



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 7, 2021

The Honorable Jeff Merkley
United States Senator
531 Hart Senate Office Building
Washington, DC 20510

Re: S. 1171, the “Investor Choice Act of 2021”

Dear Senator Merkley:

On behalf of the North American Securities Administrators Association, Inc. (“NASAA”)¹, I am pleased to express support for S.1171, the “Investor Choice Act of 2021,” which prohibits the use of mandatory or “forced” pre-dispute agreements by broker-dealers and investment advisers that impede the fundamental rights of investors to pursue recourse through the U.S. judicial system. Your legislation will significantly benefit the investing public by protecting investors’ ability to pursue claims in a lawful forum of their choice.

As you know, consumer disputes may be resolved in court or through alternative dispute resolution processes, including negotiation, mediation, or arbitration. However, investor disputes against broker-dealers generally may be resolved in only one forum: arbitration administered by the Financial Industry Regulatory Authority (“FINRA”). That is because nearly all broker-dealers include provisions in their customer agreement that require them to resolve any dispute in FINRA’s arbitration forum.² These contacts are binding, even though they are entered into before a dispute or loss is known. These pre-dispute “take it or leave it” provisions serve to deny retail investors important choices when resolving disputes with their investment professionals.

NASAA has long been concerned with the proliferation of mandatory pre-dispute arbitration clauses in customer contracts used by broker-dealers and, where applicable, investment advisers. Private rights of action play an important role in allowing defrauded investors to seek compensation for their losses. Further, expanding access to the judicial process complements and supplements the work of state securities regulators to detect, punish, and deter fraud and misconduct by firms and investment professionals. Investor confidence in fair and equitable recourse is critical to sustaining participation by retail investors in the securities marketplace.

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 “Most, if not all, account agreements between broker-dealers and their customers have arbitration clauses.” See https://www.sec.gov/oiea/investor-alerts-bulletins/ib_arbitration.html.

Again, NASAA shares Congress's interest in empowering investors and protecting their access to the judicial system as a means of dispute resolution. We are pleased to support S.1171 and urge its passage.

Thank you for your consideration of NASAA's views. Please do not hesitate to contact me, or Michael Canning, NASAA's Director of Policy & Government Affairs, at (202) 737-0900, if we may be of any additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Hopkins", written over a thin horizontal line.

Lisa Hopkins
NASAA President
General Counsel and Senior Deputy Commissioner of Securities, West Virginia