United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

September 16, 2025

The Honorable Paul S. Atkins
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chair Atkins:

We write to express our deep concern regarding the U.S. Securities and Exchange Commission's (Commission or SEC) intent to change long-standing agency practices that restrict public companies' ability to force their shareholders into arbitration to resolve any disputes over their investments.[1] A reversal by the Commission of its decades-old policy with respect to forced arbitration would not be consistent with Section 14 of the Securities Act and Section 29(a) of the Exchange Act, and would deprive investors of a key tool that allows them to hold companies accountable for misconduct.

Historically, the SEC has protected investors from forced arbitration in a number of contexts, including IPO registrations.[2] In the IPO setting, the SEC has delegated authority to the Division of Corporation Finance (Division) to accelerate the effective date of registration statements, declaring that a company is clear to offer its shares to the public.[3] The Division has long taken the position that, in the context of a registered IPO of a U.S. company, it would not find that forced arbitration provisions included in a company's governing documents were consistent with "the public interest and protection of investors," as required to allow the registration statement to become effective.[4] Accordingly, the Division would decline to use its delegated authority to declare the registration statement effective, and, instead, would refer the matter to the Commission.[5] This Division policy of refusing to accelerate registration statements amounted to a Commission prohibition on mandatory arbitration provisions, because companies were deterred

[1] U.S. Securities and Exchange Commission, "Sunshine Act Notice," September 10, 2025, https://www.sec.gov/newsroom/meetings-events/sunshine-act-notice-open-meeting-091725.
[2] Harvard Law School Forum on Corporate Governance, "Keeping Investors out of Court—The Looming Threat of Mandatory Arbitration," https://corpgov.law.harvard.edu/2019/02/18/keeping-investors-out-of-court-the-looming-threat-of-mandatory-arbitration/#:~:text=Also%20in%20February%202018%2C%20SEC,of%20litigating%20with%20all%20investors.
[3] 17 CFR § 200.30-1(a)(5)(i).
[4] Letter from SEC Chair Jay Clayton to Representative Carolyn B. Maloney, April 24, 2018, https://www.skadden.com/-/media/files/publications/2018/05/maloney_et_al_forced_arbitration_es156546_response.pdf?la=en.
[5] 17 CFR § 200.30-1(g)(2).

from including them in their governing documents.[6] This has protected investors from the harms of forced arbitration. In the first Trump Administration, then-Chair Clayton indicated in a letter to Congress that he would not depart from this long-standing approach.[7]

On September 10, the SEC announced that "[t]he Commission will consider whether to issue a policy statement addressing the presence of a provision requiring arbitration of investor claims arising under the Federal securities laws and its impact on decisions whether to accelerate the effectiveness of a registration statement."[8] We are concerned that the SEC may be poised to change its long-standing policies and allow public companies to force investors into arbitration rather than allowing them their day in court. This would be a significant mistake, putting investors and markets at risk.

Any action to limit investors ability to bring claims under the securities laws, such as antifraud claims, would be inconsistent with Section 14 of the Securities Act and Section 29(a) of the Exchange Act, which provide that "[a]ny condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter ... shall be void."[9]

Additionally, allowing shareholders to waive their litigation rights not only harms individual shareholders but also confidence in the market and the ability to deter future misconduct.[10] Shareholders would be subject to a regime where facts of a case are hidden behind closed doors and participants are subject to confidentiality obligations, bad actors are not accountable to the public, and there are no legal precedents to guide future conduct.[11]

The Supreme Court has "long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and

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[6] Goodwin Law, "SEC Announces Open Meeting to Consider Policy on Mandatory Arbitration Provision", David Lynn, Sept. 10, 2025, https://www.goodwinlaw.com/en/insights/blogs/2025/09/sec-announces-open-meeting-to-consider-policy-on-mandatory-arbitration-provisions.

[7] Letter from SEC Chair Jay Clayton to Representative Carolyn B. Maloney, April 24, 2018, https://www.skadden.com/-/media/files/publications/2018/05/maloney_et_al_forced_arbitration_es156546_response.pdf?la=en.

[8] U.S. Securities and Exchange Commission, "Sunshine Act Notice," September 10, 2025, https://www.sec.gov/newsroom/meetings-events/sunshine-act-notice-open-meeting-091725.

[9] 15 U.S.C. § 77n; 15 U.S.C. § 78 cc.

[10] Letter from U.S. Law School Professors to SEC Chair Mary Jo White, October 30, 2013, p. 3, https://law.duke.edu/sites/default/files/centers/gfmc/session_2/4_letter_to_sec_re_arbitration_bylaws-10-30-2013.pdf.

[11] Public Citizen, "Mandatory Arbitration Clauses Are Discriminatory and Unfair," https://www.citizen.org/article/mandatory-arbitration-clauses-are-discriminatory-and-unfair/.

Exchange Commission."[12] Forced arbitration can undermine a shareholders' ability to pursue private litigation, including, importantly, a class action lawsuit.[13] Class action lawsuits allow sharing costs of litigating among all harmed investors.[14] Yet, without the cost sharing mechanism of a class action lawsuit, only a deep-pocketed plaintiff would be able to bear the cost of arbitration for themself, leaving many harmed shareholders without recourse.[15] This gap in enforcement of securities laws would come at a particularly dangerous time, as the SEC has lost hundreds of employees, leaving "holes in [the] agency."[16]

Given these risks to investors and our securities markets, we are deeply concerned about the Commission's potential change in policy regarding forced arbitration. If the Commission rolls back protections against forced arbitration, it would open the floodgates to companies adopting these provisions. This would eliminate the critical tool of private securities litigation for securities law enforcement, denying relief for investors and allowing misconduct to go unpunished. We ask that you reaffirm the SEC's consistent view that forced arbitration clauses are contrary to the public interest and provide our staff with a briefing on the SEC's plans, if any, to amend existing forced arbitration policy at the Commission.

Sincerely,

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[12] Tellabs, Inc v. Makor Issues & Rights, Ltd, 551 U.S. 308, 308 (2007).
[13] Harvard Law School Forum on Corporate Governance, "Keeping Investors out of Court—The Looming Threat of Mandatory Arbitration," Salvatore Graziano and Robert Trisotto, February 18, 2019, https://corpgov.law.harvard.edu/2019/02/18/keeping-investors-out-of-court-the-looming-threat-of-mandatory-arbitration/#:~:text=Also%20in%20February%202018%2C%20SEC,of%20litigating%20with%20all%20investors.
[14] Library of Congress, "Class Action Lawsuits: An Introduction," https://www.congress.gov/crs-product/IF12763#:~:text=First%2C%20a%20class%20action%20must,generally%20satisfies%20the%20numerosity%20requirement.
[15] Letter from Senator Sherrord Brown to SEC Chair Clayton, SEC, May 3 2018, p. 3, https://business.cch.com/srd/SenatorsMandatoryArbitrationLetter050918.pdf.
[16] Law360, "SEC Chair Says Staff Exits Have Left Holes In Agency," Jessica Corso, May 20, 2025, https://www.law360.com/articles/2342163/sec-chair-says-staff-exits-have-left-holes-in-agency.

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