



September 9, 2019

The Honorable Jerrold Nadler
Chairman
U.S. House Committee on the Judiciary
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
U.S. House Committee on the Judiciary
Washington, DC 20515

END FORCED INVESTOR ARBITRATION
Support the Forced Arbitration Injustice Repeal (FAIR) Act (H.R. 1423)

Dear Chairman Nadler, Ranking Member Collins, and Members the Committee:

We write on behalf of Secure Our Savings (SOS) to express our strong support for the Forced Arbitration Injustice Repeal (“FAIR”) Act, which prohibits forced arbitration of consumer, investor, and worker disputes and bars class action bans. **We urge members of the House Committee on the Judiciary to support the FAIR Act (H.R. 1423).**

SOS is a diverse coalition of organizations that work on behalf of middle income, working Americans, many of whom turn to our nation’s capital markets to save for retirement and other long-term goals. These hard-earned savings are put at risk when investors can’t hold corporations and broker-dealers accountable for securities fraud. The FAIR Act would help to ensure that defrauded investors have the ability to seek justice and a choice of whether to pursue their claims in arbitration or, when appropriate, in court.

Investors are affected by forced arbitration in two ways. First, virtually all customers of broker-dealers must, as a condition of opening a brokerage account, agree to resolve any disputes with their broker in the industry-run arbitration forum operated by the Financial Industry Regulatory Authority (FINRA). Second, a new campaign has been launched in recent years to include forced arbitration clauses in corporate charters or bylaws and through proxy measures as a way to prevent shareholders from holding company management accountable in court when they commit securities fraud.

Forced Shareholder Arbitration Would Undermine Market Integrity, Deprive Defrauded Investors of Compensation for their Losses.

While the Securities and Exchange Commission has long prohibited public companies from adopting forced arbitration policies, a campaign is currently underway to overturn that policy and it appears to enjoy strong support among certain SEC officials. As a result, the FAIR Act’s protections are urgently needed to protect defrauded shareholders’ right to seek compensation for their losses.

If shareholders lose the right to band together in class actions in claims involving corporate securities fraud, the vast majority will lose their right to bring their fraud claims at all. That is because the issues in a securities fraud case are often too complex, and the costs of building a case too high, for these claims to be dealt with effectively through individual arbitration. Class actions provide a practical way for groups of investors who have suffered similar harm to join together in court and hold the corporation accountable.

Because the SEC lacks the resources to pursue all meritorious cases and is limited in the amounts it can recover for victims of fraud, allowing forced shareholder arbitration would severely reduce victim recoveries. Recent high-profile cases of securities fraud make clear just how central private enforcement is to ensuring accountability and protecting Americans' investments. Even when the federal government steps in to provide victim recoveries through enforcement actions, defrauded shareholders typically get far more money back in private class actions. For instance, while the SEC recovered penalties and fees totaling \$1.8 billion against Enron, WorldCom, Tyco, Bank of America and Global Crossing, private securities class actions returned \$19.4 billion to defrauded investors – more than ten times as much. Allowing corporations to adopt forced arbitration clauses and class action bans for shareholder disputes would eliminate recovery from private actions and leave investors at the mercy of the limited government actions for any type of recovery.

Shareholder securities fraud class actions help to ensure that publicly held companies provide the accurate and reliable financial information on which our markets depend. Eliminating shareholders' right to pursue private lawsuits would therefore not only effectively eliminate their ability to recover their losses, it would also seriously erode investor confidence in the integrity of the capital markets on which the health of our markets, and the economy as a whole, depend.

Forced Arbitration in Broker-dealer Account Agreements Forces Investors into an Industry-Run System.

The FAIR Act would also ensure that investors with claims against their brokers would have the choice of whether to bring them in court or in FINRA's arbitration forum. While FINRA has, over the years, adopted reforms that are often absent from other consumer arbitration venues, FINRA arbitration still suffers from many of the basic shortcomings of arbitration more generally:

- the proceedings are opaque, with written decisions being the exception rather than the rule;
- arbitrators who are not trained in the law apply the law inconsistently;
- arbitrators who want to remain active may be reluctant to adopt tough sanctions against brokers out of fear of being blackballed by firms and their attorneys; and
- brokers have been successful getting arbitrations expunged from their records, even when doing so is not consistent with FINRA's standards for expungement.

Furthermore, while FINRA rules currently prohibit firms from including class action waivers in their arbitration clauses, that policy has been challenged in the past and could be challenged again.

If the FAIR Act were adopted, many investors would likely continue to choose FINRA arbitration to resolve their broker disputes. But others, including those whose claims are not well suited to arbitration, because they require extensive discovery or involve complex issues of law, would have a choice to pursue their claims in a court of law. And the right to participate in class actions would be protected from industry challenge.

To Protect Investors, Support the FAIR Act

Prohibiting pre-dispute forced arbitration and class action bans will restore and protect important investor rights, increase accountability and transparency, and make our financial system stronger and safer. On behalf of millions of Americans who rely on our capital markets to save and invest, SOS urges you to support the FAIR Act (H.R. 1423).

Respectfully submitted,

Americans for Financial Reform

CARS

Center for Economic Justice

Center for Justice & Democracy

The Congregation of Sisters of St. Agnes

Consumer Action

Consumer Attorneys of California

Consumer Federation of America

Consumer Federation of California

D.C. Consumer Rights Coalition

EPI Policy Center

Fund Democracy

Maryland Consumer Rights Coalition

National Association of Consumer Advocates

National Consumers League

National Employment Law Project

National Employment Lawyers Association

New Jersey Citizen Action

The One Less Foundation

Partners In Community Building, Inc.

Protect All Children's Environment

Public Citizen

Public Justice

SC Appleseed Legal Justice Center

United Automobile, Aerospace and Agricultural Implement Workers of America, UAW

Virginia Citizens Consumer Council

Joshua M. Silverstein, Professor of Law, University of Arkansas at Little Rock, William H. Bowen School of Law (in his individual capacity)

Peter Kochenburger, Associate Clinical Professor of Law, University of Connecticut School of Law (in his individual capacity)

cc:

Speaker Nancy Pelosi

Minority Leader Kevin McCarthy