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Coalition of Investor Advocates Responds to Securities and Exchange Commission Statement on Forced Arbitration Proposal by Johnson & Johnson Shareholder

Washington, DC – The [Secure Our Savings Coalition](#), a group of more than 40 national and state-based consumer advocacy organizations, commended Securities and Exchange Commission (SEC) Chairman Jay Clayton for the agency’s response to a Johnson & Johnson shareholder proposal that sought to amend the Fortune 500 company’s corporate bylaws to strip investors of their rights to file securities claims in court and, instead, force those claims into arbitration proceedings.

“We appreciate that Chairman Clayton has refused the invitation to gut investors’ rights, and has acted to protect the rule of law with respect to securities fraud,” said Paul Bland, executive director of Public Justice, a member of the SOS coalition. “Americans should not have their savings and investments jeopardized by the ideological campaign of one activist investor looking to overturn decades of U.S. policy. Basic rules of New Jersey state corporate law that govern all by-laws do not allow the kind of measure that was being pushed here, and, as Chairman Clayton noted, the Commission has an obligation not to disrupt and rewrite normal rules of state law.”

Barbara Roper, Director of Investor Protection for the Consumer Federation of America, said “There was a lot riding on this decision. Deprived of the right to pursue class actions in court, all but the largest of institutional investors would find it unaffordable to pursue securities fraud claims at all, as the backer of this measure surely understands. In other words, this forced arbitration proxy proposal was never about *where* investor disputes would be heard but whether investors would retain *any* ability to pursue federal securities fraud claims and hold corporations accountable, a right that is fundamental to investor confidence. The SEC staff and Chairman Clayton deserve our appreciation for deciding this issue correctly, to the benefit of investors and market integrity, just as SEC leaders of both parties have consistently done in the past.”

In December, Johnson & Johnson sought the SEC’s permission to take no action on the shareholder’s proposal noting that the company believed doing so would violate state laws in both New Jersey (where Johnson & Johnson is incorporated) and in Delaware. In a separate letter to the Commission, New Jersey’s Attorney General affirmed the company’s opinion, stating that “The Proposal, if adopted, would cause Johnson & Johnson to violate the [state’s law] and should be excluded from the company’s 2019 proxy materials on that basis.”

In deferring to the New Jersey AG’s opinion, the Commission did not take a position on the question of whether the proposal would violate federal securities law. In a statement posted yesterday on the SEC website, Chairman Clayton wrote, “I continue to believe that any SEC policy decision on this subject should be made by the Commission in a measured and deliberative manner.”

“The federal securities laws also protect investors against proposal to bar them from joining together to bring a class action in court,” Bland said. “Though Chairman Clayton offered no definitive opinion on the matter, we appreciate his pledge that any policy in this area would be made at the Commission level through an appropriate deliberative process.”