

116TH CONGRESS
1ST SESSION

S. 2992

To amend the Securities Exchange Act of 1934 to prohibit mandatory pre-dispute arbitration agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2019

Mr. MERKLEY (for himself, Mr. DURBIN, Mr. BLUMENTHAL, Ms. WARREN, Mr. MENENDEZ, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to prohibit mandatory pre-dispute arbitration agreements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investor Choice Act
5 of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Investor confidence in fair and equitable re-
9 course is essential to the health and stability of the

1 securities markets and to the participation of retail
2 investors in those markets.

3 (2) Brokers, dealers, and investment advisers
4 hold powerful advantages over investors, and manda-
5 tory arbitration clauses, including contracts that
6 force investors to submit claims to arbitration or to
7 waive the right of investors to participate in a class
8 action lawsuit, leverage those advantages to severely
9 restrict the ability of defrauded investors to seek re-
10 dress.

11 (3) Investors should be free to—

12 (A) choose arbitration to resolve disputes if
13 they judge that arbitration truly offers them
14 the best opportunity to efficiently and fairly set-
15 tle disputes; and

16 (B) pursue remedies in court should they
17 view that option as superior to arbitration.

18 **SEC. 3. ARBITRATION AGREEMENTS IN THE SECURITIES**

19 **EXCHANGE ACT OF 1934.**

20 (a) IN GENERAL.—The Securities Exchange Act of
21 1934 (15 U.S.C. 78a et seq.) is amended—

22 (1) in section 6(b) (15 U.S.C. 78f(b)), by add-
23 ing at the end the following:

24 “(11) The rules of the exchange prohibit the
25 listing of any security if the issuer of the security,

1 in the bylaws of the issuer, other governing docu-
 2 ments, or any contract with a shareholder relating to
 3 the parties as issuer and shareholder, mandates ar-
 4 bitration for any dispute between the issuer and the
 5 shareholders of the issuer.”; and

6 (2) in section 15 (15 U.S.C. 78o), by amending
 7 subsection (o) to read as follows:

8 “(o) LIMITATIONS ON PRE-DISPUTE AGREE-
 9 MENTS.—Notwithstanding any other provision of law, it
 10 shall be unlawful for any broker, dealer, funding portal,
 11 or municipal securities dealer to enter into, modify, or ex-
 12 tend an agreement with customers or clients of that entity
 13 with respect to a future dispute between the parties that—

14 “(1) mandates arbitration for that dispute;

15 “(2) restricts, limits, or conditions the ability of
 16 a customer or client of that entity to select or des-
 17 ignate a forum for resolution of that dispute; or

18 “(3) restricts, limits, or conditions the ability of
 19 a customer or client of that entity to pursue a claim
 20 relating to that dispute in an individual or rep-
 21 resentative capacity or on a class action or consoli-
 22 dated basis.”.

23 (b) APPLICATION TO EXISTING AGREEMENTS.—

24 (1) IN GENERAL.—With respect to an agree-
 25 ment described in section 15(o) of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78o(o)), as amended
 2 by subsection (a) of this section, that was entered
 3 into before the date of enactment of this Act, any
 4 provision of that agreement that is prohibited by
 5 such section 15(o), as amended by subsection (a) of
 6 this section, is void.

7 (2) ONGOING ARBITRATION.—A provision of an
 8 agreement prohibited by section 15(o) of the Securi-
 9 ties Exchange Act of 1934 (15 U.S.C. 78o(o)), as
 10 amended by subsection (a) of this section, shall not
 11 be void under paragraph (1) if arbitration required
 12 by that provision was initiated by any party on or
 13 before the date of enactment of this Act.

14 **SEC. 4. ARBITRATION AGREEMENTS IN THE SECURITIES**
 15 **ACT OF 1933.**

16 Section 6 of the Securities Act of 1933 (15 U.S.C.
 17 77f) is amended by adding at the end the following:

18 “(f) LIMITATION ON ARBITRATION REQUIRE-
 19 MENTS.—A security may not be registered with the Com-
 20 mission if the issuer of the security, in the bylaws of the
 21 issuer, other governing documents, or any contract with
 22 a shareholder relating to the parties as issuer and share-
 23 holder, mandates arbitration for any dispute between the
 24 issuer and the shareholders of the issuer.”.

1 **SEC. 5. ARBITRATION AGREEMENTS IN THE INVESTMENT**
2 **ADVISERS ACT OF 1940.**

3 (a) IN GENERAL.—Section 205(f) of the Investment
4 Advisers Act of 1940 (15 U.S.C. 80b–5(f)) is amended
5 to read as follows:

6 “(f) Notwithstanding any other provision of law, it
7 shall be unlawful for any investment adviser to enter into,
8 modify, or extend an agreement with customers or clients
9 of the investment adviser with respect to a future dispute
10 between the parties to that agreement that—

11 “(1) mandates arbitration for that dispute;

12 “(2) restricts, limits, or conditions the ability of
13 a customer or client of the investment adviser to se-
14 lect or designate a forum for resolution of that dis-
15 pute; or

16 “(3) restricts, limits, or conditions the ability of
17 a customer or client of the investment adviser to
18 pursue a claim relating to that dispute in an indi-
19 vidual or representative capacity or on a class action
20 or consolidated basis.”.

21 (b) APPLICATION TO EXISTING AGREEMENTS.—

22 (1) IN GENERAL.—With respect to an agree-
23 ment described in section 205(f) of the Investment
24 Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as
25 amended by subsection (a) of this section, that was
26 entered into before the date of enactment of this

1 Act, any provision prohibited by such section 205(f),
2 as amended by subsection (a) of this section, is void.

3 (2) ONGOING ARBITRATION.—A provision of an
4 agreement prohibited by section 205(f) of the Invest-
5 ment Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as
6 amended by subsection (a) of this section, shall not
7 be void under paragraph (1) if arbitration required
8 by that provision was initiated by any party on or
9 before the date of enactment of this Act.

10 **SEC. 6. APPLICATION.**

11 Except as otherwise stated, the amendments made by
12 this Act shall apply with respect to any agreement entered
13 into, modified, or extended after the date of enactment
14 of this Act.

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