

"With a Regulatory Shift, Questions Emerge About Investors' Access to the Courts" by Salvatore Graziano and Tony Gelderman (published by The NAPPA Report)

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With a Regulatory Shift, Questions Emerge About Investors' Access to the Courts

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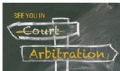
In recent years, forced arbitration clauses have swept the nation, closing the courthouse doors to countless individuals. Arbitration clauses embedded in all types of consumer and employment contracts, require disputes to be resolved individually in privatized settings chosen by corporate defendants. Proponents of arbitration highlight how arbitration can reduce costs and accelerate dispute resolution, as arbitration disputes with jury trials, certain discovery, rules of evidence, and appellate rights.

On the other hand, many argue that arbitration also silences victims, enables and conceals misconduct, and often allows wrongdoers to escape public accountability. The investment community is in an uncommon position, as it has, with the help of federal regulators, generally maintained its access to public courtrooms when wronged by the corporations in which it invests.

Recent developments, however, indicate that investors may soon face a rising tide of mandatory arbitration provisions. Federal regulators, including at the U.S. Securities and Exchange Commission, have indicated a potential willingness to relax a longstanding policy prohibiting mandatory arbitration for securities claims. The investment community should take note of these developments and the possibility of rapid adoption of mandatory arbitration

and class action waiver provisions across the public capital markets.

Investors Have Recovered Billions Litigating Securities Claims in Courthouses



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Enforcement of the federal securities laws in public courthouses has yielded significant benefits for investors. Federal securities class actions have recovered over \$100 billion for defrauded investors within the last 20 years alone, including \$17 billion in financial crisis-era recoveries. Through waves of corporate misconduct, investors have banded together in class action lawsuits and secured exponentially greater recoveries for injured investors compared to regulatory actions. Investors have held wrongdoers accountable when government regulators failed to take action due to lack of resources, interest or expertise. The U.S. Supreme Court has repeatedly noted the essential role that investors play in maintaining the integrity of our nation's securities markets by bringing claims in court under the federal securities laws.

It stands to reason that the return of real money to investors, no matter the size of their investment, is only possible when investors are able to band together and enforce their rights in the courts. It is well-recognized that when the injured are prohibited from joining together, the high costs of litigation mean that far fewer suits are pursued. And when the suits

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