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SEC Commissioner Sounds Alarm on Rumors of Curbing Shareholder Rights

Securities and Exchange Commissioner Robert Jackson expressed alarm yesterday about recent reports [suggesting](#) that the new SEC leadership is weighing a dramatic reversal of policy to let corporations shield themselves from lawsuits by including forced arbitration provisions in their bylaws when they register to conduct an initial public offerings (IPOs). In recent weeks, SEC Commissioner Michael Piowar has [publicly urged corporations](#) to ask the SEC for “relief” to permit forced arbitration agreements in company charters. Under questioning from Sen. Elizabeth Warren (D-MA) during a recent Senate Banking hearing, SEC Chair Jay Clayton also failed to provide a firm assurance that the Commission would not pursue this major reversal or even that it would only do so through an open process and an actual vote by the full Commission.

In a [speech](#) on Monday, Commissioner Jackson warned against “handcuffing the investors who play such an important role in detecting fraud.” Jackson emphasized that “now—when SEC enforcement is hamstrung by budgetary and legal limits—is hardly the time to be thinking about depriving shareholders of their day in court,” and went on to note that “after scandals at Worldcom, Enron, Tyco, Bank of America, and Global Crossing, investors recovered more than \$19.4 billion in private lawsuits.” “By contrast,” he added, “the SEC obtained \$1.75 billion.”

Taking away private lawsuits, Jackson predicted, would further “deprive the public of the many investor protections developed in state courts, [which] would not exist if the underlying disputes had been privately arbitrated.” Commissioner Jackson concluded his remarks by stressing “if we’re going to take away investors’ right to their day in court, I hope my colleagues on the Commission can agree that we should, at least, do so in the light of day,” citing the “detailed empirical work that supported the CFPB’s arbitration rule” as a model the SEC could follow.

The SEC has historically protected class action rights of shareholders as a necessary deterrent to financial fraud and other securities law violations. In response to reports that the agency may dramatically curtail the rights of investors, Public Justice Executive Director Paul Bland had this to say:

“Securities class actions ensure that companies provide the accurate and reliable financial information on which our markets depend. They also recover billions for cheated investors – ranging from large pension funds for police officers and firefighters to regular American citizens holding IRAs and 401(k)s. Equally important, this private enforcement has been central to holding the worst of the worst

corporate actors accountable. Rolling back this fundamental protection for investors is an idea that's only popular with one group – corporations that don't want to be sued if they cheat people. I commend Commissioner Jackson for sounding the alarm, so that none of his fellow Commissioners are tempted to imagine that they can secretly act to place our retirement savings at the mercy of big corporations. Commissioner Jackson is right on the law and the policy here – if anyone at the SEC wants to gut protections against fraud, they will have to do it with a public discussion and a full Commission vote.”

For a more detailed explanation of these issues, please see Paul Bland's recent [column in the Hill](#).