



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 20, 2013

Senator Al Franken
309 Hart Senate Office Building
Washington, DC 20510

Re: Arbitration Fairness Act of 2013 (S. 878)

Dear Senator Franken:

On behalf of the North American Securities Administrators Association (NASAA),¹ I am writing to applaud you for introducing the Arbitration Fairness Act of 2013, which furthers investor protection and promotes judicial efficiency. By prohibiting mandatory, pre-dispute arbitration clauses, the AFA restores investors' access to the courts and upholds the original intent of the Federal Arbitration Act (FAA).

The FAA was enacted in 1925 to honor agreements to arbitrate between mutually consenting parties. The "principal purpose" of the FAA was to "require courts to enforce privately negotiated agreements to arbitration, like other contracts, in accordance with their terms."² Form contracts or "contracts of adhesion" where one party offers terms on a non-negotiated, "take-it-or-leave-it" basis are contrary to the intended purpose of the FAA.

Brokerage "form" contracts typically require that their customers agree, in advance of any dispute with either the brokerage firm or its associated persons, to mandatory arbitration. If cases are not settled, the only alternative is arbitration in a forum administered by the Financial Industry Regulatory Authority (FINRA). It has been NASAA's long-standing position that such "take-it-or-leave-it" arbitration clauses are unfair to investors, and the Arbitration Fairness Act of 2013 is a positive step to remedy this disparity. This legislation does not prohibit arbitration; rather, it guarantees investors a choice between FINRA arbitration and the traditional court system.

Congress recognized the potential harm to investors from mandatory pre-dispute arbitration clauses when it enacted Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which provided the U.S. Securities and Exchange Commission (SEC) with the authority to prohibit or impose limitations on the use of mandatory pre-dispute arbitration clauses in broker-dealer and investment adviser customer contracts. Unfortunately, the SEC has not exercised this authority. Just recently investor rights were

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

² Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ., 489 U.S. 468, 478 (1989).

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further eroded when the Charles Schwab brokerage firm expanded its mandatory arbitration clauses in its customer agreements to include a mandatory class action waiver.³

The Arbitration Fairness Act of 2013 reaches beyond the securities regime and eliminates mandatory, pre-dispute arbitration clauses in a wide range of consumer contracts. It restores investors' access to the courts, and allows them to determine, *after a dispute arises*, if arbitration is the appropriate and desired forum. This legislation is consistent with the intent and spirit of Section 921 of the Dodd-Frank Act, and it removes the ability of any brokerage firm to unilaterally restrict an investor's ability to seek judicial relief.

In conclusion, for the reasons summarized above, NASAA applauds you for introducing the Arbitration Fairness Act of 2013 in the 113th Congress, and we look forward to working with you to ensure the legislation's timely enactment.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Heath Abshire". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

A. Heath Abshire
NASAA President and Arkansas Securities Commissioner

³ On Wednesday, May 15th, Schwab released a statement on its website that it was suspending class action waivers in its account agreements. Notably, however, it qualified this measure as temporary "until the issue is resolved by the appropriate regulatory and/or court decisions." The Schwab statement is available at <http://aboutschwab.com/press/statement>.