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NASAA

January 30, 2017

The Honorable Keith Ellison
U.S. House of Representatives
2263 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 585, the Investor Choice Act of 2017

Dear Congressman Ellison:

On behalf of the North American Securities Administrators Association (NASAA),[1] I am pleased to write and applaud you for reintroducing legislation that prohibits the use of mandatory pre-dispute agreements by broker-dealers and investment advisers that limit investors' ability to pursue recourse in any forum. Your legislation will greatly benefit the public and give investors access to our judicial system. It will further the legislative intent of Congress and ensure that mandatory pre-dispute arbitration provisions are statutorily prohibited under the securities laws.

NASAA has long been concerned with the widespread use of mandatory pre-dispute arbitration clauses in customer contracts used by broker-dealers and, most recently, investment advisers. NASAA believes that investors must have a choice of forum when it comes to resolving disputes with their investment professionals. Investor confidence in fair and equitable recourse is critical to the stability of the securities markets and long-term investments by retail investors. NASAA has argued that participation by "mom and pop" investors in our capital markets, and, by extension, job growth, is directly tied to their level of trust in having a reasonable avenue to seek recovery if they are victimized by securities fraud or other unethical conduct.

Consumer disputes are typically resolved in court or through alternative dispute resolution processes (i.e., negotiation, mediation, arbitration, etc.). Investor disputes against broker-dealers, however, are resolved in only one forum: arbitration administered by the Financial Industry Regulatory Authority (FINRA). Investors are required to submit to FINRA arbitration and are denied access to the courts because almost all broker-dealer contracts require that their customers agree to binding, pre-dispute (i.e., before a dispute or loss is known) arbitration. Increasingly, investment advisers are also requiring that their customers agree to mandatory pre-dispute

[1] The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc. (NASAA) 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.

arbitration as a precondition to becoming a customer of the advisory firm.[2] NASAA considers these "take-it-or-leave-it" clauses (also known as "contracts of adhesion" or "form contracts") to be detrimental to the public interest.

Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection ("Dodd Frank") Act, enacted on July 21, 2010, was included in response to Congressional concern that mandatory pre-dispute arbitration agreements were unfair to investors.[3] The provision gives the U.S. Securities and Exchange Commission (SEC) explicit rulemaking authority to prohibit, condition or limit the use of mandatory pre-dispute arbitration agreements if it finds that doing so is in the public interest and for the protection of investors. Unfortunately, although Congress gave the SEC an important tool to act in this area, the SEC has not exercised its authority to conduct rulemaking or even examine the impact of mandatory pre-dispute arbitration clauses on investors and the public.

The Investor Choice Act ensures that investors will not be forced into arbitration or any other forum that could foreclose their ability to obtain relief. NASAA strongly supports the legislation, and thanks you for recognizing that the inclusion of mandatory pre-dispute arbitration agreements in broker-dealer and investment adviser contracts undermines investor faith in the markets that Congress is trying to jump start. If enacted, the bill will ensure that investors have a meaningful choice and an unencumbered right to seek redress in the appropriate and desired forum.

In sum, NASAA applauds you for introducing the Investor Choice Act, and we look forward to working with you to facilitate its timely enactment. Please do not hesitate to contact me, or Michael Canning, NASAA Director of Policy, at (202) 737-0900, if we may be of any additional assistance.

Sincerely,

Mike Rothman

Mike Rothman
NASAA President and Minnesota Commissioner of Commerce

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[2] Letter from Secretary William F. Galvin of the Commonwealth of Massachusetts to SEC Chair Elisse B. Walter and SEC Commissioners Tory A. Paredes, Luis A. Aguilar, and Daniel M. Gallagher (Feb. 12, 2013), available at sec.state.ma.us/sct/sctarbitration/arbitration-letter.pdf (citing a Massachusetts Securities Division survey to 710 state-registered Massachusetts investment advisers, which indicated that of the over 50% surveys received, nearly half of the investment advisers included a binding pre-dispute arbitration clause in their advisory contracts).

[3] Congress considered the following concerns about the arbitration process: "high upfront costs; limited access to documents and other key information; limited knowledge upon which to base the choice of arbitrator; the absence of a requirement that arbitrators follow the law or issue written decisions; and extremely limited grounds for appeal." See Senate Committee on Banking, Housing, and Urban Affairs on S. 3217, S. Rep. No. 111-176, at 110.