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NASAA

June 22, 2010

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
2426 Rayburn House Office Building
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
2409 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith:

On behalf of the North American Securities Administrators Association (NASAA),[1] I am writing to support passage of H.R. 1020, the Arbitration Fairness Act of 2009, which we interpret as prohibiting broker-dealers from requiring investors to accept mandatory arbitration clauses. We appreciate your decision to schedule this important consumer protection legislation for a markup.

Almost every broker-dealer presently includes in their customer agreements, a pre-dispute arbitration provision that forces public investors to submit all disputes that they may have with the firm and/or its associated persons to mandatory arbitration. NASAA believes this "take-it-or-leave-it" clause in brokerage contracts is inherently unfair to investors and that the Arbitration Fairness Act of 2009 is a positive step in the right direction. This legislation will not prohibit arbitration, it will only give investors a choice between arbitration and the traditional court system.

In addition to prohibiting mandatory arbitration clauses, we believe fairness and balance need to be restored to the existing securities arbitration system. The current makeup of the FINRA arbitration panel consists of a mandatory industry representative and two public arbitrators who may have prior affiliation to industry. This industry presence on the panel destroys any pretense that the forum is fair and impartial. Thus, we urge Congress to immediately act to remove the mandatory industry arbitrator and create measures to assure that public arbitrators have no prior affiliation or ties to industry.

NASAA believes Congress should also review the manner in which arbitrations are conducted to determine whether (1) there is sufficient disclosure of potential conflicts by panel members; (2) selection, qualification, and composition of the panels is fair to the parties; (3) arbitrators receive

[1] The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc., was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, the U.S. Virgin Islands, Canada, Mexico and Puerto Rico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

adequate training; (4) explanations of awards are sufficient; and (5) the system is fast and economical for investors.

The consolidation of NASD and NYSE into the merged Financial Industry Regulatory Authority (FINRA) has eliminated one arbitration forum for the resolution of disputes between public customers and the securities industry, which raises the stakes for getting it right.

For this reason, NASAA supports the passage of H.R. 1020, the Arbitration Fairness Act of 2009, and respectfully suggests that it be amended to clarify that its provisions extend to securities arbitration. We recommend that language be added to the term "consumer dispute" to include "services relating to securities and other investments." This addition would make H.R. 1020 consistent with its Senate counterpart.

We appreciate your taking our views into consideration. Please don't hesitate to contact NASAA's Director of Policy, Deborah House, for further information.

Sincerely,

Denise Voigt Crawford

Denise Voigt Crawford
Texas Securities Commissioner
NASAA President

cc: Members of the House Committee on the Judiciary