

SEC Reverses Position on Mandatory Arbitration Clauses in IPOs

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On September 17, 2025, the US Securities and Exchange Commission (SEC) approved a policy statement (the Statement) that allows companies to include mandatory arbitration clauses in their governing documents for investor claims, reversing its longstanding practice of prohibiting companies intending to go public from doing so.

Mandatory arbitration provisions in governing documents *require* investors to resolve disputes they have against the issuing company through arbitration, and are considered controversial by some because they effectively result in investors waiving their rights to litigate in court. The SEC's shift in policy is made following a "*number of developments*" in US courts' interpretation of the Federal Arbitration Act and, seemingly, in an attempt to reduce regulatory interference for companies looking to go public. SEC chairperson Paul Atkins stated that the changes set out in the Statement "*are among the first steps of my goal to make IPOs great again*"

The Statement has not been without criticism, however, with some viewing it as a shift away from consumer protection. Indeed, the decision itself only passed by three-to-one majority, on account of a forceful dissenting opinion from Caroline Crenshaw, the only Democratic SEC commissioner on the panel, who stated that the Statement "*finds another way to stack the deck against investors – this time primarily small, retail shareholders in public companies*".

It remains to be seen whether companies that IPO will decide to include mandatory arbitration provisions in their governance documents, however it is clear that – as a result of the SEC's policy shift towards greater flexibility for issuers – they now can do so. That said, issuers intending to include mandatory arbitration provisions must ensure that those provisions are enforceable as a matter of relevant state law; the Statement itself notes there is uncertainty regarding the intersection of federal law (which recognises the enforceability of these provisions) and state law (which, in some cases, does not).

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