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National Coalition Urges SEC to Side with Investors, Reject Forced Arbitration

Washington, DC — Today a group of 56 organizations and individuals sent U.S. Securities and Exchange Commission (SEC) Chairman Jay Clayton a letter urging the SEC to continue its longstanding history of rejecting attempts to force shareholder claims into arbitration after a company has committed violations of the law, including fraud. Allowing such a move would virtually eliminate smaller investors' ability to enforce their rights under federal securities laws in a court of law.

In December, an investor named Hal Scott who frequently works with entities representing large corporate interests filed a proposal with Johnson & Johnson (J&J) that would strip investors of their ability to hold J&J publicly accountable for fraud, misconduct, or negligence in a court of law. The move is designed to force the Commission to reconsider the question of whether public companies can legally adopt forced shareholder arbitration clauses. The SEC must make a decision within approximately 30 days.

The letter was spearheaded by Secure Our Savings (SOS) and was signed by a diverse group of organizations representing consumers, investors, and labor unions that have been calling on the SEC to safeguard Americans' rights to join together to hold law-breaking corporations accountable in a court of law.

"The SEC has an obligation to protect Americans from corporate abuse and misconduct, but this proposal would have the exact opposite effect," said Barbara Roper, Director of Investor Protection for Consumer Federation of America, a leading member of the SOS coalition. "The vast majority of investors, who would have no ability to bring individual claims in arbitration, would be deprived of their ability to seek compensation for their losses, and the markets would be deprived of a vital deterrence to fraud. That would be bad for investors, bad for the markets, and bad for the overall economy."

The letter read, in part:

"At best, Scott's preferred approach [forced shareholder arbitration] would create a system of haves and have nots, in which only the largest of institutional investors are able to seek compensation for their losses from securities fraud, likely at the expense of small investors who were similarly harmed but unable to seek recovery. At worst, it would eliminate this vital deterrent to financial fraud entirely, doing untold harm to the integrity of U.S. capital markets."

The coalition's full letter is available here.

Background:

After Hal Scott filed his proposal with J&J, the company wrote the SEC requesting permission to keep the proposal off its ballot on the grounds that forced arbitration clauses violate federal securities law. The SEC has limited time prior to the company's annual meeting in which to decide whether it will issue a "no action" letter permitting J&J to exclude the measure from the proxy ballot. SEC Chairman Jay Clayton has previously pledged that the Commission would not change policy in this area without conducting and open and deliberative process with opportunities for input for all stakeholders. Currently, however, the Commission is not acting on "no action" requests as a result of the partial government shutdown.

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The Secure Our Savings (SOS) Coalition is comprised of more than 40 national and state-based organizations. It assembled to call on the U.S. Securities and Exchange Commission (SEC) to stand by its mission and longstanding policy of empowering and protecting American investors, including retired servicemembers, first responders, and teachers, by safeguarding their right to join together to hold law-breaking corporations publicly accountable in a court of law. To stay up to date on SOS Coalition activities, visit https://secureoursavings.com.