Member Waters:

Fair Arbitration Now, a network of more than 70 consumer, labor, legal and community organizations, write to strongly oppose Financial CHOICE Act of 2017. While much of the legislation would undo critical protections instituted in response to the 2008 financial crisis, we specifically oppose provisions – Sections 738 and 857 – aimed at repealing the fundamental rights of everyday consumers and investors. Contrary to its title, H.R. 5983 would deprive ordinary consumers and investors of their choice on how to resolve serious disputes with powerful financial institutions.

For too long, consumers and investors in the marketplace have been restricted by terms in the fine-print contracts of consumer financial services, brokerage and investment advice, and employment contracts that deny them the ability to go to court to challenge misbehavior. Instead, the nonnegotiable corporate contracts require individuals to resolve disputes often on an individual basis, in private arbitration proceedings, which, as a tremendous amount of evidence shows,[1] are set up to favor corporations at the expense of ordinary people.

The Great Recession of 2007-2008 highlighted the harm of financial deregulation and the absence of corporate accountability in the financial system. The resulting recklessness caused significant damage in the form of lost jobs, foreclosures, and massive corporate bailouts, and reverberated throughout the economy for years. Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to reform the financial system and increase accountability in the markets. Indeed, important provisions in the Dodd-Frank Act recognized that the overall goal of improving corporate behavior depended on the ability of individual homeowners, consumers, investors and whistleblowers to enforce their rights in court when they were harmed by predatory conduct.

[1] See. e.g., Consumer Financial Protection Bureau, *Arbitration Study Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a)*, March 2015.

For example, the Dodd-Frank Act prohibited forced arbitration clauses outright in residential mortgages and lines of credit as well as for whistleblower claims under the Sarbanes-Oxley Act of 2002. It ensured that grievances related to these financial sectors could be heard in court. In addition, the statute specifically authorized regulators to examine the market and restrict forced arbitration in the interest of ordinary Americans.

Section 1028 required the Consumer Financial Protection Bureau to study the use of forced arbitration terms in consumer financial products or services and explicitly authorized the bureau by regulation to "prohibit or impose conditions or limitations" on the use of forced arbitration clauses if it finds it in the public interest and for the protection of consumers. Not only is the bureau's authority under this section indisputable, the agency has spent valuable time and resources to fulfill its mission pursuant to this provision. It released a data-driven study that demonstrated widespread use and impact of forced arbitration on the marketplace. The evidence showed that the court system is a critical tool to encourage corporate responsibility and also to reimburse consumers for losses caused by corporate transgressions. The bureau relied on meticulous information gathering and its explicit authority to propose a rule that would restore consumers' ability to band together when they are similarly harmed by financial misconduct. Our organizations strongly support this rulemaking.

Similar to the CFPB's authority, section 921 of the Dodd-Frank Act authorizes the Securities and Exchange Commission to prohibit or limit the use of forced arbitration clauses in contracts that investors enter into with broker-dealers and investment advisors, if doing so is in the public interest and for investors' protection. Forced arbitration is prevalent in the securities sector, forcing investors to surrender their ability to seek redress in court as a condition to receiving brokerage and other financial services. Brokerage firms were responsible for many fraudulent actions that led to or arose from the financial crisis. Ensuring that investors can choose the forum in which to resolve disputes with broker- dealers and investment advisors is critical to deterring future misconduct. The SEC has not exercised its authority under this provision at this time, but it should not be blocked from doing so.

The Dodd-Frank Act permits the SEC and CFPB to provide basic fairness by ensuring that consumers and investors enter arbitration voluntarily, after disputes arise. Voluntariness ensures that one party can't force a secret, biased arbitration process on the other. The agencies alone cannot combat the malfeasance that can run rampant at the hands of insatiable financial institutions. Private enforcement is integral for protecting the integrity of the marketplace.

The recent Wells Fargo scandal demonstrates the very real harm caused by forced arbitration, as well as the danger it poses to our financial system. Reports show that Wells Fargo customers had been trying to sue over fraudulent accounts since at least 2013, but the bank concealed its misconduct from the public and its investors by forcing these claims into secret arbitration. Even now that the bank's widespread fraud has been exposed, Wells Fargo continues to invoke forced arbitration clauses to deny justice to millions of consumers. This behavior is particularly galling, as the bank is relying on arbitration clauses in its customers' legitimate account contracts to block them from seeking redress over fraudulent accounts. The proposed rule from the CFPB to restrict forced arbitration would help prevent exactly this type of misconduct and subsequent denial of justice.

This bill would prevent these federal agencies from acting in the public interest to enact rules that would restore the rights of consumers and investors to hold financial companies accountable. Further, this proposal would undermine the fundamental purpose of Wall Street reform by aiding and abetting reckless corporate behavior like that of Wells Fargo. We urge you to reject this legislation. Thank you for considering our views.

If you have any questions or concerns, please contact Christine Hines, National Association of Consumer Advocates, christine@consumeradvocates.org or Amanda Werner, Americans for Financial Reform and Public Citizen, awerner@ourfinancialsecurity.org.

Sincerely,

Fair Arbitration Now (Organizations that support ending the predatory practice of forced arbitration in consumer and non-bargaining employment contracts: http://www.fairarbitrationnow.org/coalition/).