Submitted Testimony

of the Securities Industry and Financial Markets Association

before the U.S. House of Representatives

House Financial Services Subcommittee on

Investor Protection, Entrepreneurship and Capital Markets

Hearing entitled "Putting Investors First: Reviewing Proposals to Hold Executives Accountable"

April 3, 2019

The Securities Industry and Financial Markets Association (SIFMA)[1] and its member firms appreciate the opportunity to submit our perspectives on the legislative proposals that the Committee is evaluating this week. We are writing specifically to express our concerns regarding the Discussion Draft which is entitled the "Investor Choice Act of 2019." This legislation would prohibit arbitration clauses in all consumer contracts, including the retail contracts of investors who utilize the services of broker-dealers.

Brokers-dealers are subject to fairly extensive and regular regulatory oversight by the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA), among others. Under FINRA Rule 12200 (Arbitration under an Arbitration Agreement or the Rules of FINRA), broker-dealers are generally required to arbitrate a retail customer's dispute if required by a written agreement, *or* requested by the customer and if the dispute is between a customer and FINRA member (or associated person of a member). This rule is based on the belief that some customers may want to arbitrate and will benefit from it, especially considering that securities arbitration is less expensive, faster, and closely supervised and regulated by the SEC and FINRA.

It is important to recognize that arbitration is not specific to the financial services industry. Many industries outside of financial services include arbitration clauses, often employing arbitration fora that do not necessarily compare favorably to FINRA's forum. FINRA's arbitration forum stands above because it incorporates substantive and procedural protections comparable to court-based litigation, and thereby ensures fair case outcomes for retail customers.

Broker-dealers include arbitration clauses in customer contracts so that firms can appropriately price their products and services, as the cost of resolving future disputes is simply part of the cost of running a business. Each company must have a clear understanding of the scope of these costs. Arbitration clauses also provide clear and certain information as to where disputes will be handled for the customers and help secure lower dispute resolution costs that would otherwise be significantly higher in court-based litigation.

SIFMA consistently advocates to enhance the quality, and substantive and procedural fairness, of securities arbitration as the exclusive dispute resolution forum for most disputes between securities firms and their customers. The securities arbitration system has worked effectively for decades because it is subject to public oversight, regulatory oversight by multiple independent regulators, and rules of procedure that are designed to benefit investors. Pre-dispute arbitration agreements

---

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

are a vital component of this system. Such agreements help shape the public policy in favor of arbitration that has been recognized by both Congress and the U.S. Supreme Court. This policy is strengthened by the recognition that securities arbitration promotes fair, efficient, and economical dispute resolution for all parties.

In sum, SIFMA believes we should preserve the current enforceability of arbitration clauses in customer contracts and therefore strongly opposes the Discussion Draft which would ban them.

###