

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE

CURRENCY CONVERSION FEE  
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ROBERT ROSS, et al.,

Plaintiffs,

-against-

BANK OF AMERICA, N.A, (USA) et al.,

Defendants.

x

MDL No. 1409

M 21-95

x

Index No. 05 CV 7116 (WHP)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/13/11

x

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT AS TO  
DEFENDANT NATIONAL ARBITRATION FORUM, INC.**

The Court having held a hearing from all interested parties who desire to be heard, and upon review and consideration of the terms and conditions of the Memorandum of Settlement with National Arbitration Forum, Inc. (the "Settlement Agreement") entered into between the Representative Plaintiffs and the Settlement Class (defined below), by and through the Representative Plaintiffs and Plaintiffs' Co-Lead Counsel (collectively, "Plaintiffs"), and the National Arbitration Forum, Inc. ("NAF"), by and through their respective authorized signatories;

Upon consideration of all prior proceedings in this Litigation;

and

Upon consideration of the motion for Preliminary Approval of the Settlement Agreement, and the settlement contemplated thereby, and all memoranda, affidavits and other papers and arguments submitted with respect thereto;

NOW, it is hereby ORDERED as follows:

1. The Settlement Agreement and the definitions of the capitalized words and terms contained therein, lodged with the Chambers on May 19, 2010, is incorporated by reference in this Order.

2. This Court has jurisdiction over the subject matter of this litigation, *Ross, et al. v. Bank of America N.A., et al.*, 05-CV-07116 (WHP) (S.D.N.Y.) (the “Litigation”), and over all parties to the Litigation, including all members of the Class and the Subclass (collectively, the “Settlement Class”) certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure in this Court’s Order dated October 6, 2009:

CLASS: All Persons holding during the Period in Suit a Credit Card under a United States Cardholder Agreement with any of the Bank Defendants<sup>1</sup> (including, among other cards, cards originally issued under the MBNA, Bank One, First USA and Providian brands), but not including members of the proposed Subclass, subject to an arbitration provision relating to their cards;<sup>2</sup> and

SUBCLASS: All Persons holding during the Period in Suit a Credit Card under a United States Cardholder Agreement with Discover Bank, which cardholders have not previously successfully exercised their right to opt out of the Arbitration of Disputes Provision.<sup>3</sup>

---

<sup>1</sup> The “Bank Defendants” are: Bank of America, N.A. (USA) (n/k/a FIA Card Services, N.A.), Bank of America, N.A., Capital One Bank (USA), N.A., Capital One, N.A., JPMorgan Chase & Co., Chase Bank USA, N.A., Citigroup, Inc., Citibank (South Dakota) N.A., Citibank USA, N.A., Universal Bank, N.A., Universal Financial Corp., Citicorp Diners Club, Inc., DFS Services LLC, Discover Financial Services, Discover Bank, HSBC Finance Corp., and HSBC Bank, Nevada, N.A. The “Defendants” are the National Arbitration Forum and the Bank Defendants.

<sup>2</sup> Use of the term “agreement” in this definition does not reflect any conclusion by the Court that there is any “agreement” between issuers and cardholders either as a matter of fact or law.

<sup>3</sup> In referring to Discover’s opt out provision, the Court does not conclude one way or the other that Discover’s opt out provision is meaningful, effective or legally operative.

Provided, however, that Defendants (and their corporate parents, subsidiaries and affiliates), American Express (and its corporate parents, subsidiaries and affiliates), Wells Fargo (and its corporate parents, subsidiaries and affiliates), and governmental entities are not members of the Class and Subclass.

3. The terms of this Court's October 6, 2009, order certifying the Settlement Class are incorporated by referenced into this Order.

4. The Court preliminarily approves the Settlement Agreement, and the settlement contemplated thereby, as being a fair, reasonable and adequate settlement as to all members of the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, approves the establishment and funding of a fund for the Notice Plan (attached at Exhibit 1), and directs the Plaintiffs and the NAF to proceed with said settlement pursuant to the terms and conditions of the Settlement Agreement and exhibit thereto, subject to this Court's authority to determine whether to finally approve said settlement.

5. The Court finds and concludes that the proposed Notice Plan, including, but not limited to, the publication of the notice and related information on the settlement website ([www.arbitration.cfsettlement.com](http://www.arbitration.cfsettlement.com)), the dissemination of the notice to targeted class members, and the dissemination of the notice to consumer advocacy organizations (collectively, "Publication Notice"), fully satisfy Rule 23 of the Federal Rule of Civil Procedure and the requirements of due process. A copy of the Publication Notice, as approved by this Court, is attached at Exhibit 2.

6. The NAF will file notifications of this settlement with the appropriate officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4, 7-8 (2005), effective February 18, 2005, codified at 28 U.S.C. §§ 1711-1715. These notifications will apprise the appropriate officials that, in connection with the approval of this settlement, the

NAF will seek certification from this Court that its notifications complied with any applicable CAFA requirements.

7. Heffler, Radetich & Saitta, L.L.P. (“HR&S”), previously appointed as the Administrator for the prior settlements, is also appointed Administrator to supervise and administer the Notice Plan.

8. On or before December 20, 2011, the NAF shall advance \$125,000.00 into an escrow account to cover the costs of notice (including administration), in the amounts set forth in Section 5 of the Settlement Agreement. The Court hereby approves the payment of up to \$125,000.00 for the payment of notice costs (including administration) and such funds shall be made immediately available to Plaintiffs’ Co-Lead Counsel for such purposes only, subject to Plaintiffs’ and Plaintiffs’ Co-Lead Counsel’s compliance with the terms of the Notice Plan.

9. All further proceedings in the Litigation as to the NAF is ordered stayed until final approval or termination of the Settlement Agreement, whichever occurs earlier, except (i) for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement, and (ii) as set forth in Section 9 of the Settlement Agreement.

10. All Settlement Class members, and any Person actually or purportedly acting on behalf of any Settlement Class member(s), are stayed and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing any Released Claim (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum, against the NAF until final approval or termination of the Settlement Agreement, whichever occurs earlier. This stay and injunction is necessary to protect and effectuate the Settlement Agreement, and the settlement contemplated thereby, this Preliminary Approval

Order, and the Court's flexibility and authority to effectuate the Settlement Agreement and to enter final judgment when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

11. All supplemental papers in support of the settlement contemplated by the Settlement Agreement, including any application by Plaintiffs' Counsel for attorneys' fees, expenses and costs, shall be filed with the Court and served on or before March 2, 2012.

12. Any Settlement Class member who or which wants to object to the approval of the Settlement Agreement, and the settlement contemplated thereby, and/or the application by Plaintiffs' Counsel for attorneys' fees, expenses and costs, may do so, either personally or through an attorney, by filing a written notice of objection, together with any supporting written or documentary materials with the Clerk of the Court on or before March 16, 2012. Any such written notice of objection must include (a) documents sufficient to show that the person is a member of the Settlement Class; (b) a detailed statement of such Settlement Class member's specific objections to any such matter; and (c) the grounds for such objections, as well as all documents which such person desires the Court to consider. This written objection must also be served by hand, overnight mail, or via mail, postmarked on or before March 16, 2012, on Plaintiffs' Lead Counsel.

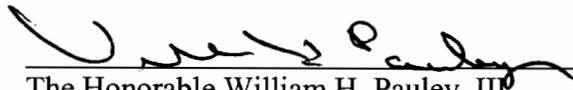
13. Any responses to objections shall be filed on or before March 30, 2012.

14. The Court hereby schedules a hearing on entry of a Final Judgment and Order of Dismissal as to the NAF (the "Fairness Hearing") for April 27, 2012, at 12:00 noon eastern in Courtroom 11D at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007. At the Fairness Hearing the Court will consider: whether the settlement on the terms and conditions provided for in the

Settlement Agreement is fair, reasonable and adequate and should be approved by the Court; whether the Notice Plan should be approved; and the amount of attorneys' fees and expenses that should be awarded to Plaintiffs' Co-Lead Counsel.

15. The date and time of the Fairness Hearing shall be set forth in, *inter alia*, the Publication Notice. The Court reserves the right to adjourn or continue the date of the Fairness Hearing without further notice to members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or in connection with the Settlement Agreement. At or after the Fairness Hearing, the Court may approve or reject the Settlement Agreement without further notice to members of the Settlement Class.

SO ORDERED this 13th day of December, 2011

  
The Honorable William H. Pauley, III  
United States District Judge

**NOTICE PLAN**

## Notice of Proposed Settlement and Application for Attorneys' Fees

This notice is authorized by the U.S. District Court for the Southern District of New York. The Court will hold a hearing, in which you may participate, before this settlement is finally approved.

**To: Holders of consumer or small business credit cards from Bank of America, Capital One, Chase, Citibank, Discover and HSBC.**

If you (individuals, small businesses and agencies) hold a consumer or small business credit card issued by Bank of America, Capital One, Chase, Citibank, Discover or HSBC, your rights may be affected by the partial settlement of this class action lawsuit.

### **What is the proposed settlement?**

The proposed settlement, which must be approved by the Court, is with the National Arbitration Forum, Inc. ("NAF"), a defendant in a lawsuit called *Ross, et al. v. Bank of America, N.A., (USA)*, No. 05-cv-7116 (S.D.N.Y.). This is the fifth settlement reached in this lawsuit. On July 22, 2010, the Court granted final approval of settlements reached with Bank of America, Chase, Capital One and HSBC.

This lawsuit claims that the defendants Bank of America, Capital One, Chase, Citibank, Discover, HSBC and the NAF violated federal law by conspiring, with each other and certain non-defendants, to require that the banks' cardholders (a) take all legal disputes to arbitration rather than court and (b) give up any right to participate in class actions against these credit card companies. This case is on behalf of cardholders who are subject to arbitration clauses. Cardholders who are not subject to arbitration clauses, including any Discover cardholders who have opted out of arbitration, are not included in the case.

All settling defendants and all non-settling defendants deny that they conspired with each other or that they violated any law, and assert that they have done nothing wrong or improper. The case will remain pending against Citibank and Discover.

The proposed settlement requires that the NAF cease administering or processing any new credit card arbitrations of disputes involving business cards for a period of 3-1/2 years. This relief compliments the relief previously obtained by the Minnesota Attorney General precluding the NAF from administering or processing any consumer credit card arbitrations. The settlement also requires the NAF, subject to court review, to pay \$125,000 to defray attorneys' fees and litigation expenses, including the cost of this notice.

If approved, the settlement will bind you. It releases the NAF from all liability stemming from the adoption or inclusion of the arbitration clauses and class action bans in the terms the defendant banks require of their consumer and small business credit card cardholders. The NAF is *NOT* being released from any claim for money damages that may allegedly arise from the *invocation or enforcement* of the defendant banks' arbitration clauses and class action bans.

**Is there any payment to cardholders?**

No, there is no payment to cardholders in this settlement. This lawsuit seeks only to change the defendants' alleged conduct on arbitration clauses and class action bans. No money damages were or are sought in this case.

**What are my options?**

If you agree with the settlement, you do not need to do anything. If you disagree with the settlement or the payment of attorneys' fees, you may object to either. You must file your written objection and proof of class membership with the Court. **The deadline for objecting is March 16, 2012.** The Court will hold a hearing to decide whether to approve the settlement on April 27, 2012 at 12:00 noon eastern at the U.S. District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007-1581. If you plan to go, check with the website at [www.arbitration.ccfsettlement.com](http://www.arbitration.ccfsettlement.com) or with class counsel to confirm the time and date. The plaintiffs' papers supporting the settlement will be filed on March 2, 2012 and will be available at [www.arbitration.ccfsettlement.com](http://www.arbitration.ccfsettlement.com) within 2 business days thereafter. You do not have to go to court or hire an attorney, but you can (do either or both) at your own expense.

**What are the Attorneys' Fees for Plaintiffs' Counsel?**

The NAF has agreed to pay a total of \$125,000 in attorneys' fees and litigation expenses, including the cost of publishing and distributing this notice. Neither you nor any class member is responsible for paying these fees and expenses, which will be paid by the NAF, and the relief to you and the class is not being reduced as a result of this payment. Plaintiffs' attorneys' fees at their regular hourly rates substantially exceed any reimbursement that may occur as a result of this settlement.

**For more information...**

This notice is only a summary. For answers to questions or more information, including complete copies of the settlement agreements and filings in support of the settlement, please visit [www.arbitration.ccfsettlement.com](http://www.arbitration.ccfsettlement.com). You may also call 1-800-654-4393. **Questions should not go to the Court, to the plaintiffs or to the settling or non-settling defendants.**