December 17, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing
& Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Crapo
Ranking Member
Committee on Banking, Housing Affairs
& Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Chairman Leahy, Chairman Johnson, Ranking Member Grassley and Ranking Member Crapo:

We represent investors that collectively manage assets exceeding $1 trillion USD in capital invested globally and in our nation's public markets. As investors whose participation in our public markets is vital to our economy's growth, we believe that companies should not be permitted to force shareholders into any system under which their rights are limited or their ability to participate in a class is extinguished. Forced arbitration systems—especially those which include class action bans—are not a viable substitute to judicial enforcement of fiduciary obligations owed to investors when the arbitration is an involuntary, costly, and biased dispute resolution system.

We, the undersigned, ask that the Committees of Jurisdiction act to preserve the ability of investors to access the judicial system for the enforcement and protection of their legal rights by:

1) Supporting the Securities and Exchange Commission ("SEC") in its exercise of Congressionally-granted authority under Section 921 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to prohibit the use of mandatory pre-dispute arbitration provisions in broker-dealer and investment advisor agreements; and,

2) Acting to formalize the SEC's longstanding policy that mandatory pre-dispute provisions requiring arbitration of investor disputes in the bylaws and governing documents of publicly traded corporations are harmful to capital markets, contrary to public policy, and could be subject to enforcement action.

Relying on the government to enforce the rights of individuals is no suitable alternative to private enforcement. Not only would requiring the government to bear the expense of prosecuting every investor dispute place an enormous additional burden on already strained budgets, but history has demonstrated that the government is ill-equipped to provide adequate recompense to individual investors injured by corporate fraud. In private litigation relating to the financial scandals at

Enron, WorldCom, Tyco, Bank of America and Global Crossing, private enforcement returned over $19.4 billion to investors.[1] The SEC's enforcement actions against these same companies relating to the same wrongdoing netted penalties and fees of $1.750 billion.[2] Indeed, in the last three years on litigation relating to the financial crisis, the SEC has recovered $2.73 billion in penalties, disgorgement and other monetary relief.[3] In comparison, private litigation against just four financial institutions arising from their conduct that led to the near collapse of our economy resulted in judgments or settlements of over $16 billion.[4]

Unfortunately, and perhaps precisely because private litigation provides the most efficient (and in some cases the only) way for investors to enforce their rights, publicly traded corporations have taken steps to eliminate judicial oversight of their fiduciary obligations to investors and their compliance with the federal securities laws. These steps have included inserting pre-dispute, forced arbitration clauses in investment-advisor contracts and corporate by-laws to force all shareholder disputes into arbitrations controlled by the very same corporations against whom the claims are being brought. These forced arbitration clauses also typically require shareholders to waive their rights to participate in any collective or class action.

When forced arbitration clauses and class action waivers appear in corporate bylaws or investor-advisor agreements, they can have the practical effect of preventing shareholders from pursuing any legal remedy whatsoever. When, as is often the case for smaller investors, the cost and expense of pursuing an individual claim far exceeds any possible recovery, a "waiver" of the right to participate in any collective action effectively immunizes wrongdoing corporations and their directors and officers from these smaller claims. These "waivers" are specifically designed to prevent class actions under Rule 10b-5 of the Securities Exchange Act of 1934, and would prevent class actions like the shareholder action brought against Enron Corporation from ever being brought. These forced arbitration clauses and class action waivers represent a real and present threat to principles of sound corporate governance, balancing the rights of shareowners against the responsibilities of corporate managers to run their businesses.

American investors are the foundation of a successful and thriving securities market. The victims of corporate wrongdoing aren't the ultra-wealthy—they are hard-working employees contributing towards their 401(k) accounts and relying on income from their pension funds, responsible

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[1] Source: *In re: Tyco International, Ltd., Securities Litigation, U*.S. District Court, District of New Hampshire, 02-266 ($3.2 billion settlement); *In re: Enron Corporation Securities Litigation*, U.S. District Court, Southern District of Texas, 01-3624($7.2 billion settlement); *In re: Worldcom, Inc. Securities Litigation,* U.S. District Court, Southern District of New York, 02-3288 ($6.1 billion); *In re: Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation,* U.S. District Court, Southern District of New York, 09-2058 ($2.4 billion settlement); *In re: Global Crossing Ltd. Securities Litigation,* U.S. District Court, Southern District of New York, 02-910 ($447.8 million settlement).

[2] Source: Tyco SEC Settlement Fair Fund: http://www.tycosecsettlement.com/ ($55.8 million settlement); Enron SEC Settlement Fair Fund: http://enronvictimtrust.com/ ($570 million); Worldcom SEC Settlement Press Release: http://www.sec.gov/news/press/2003-81.htm ($750 million); Bank of America SEC Fair Fund: http://bankofamericafairfund.com/ ($375 million); Global Crossing SEC Settlement Press Release: http://www.sec.gov/litigation/litreleases/lr19179.htm ($300,000).

[3] Source: SEC Enforcement Actions, Addressing Misconduct That Led To or Arose From the Financial Crisis, Key Statistics (through September 1, 2013), available at http://www.sec.gov/spotlight/enf-actions-fc.shtml

[4] Source: Sam Carr, SNL Financial, Largest US banks have built a $60B settlement tab, so far (March 5, 2013), available at http://www.snl.com/InteractiveX/Article.aspx?cdid=A-17047074-12337

American families saving for retirement, and parents investing in their children's education and future. Without sufficient protections and a meaningful way to hold financial institutions accountable when they violate financial or fiduciary obligations to their shareholders, investor confidence diminishes and market participation suffers, hurting investors, the institutions they invest in, and the American economy.

We ask the Committees on the Judiciary and on Banking, Housing, & Urban Affairs, jointly tasked with protecting American investors from unscrupulous or illegal financial practices, to encourage the SEC to continue its efforts to protect investor rights and restore the balance between those rights and the responsibilities of publicly traded companies and their corporate managers.

Sincerely,

American Federation of Musicians and Employers' Pension Fund (AFM-EPF)

Ann Arbor City Employees Retirement System

Arizona Public Safety Personnel Retirement System

Arkansas Teachers Retirement System

Board of Trustees of the Employees' Retirement System of the City of St. Louis

Carpenters' Pension Trust Fund of Northern California

City of Dearborn Heights General Government Fund

City of Dearborn Heights Policeman's & Fireman's Retirement System

City of Providence Employees' Retirement System

City of Roseville Employees' Retirement System

City of Southfield Fire & Police Retirement System

City of St. Clair Shores Police & Fire Retirement System

City of Sterling Heights General Employees' Retirement System

City of Sterling Heights Police & Fire Retirement System

City of Sunrise Firefighters' Retirement Fund

City of Westland Police and Fire Retirement System

Cleveland Bakers & Teamsters Pension Fund

Clinton Township Police & Fire Retirement System

Colorado Public Employees’ Retirement Association

Connecticut Retirement Plans & Trust Funds

Connecticut State Treasurer

Daytona Beach Police & Fire Pension System

Erie County Employees’ Retirement System

IBEW Local 110, International Brotherhood of Electrical Workers (St. Paul, Minnesota)

Idaho Diversified Bond Fund

Idaho Diversified Bond Fund Idle

Idaho Millennium Permanent Endowment Fund

Idaho State Treasurer

Ironworkers Local 405 (Philadelphia, PA)

Jacksonville Fire & Police

Key West Police & Fire Pension Plan

Laborers, District Council of Ohio

Los Angeles County Employees Retirement Association (LACERA)

Louisiana Municipal Police Employees Retirement Fund

Luzerne County Retirement System

Maine Public Employees’ Retirement System (MainePERS)

Monroe County Employees Retirement System

Montgomery County, PA

Municipal Police Employees' Retirement System

North Carolina Retirement Systems

Northern CA Pipefitters

Ohio Police and Fire Pension Fund

Oklahoma Law Enforcement Retirement System

Oklahoma Firefighters Pension and Retirement System

Oklahoma Police Pension and Retirement System

Oklahoma Municipal Retirement Fund

Operating Engineers Local 66 (Pittsburgh)

Oregon State Treasurer

Plymouth County Retirement System

Pompano Beach Police & Firefighters Retirement System

San Diego City Employees' Retirement System (SDCERS)

SEIU Pension Plans and Master Trust

Teamsters Union No. 142 Pension, Welfare, Annuity and Training & Apprenticeship Trust Funds (Gary, Indiana)

The Police Retirement System of St. Louis

Utah Permanent School and Institutional Trust Funds

Utah State Treasurer

Virginia Retirement System

Washington State Investment Board

Washington State Treasurer