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The Honorable Paul Atkins Chair, U.S. Securities and Exchange Commission
100 F Street
NE Washington, DC 20549

September 16, 2025

Re: SEC Open Meeting on September 17, 2025 – Investor Rights and Forced Arbitration Provisions

Dear Chair Atkins:

On behalf of the California Public Employees' Retirement System (CalPERS), the largest public pension fund in the United States, I write to respectfully request that this letter be included in the official record for the Securities and Exchange Commission's (SEC or Commission) open meeting scheduled for September 17, 2025. CalPERS represents more than two million members whose retirement security depends on fair, transparent, and accountable capital markets. CalPERS is committed to safeguarding retirement security through responsible stewardship, strong governance, and markets that protect investors.

The purpose of this letter is to express CalPERS' strong opposition to any reversal of the Commission's longstanding policy against forced arbitration provisions in the governing documents of public companies. We are deeply concerned that such a policy change would undermine the rights of investors to seek collective redress in court, weaken market discipline, and erode the protections that are fundamental to the integrity of U.S. capital markets.

When Companies Break the Law, Shareholders Need the Right to Join Together to Hold Them Accountable in Court and Recover Their Losses

When a public company commits securities fraud, investors can seek accountability by joining together to file a class action lawsuit to enforce federal and state investor protection laws. Class actions are a powerful deterrent for corporations against defrauding their investors, and such actions are embedded in federal and state laws. Importantly, investors have private rights of action under the Private Securities Litigation Reform Act that serve as an important complementary tool to protect their rights and recover their losses. In its 2024 term, the United

States Supreme Court reaffirmed these federal private rights of action in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*[1]

Forced arbitration would prevent investors from joining together to hold companies accountable for securities fraud and other misconduct. This would not only reduce recoveries for harmed investors but also diminish the deterrent effect that class actions provide. In 2024 alone, private securities class actions returned approximately $2.74 billion to investors, compared to $345 million distributed through SEC enforcement actions.[2] These figures underscore the critical role that private litigation plays in complementing government enforcement and ensuring meaningful compensation for investors harmed by violations of securities laws.

CalPERS has been a proud leader in protecting the interests of its members and beneficiaries and representing other investors harmed by corporate fraud, by using the powerful tool of securities class actions.

The SEC, Public Companies, and Institutional Investors Have Long Rejected Shareholder Forced Arbitration Provisions

Previous attempts to undermine investor rights through forced shareholder arbitration provisions consistently have been rejected by the SEC, public companies, and their shareholders.

A reversal of the SEC's policy would represent a significant departure from decades of regulatory practice. For years, the SEC has declined to accelerate IPO registrations that include forced arbitration provisions and has supported the exclusion of such proposals from company ballots. These actions have been consistent with the Commission's mandate to protect investors and promote healthy capital markets. Changing course now would tilt the playing field against investors, including the millions of Americans who rely on their retirement savings.

There is clear market consensus against forced arbitration. Shareholders and issuers have repeatedly rejected such provisions. For example, Johnson & Johnson successfully excluded a forced arbitration proposal in 2019, taking the management position that forced arbitration "would be contrary to the public policy interests underlying the federal securities laws and would cause [the company] to violate federal law." CalPERS joined with another large institutional investor to successfully support Johnson & Johnson's management position opposing the mandatory arbitration proposal.

Similarly, in 2020, Intuit had a shareholder proposal on its ballot that would have forced all shareholder claims into individual arbitration and denied class relief. Intuit opposed the proposal, a position applauded by the Council of Institutional Investors. Major institutional investors also opposed the proposal, with one large institutional investor, the New York State Common Retirement Fund, even filing an exempt solicitation opposing it. When the proposal was voted on, the proposal received less than 2.5% support.

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[1] 601 U.S. 257, 263 (2024) (quoting *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 157 (2008)).

[2] *See* NERA, Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review (Jan. 22, 2025), *available at* https://www.nera.com/insights/publications/2025/recent-trends-in-securities-class-action-litigation--2024-full-y.html?lang=en.

And when a private company has attempted to go public with organization documents that would force arbitration of investors' securities law claims, the SEC has followed its policy of declining to accelerate the effective date of a company's registration statement upon considering, among other things, the public interest and the protection of investors. For example, in 2012, when Carlyle Group attempted to include forced arbitration in its IPO documents, the provision was withdrawn following SEC staff concerns and broad opposition from the investment community. SEC Commissioners and staff made statements supporting Carlyle's decision to withdraw the forced arbitration provision, with a Commission spokesperson stating, "We are pleased they have announced that they plan to remove this provision. We advised them that the staff was not prepared to clear the filing with the mandatory arbitration provision included[.]"

The SEC's historic policy remains aligned with the interests of investors, public companies, public markets, and the public interest. There is no reason to change it now.

For these reasons, CalPERS respectfully urges the Commission to maintain its longstanding policy protecting investors' access to the courts and the right to collective legal action. At a minimum, any change of this magnitude should proceed only through a formal notice-and comment rulemaking process that allows for robust input from investors, companies, and the public. CalPERS will continue to advocate for strong governance and will encourage companies considering IPOs to reject forced arbitration provisions that erode investor rights. Forced shareholder arbitration has no place in the registration documents of a well-governed public company.

We respectfully request that the Commission include this letter in the official record for the September 17, 2025, open meeting. We also encourage the SEC to provide ample opportunity for all stakeholders to be heard on this critical issue. Protecting the ability of investors to seek accountability together in court is essential to maintaining fair, trustworthy, and efficient markets.

Thank you for your attention to this important matter. Please do not hesitate to contact us if you have any questions or require additional information.

Sincerely,

Marcie Frost
Chief Executive Officer