H. R. 2620

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2021

Mr. Foster (for himself, Mrs. Carolyn B. Maloney of New York, Mr. Meeks, Mr. Casten, Ms. Velázquez, Mr. García of Illinois, Ms. Schakowsky, and Ms. Dean) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Investor Choice Act of 2021”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Investor confidence in fair and equitable recourse is essential to the health and stability of the
securities markets and to the participation of retail
investors in those markets.

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

(3) Investors should be free to—

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

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

SEC. 3. ARBITRATION AGREEMENTS IN THE SECURITIES
EXCHANGE ACT OF 1934.

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

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

“(11) The rules of the exchange prohibit the
listing of any security if the issuer of the security,
in the bylaws of the issuer, other governing docu-
ments, or any contract with a shareholder relating to
the parties as issuer and shareholder, mandates ar-
bitration for any dispute between the issuer and the
shareholders of the issuer, without regard to whether
such a provision in the bylaws, documents, or con-
tract is otherwise permissible under title 9, United
States Code.”; and

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

“(o) LIMITATIONS ON PRE-DISPUTE AGRE-
EMENTS.—Notwithstanding any other provision of law, in-
cluding any provision of title 9, United States Code, it
shall be unlawful for any broker, dealer, funding portal,
or municipal securities dealer to enter into, modify, or ex-
tend an agreement with customers or clients of that entity
with respect to a future dispute between the parties that—
“(1) mandates arbitration for that dispute;
“(2) restricts, limits, or conditions the ability of
a customer or client of that entity to select or des-
ignate a forum for resolution of that dispute; or
“(3) restricts, limits, or conditions the ability of
a customer or client of that entity to pursue a claim
relating to that dispute in an individual or rep-
resentative capacity or on a class action or consolidated basis.”.

(b) Application to Existing Agreements.—

(1) In General.—With respect to an agreement described in section 15(o) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(o)), as amended by subsection (a) of this section, that was entered into before the date of enactment of this Act, any provision of that agreement that is prohibited by such section 15(o), as amended by subsection (a) of this section, is void.

(2) Ongoing Arbitration.—A provision of an agreement prohibited by section 15(o) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(o)), as amended by subsection (a) of this section, shall not be void under paragraph (1) if arbitration required by that provision was initiated by any party on or before the date of enactment of this Act.

SEC. 4. ARBITRATION AGREEMENTS IN THE SECURITIES ACT OF 1933.

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

“(f) Limitation on Arbitration Requirements.—A security may not be registered with the Commission if the issuer of the security, in the bylaws of the
issuer, other governing documents, or any contract with
a shareholder relating to the parties as issuer and share-
holder, mandates arbitration for any dispute between the
issuer and the shareholders of the issuer, without regard
to whether such a provision in the bylaws, documents, or
contract is otherwise permissible under title 9, United
States Code.”.

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

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

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

“(1) mandates arbitration for that dispute;

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

“(3) restricts, limits, or conditions the ability of
a customer or client of the investment adviser to
pursue a claim relating to that dispute in an individual or representative capacity or on a class action or consolidated basis.”.

(b) Application to Existing Agreements.—

(1) In General.—With respect to an agreement described in section 205(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as amended by subsection (a) of this section, that was entered into before the date of enactment of this Act, any provision prohibited by such section 205(f), as amended by subsection (a) of this section, is void.

(2) Ongoing Arbitration.—A provision of an agreement prohibited by section 205(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(f)), as amended by subsection (a) of this section, shall not be void under paragraph (1) if arbitration required by that provision was initiated by any party on or before the date of enactment of this Act.

SEC. 6. Application.

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