

Congress of the United States
Washington, DC 20510

April 26, 2013

The Honorable Mary Jo White
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman White,

We write to express our strong belief that the Securities and Exchange Commission (the “Commission”) should promptly exercise its authority under Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to prohibit the use of mandatory arbitration provisions in customer service agreements.

The Dodd-Frank Act was enacted, among other reasons, to protect American consumers from abusive financial services practices. Section 921 reflects Congress’s concern over the increasingly widespread use of mandatory arbitration agreements in customer and client contracts, and grants the Commission authority to restrict or prohibit the use of these provisions. Ensuring a choice of forum, particularly for small investors, heightens fairness and ultimately enhances participation in our capital markets. To our disappointment, in the almost three years since the Dodd-Frank Act’s enactment, the Commission has largely disregarded this important mandate.

The time is ripe for the Commission to act under Section 921 to protect the investing public and prevent further abuse of forced arbitration contracts.

Recently, we were alarmed to see further attempts to erode investor rights when Charles Schwab, one of the country’s largest brokers, expanded the mandatory arbitration clauses in its customer agreements to include a mandatory class action waiver clause. In this instance, Schwab argued that, in response to the Supreme Court’s interpretation of the Federal Arbitration Act (FAA) in *AT&T Mobility v. Concepcion*, it could include a waiver of class action and class arbitration rights in its customer agreements. FINRA initiated a disciplinary action against Schwab for violation of FINRA rules barring class action waivers. In February, however, a FINRA hearing panel ruled that although Schwab’s actions did in fact violate FINRA rules, those rules could not be enforced under *Concepcion*.^[1]

While the Supreme Court in *Concepcion* did find that the FAA preempts state actions that would restrict the use of arbitration, the facts in the Schwab case are notably distinguishable—not least because FINRA is a membership organization seeking to enforce its own rules.

^[1] FINRA Department of Enforcement v. Charles Schwab & Company Inc. (CRD No. 5393) Disciplinary Proceeding No. 201102976021. February 21, 2013.

However, the ambiguity created by the panel's ruling underscores the urgency with which the Commission should adopt rules under Section 921.

Section 921 was included in the Dodd-Frank Act to address the threat to consumers posed by mandatory arbitration clauses in investment contracts. During Congress's deliberation of this section, legislators heard concerns that investors forced into arbitration must face "high upfront costs; limited access to documents and other key information; limited knowledge upon which to base the choice of arbitrator; the absence of a requirement that arbitrators follow the law or issue written decisions; and extremely limited grounds for appeal."^[2]

If arbitration offers investors an efficient forum to resolve disputes, as some argue, investors may choose that option—but they should be given the choice. It is equally important that investors not be precluded from bringing class actions because of contractual fine print imposed by a mandatory waiver class action clause.

Although evidence suggests that the use of mandatory arbitration agreements is widespread, we are concerned about the lack of transparency and reliable data regarding the prevalence of such agreements. We encourage the Commission to track how many brokerage firms are inserting mandatory arbitration agreements and class action waivers into consumer contracts, so that this questionable practice may be better monitored and addressed.

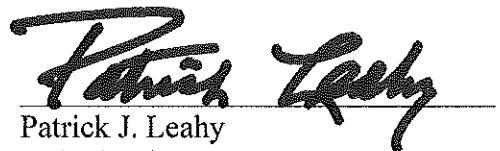
We are deeply concerned that the Commission's failure to respond to the dangers posed by widespread forced arbitration will weaken existing investor protections. Given the uncertainty created by the recent FINRA decision, we urge the Commission to act quickly to exercise its authority under Section 921 to prevent this practice and protect investor rights.

We recognize that the Commission is balancing competing demands, and that it must prioritize its recent mandates by Congress. The exigent circumstances at hand, however, require that the Commission exercise its authority under Section 921 of the Dodd-Frank Act and prohibit the use of mandatory arbitration provisions.

Sincerely,



Al Franken
United States Senator



Patrick J. Leahy
United States Senator

^[2] Senate Committee on Banking, Housing, and Urban Affairs on S. 3217, S. Rep. No. 111-176, at 110.



Tom Harkin
United States Senator



Bernard Sanders
United States Senator




Richard Blumenthal
United States Senator



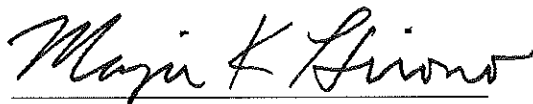
Richard J. Durbin
United States Senator



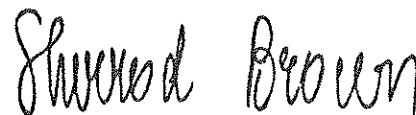
Sheldon Whitehouse
United States Senator



Jeff Merkley
United States Senator



Mazie K. Hirono
United States Senator



Sherrod Brown
United States Senator



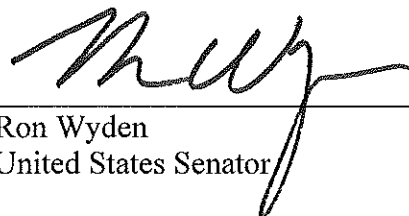
Martin Heinrich
United States Senator



Frank R. Lautenberg
United States Senator



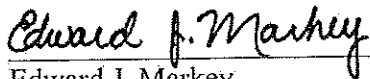
Robert Menendez
United States Senator



Ron Wyden
United States Senator

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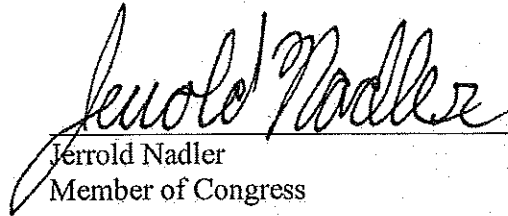
Elizabeth Warren
United States Senator




Edward J. Markey
Member of Congress



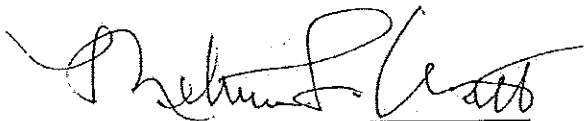
John Conyers Jr.
Member of Congress



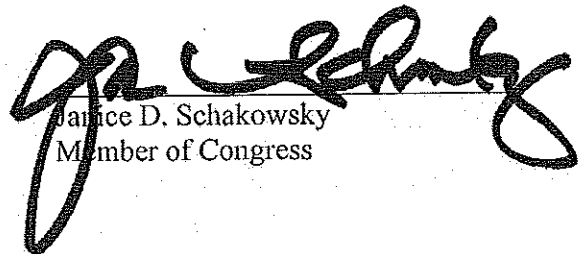
Jerrold Nadler
Member of Congress



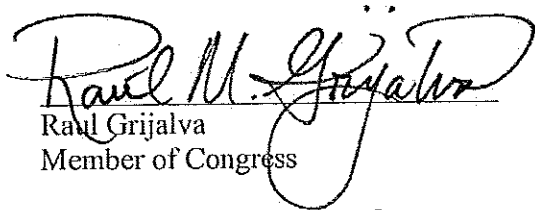
Bobby Scott
Member of Congress



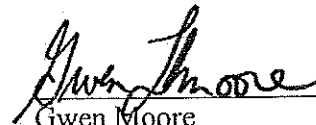
Melvin L. Watt
Member of Congress



Janice D. Schakowsky
Member of Congress



Raul Grijalva
Member of Congress



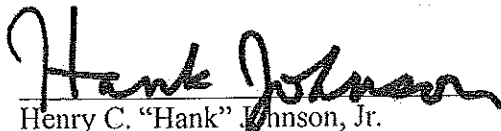
Gwen Moore
Member of Congress



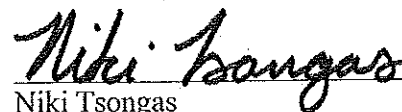
Bruce L. Braley
Member of Congress



Peter Welch
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



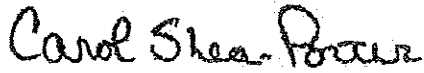
Niki Tsongas
Member of Congress



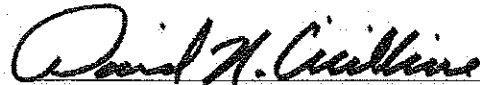
Chellie Pingree
Member of Congress



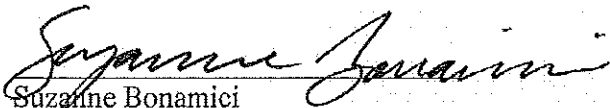
Theodore E. Deutch
Member of Congress



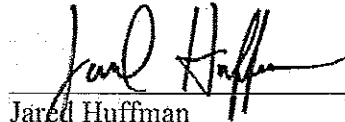
Carol Shea-Porter
Member of Congress



David N. Cicilline
Member of Congress



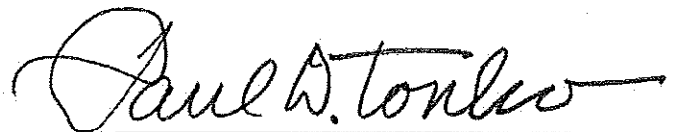
Suzanne Bonamici
Member of Congress



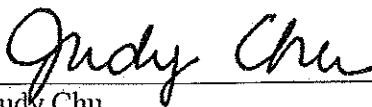
Jared Huffman
Member of Congress



Chris Van Hollen
Member of Congress



Paul Tonko
Member of Congress



Judy Chu
Member of Congress



Steve Cohen
Member of Congress