

The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

February 12, 2013

The Honorable Elisse B. Walter
U.S. Securities and Exchange
Commission
100 F Street NE
Washington, D.C. 20549

The Honorable Troy A. Paredes
U.S. Securities and Exchange
Commission
100 F Street NE
Washington, D.C. 20549

The Honorable Luis A. Aguilar
U.S. Securities and Exchange
Commission
100 F Street NE
Washington, D.C. 20549

The Honorable Daniel M. Gallagher
U.S. Securities and Exchange
Commission
100 F Street NE
Washington, D.C. 20549

Re: Prohibiting the Use of Mandatory Pre-Dispute Arbitration Clauses by
Investment Advisers

Dear Chairman Walter, Commissioner Aguilar, Commissioner Paredes, and
Commissioner Gallagher:

As chief securities regulator for Massachusetts, I write to you today regarding a key investor protection issue: investment advisers including mandatory pre-dispute arbitration provisions in their advisory contracts. This practice is more widespread than many observers may have believed. The Massachusetts Securities Division urges the Commission to use its authority under Section 921 of the Dodd-Frank Financial Reform Act to commence a study of investment advisers requiring pre-dispute arbitration; a practice that appears to be inconsistent with the fiduciary duty that advisers owe their customers. The Massachusetts Securities Division offers its experience and resources to assist with any study the Commission may conduct.

The Massachusetts Securities Division recently sent 710 state-registered Massachusetts investment advisers surveys which included questions on the advisers' contracts, and the Division created a report based on the responses received (the "Report"). The survey requested specific information regarding arbitration. Responses were voluntary and anonymous, and response rate was over 50%. In the surveys received, nearly half the investment advisers responded that they include in their advisory contract a binding pre-dispute arbitration clause. I enclose a copy of the Securities Division's Report.

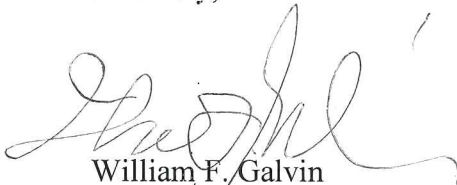
Such widespread use of mandatory pre-dispute arbitration clauses in advisory contracts is troubling and a cause for regulatory concern. By law, investment advisers are required to act as fiduciaries for their clients, with an obligation to act in their best interests. While arbitration may be appropriate in some cases, a clause binding an investor to arbitration before the circumstances are known may not be in the client's best interest nor consistent with an investment adviser's fiduciary duty.

Under the Dodd-Frank Act, which was signed into law on July 21, 2010, Section 921 authorizes and delegates to the Commission the responsibility to reform or prohibit pre-dispute arbitration requirements if the Commission finds that such changes are in the public interest and for the protection of investors. Congress has given the SEC both the tools and a mandate to act in this area.

I urge the Commission to consider making its first step in reform of mandatory arbitration the banning of pre-dispute arbitration language in advisory contracts. At a minimum, the Commission should commence a study of the issues raised by these provisions. It is my opinion that they are inconsistent with the fiduciary duty that investment advisers owe to their clients.

My office stands ready to assist the Commission with any study or information gathering it conducts in this important area. Please contact Bryan Lantagne, Director of the Massachusetts Securities Division at (617) 727-3548 if you have questions or we can assist in any way.

Sincerely,



William F. Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts

Enclosure