

[Law Firm Name/Legal Department]  
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## **RE: Advisory on Enforceability of Class Action Waivers in Financial Services Contracts**

To: [Client Name/Compliance Officer]  
From: [Attorney Name/Legal Counsel]

### **1. Executive Summary**

This advisory evaluates the current legal standing of class action waivers within consumer financial services agreements. Following recent judicial precedents and regulatory shifts, this letter outlines the criteria required for such waivers to remain enforceable against potential litigation.

### **2. Current Legal Landscape**

Under the Federal Arbitration Act (FAA), class action waivers are generally enforceable when coupled with a valid arbitration agreement. However, financial institutions must remain cognizant of specific exceptions under [State Law/Regulatory Agency] guidelines which may scrutinize waivers for procedural or substantive unconscionability.

### **3. Requirements for Enforceability**

- **Clear and Conspicuous Disclosure:** The waiver must be presented in a manner that is easily identifiable by the consumer (e.g., bold text, distinct borders).
- **Mutual Assent:** Evidence of the consumer's affirmative agreement to the terms, typically through a signature or digital "click-wrap" mechanism.
- **Opt-out Provisions:** Inclusion of a reasonable period (e.g., 30 days) allowing the consumer to reject the waiver without termination of services.
- **Cost Allocation:** Provisions ensuring that arbitration costs do not prohibitively exceed the costs of traditional litigation for the consumer.

### **4. Regulatory Compliance Warnings**

Please note that the Consumer Financial Protection Bureau (CFPB) and other governing bodies frequently review these clauses. Language that appears to waive non-waivable statutory rights or prevents consumers from filing complaints with government agencies may render the entire arbitration agreement void.

### **5. Recommended Actions**

We recommend a comprehensive audit of existing customer agreements to ensure compliance with the latest appellate court rulings. Specifically, we suggest updating the "Dispute Resolution" section to include the revised language attached to this advisory.

## **6. Disclaimer**

This letter is for informational purposes only and does not constitute a final legal opinion on any specific pending litigation. The enforceability of waivers is subject to change based on evolving case law.

Sincerely,

[Signature]

[Printed Name]

[Title]