

117TH CONGRESS  
1ST SESSION

# S. 1171

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 15, 2021

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

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## 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 2021”.

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) Issuers, brokers, dealers, and investment  
4 advisers hold powerful advantages over investors,  
5 and mandatory arbitration clauses, including con-  
6 tracts that force investors to submit claims to arbi-  
7 tration or to waive the right of investors to partici-  
8 pate in a class action lawsuit, leverage those advan-  
9 tages to severely restrict the ability of defrauded in-  
10 vestors to seek redress.

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, without regard to whether  
6 such a provision in the bylaws, documents, or con-  
7 tract is otherwise permissible under title 9, United  
8 States Code.”; and

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

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

18 “(1) mandates arbitration for that dispute;

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

22 “(3) restricts, limits, or conditions the ability of  
23 a customer or client of that entity to pursue a claim  
24 relating to that dispute in an individual or rep-

1       representative capacity or on a class action or consoli-  
2       dated basis.”.

3       (b) APPLICATION TO EXISTING AGREEMENTS.—

4               (1) IN GENERAL.—With respect to an agree-  
5       ment described in section 15(o) of the Securities Ex-  
6       change Act of 1934 (15 U.S.C. 78o(o)), as amended  
7       by subsection (a) of this section, that was entered  
8       into before the date of enactment of this Act, any  
9       provision of that agreement that is prohibited by  
10      such section 15(o), as amended by subsection (a) of  
11      this section, is void.

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

19   **SEC. 4. ARBITRATION AGREEMENTS IN THE SECURITIES**  
20               **ACT OF 1933.**

21       Section 6 of the Securities Act of 1933 (15 U.S.C.  
22   77f) is amended by adding at the end the following:

23       “(f) LIMITATION ON ARBITRATION REQUIRE-  
24   MENTS.—A security may not be registered with the Com-  
25   mission if the issuer of the security, in the bylaws of the

1 issuer, other governing documents, or any contract with  
 2 a shareholder relating to the parties as issuer and share-  
 3 holder, mandates arbitration for any dispute between the  
 4 issuer and the shareholders of the issuer, without regard  
 5 to whether such a provision in the bylaws, documents, or  
 6 contract is otherwise permissible under title 9, United  
 7 States Code.”.

8 **SEC. 5. ARBITRATION AGREEMENTS IN THE INVESTMENT**  
 9 **ADVISERS ACT OF 1940.**

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

13 “(f) Notwithstanding any other provision of law, in-  
 14 cluding any provision of title 9, United States Code, it  
 15 shall be unlawful for any investment adviser to enter into,  
 16 modify, or extend an agreement with customers or clients  
 17 of the investment adviser with respect to a future dispute  
 18 between the parties to that agreement that—

19 “(1) mandates arbitration for that dispute;

20 “(2) restricts, limits, or conditions the ability of  
 21 a customer or client of the investment adviser to se-  
 22 lect or designate a forum for resolution of that dis-  
 23 pute; or

24 “(3) restricts, limits, or conditions the ability of  
 25 a customer or client of the investment adviser to

1       pursue a claim relating to that dispute in an indi-  
 2       vidual or representative capacity or on a class action  
 3       or consolidated basis.”.

4       (b) APPLICATION TO EXISTING AGREEMENTS.—

5           (1) IN GENERAL.—With respect to an agree-  
 6       ment described in section 205(f) of the Investment  
 7       Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as  
 8       amended by subsection (a) of this section, that was  
 9       entered into before the date of enactment of this  
 10      Act, any provision prohibited by such section 205(f),  
 11      as amended by subsection (a) of this section, is void.

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

19   **SEC. 6. APPLICATION.**

20       Except as otherwise stated, the amendments made by  
 21      this Act shall apply with respect to any agreement entered  
 22      into, modified, or extended after the date of enactment  
 23      of this Act.

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