

BLOOMBERG

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Obama Fails to End Kangaroo Courts for Investors

[M]ore than half the investors who go through a Wall Street arbitration get nothing at all, and those who do win get about half what they claim to have lost. Once they are in a hearing room, investors typically face a panel of three judges that includes someone from the very industry that got them into the mess in the first place -- Wall Street.

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All those issues and more inspired Democratic Senator Russell Feingold to introduce on April 29 the Arbitration Fairness Act, a bill that would make it illegal to force investors and other consumers to agree to give up their rights to go to court before they even buy a product, whether it be a cell phone, a refrigerator or some sketchy merchandise packaged as a risk-free investment.

Considering Feingold's bill, Wall Street's shame and Washington's new vigilance about financial regulation, you might figure that President Barack Obama's regulatory overhaul unveiled last week would include some tough talk about killing off mandatory arbitration.

But you would have figured wrong.

Obama's plan devoted a single paragraph to what happens to investors once they realize they got shafted.

The Securities and Exchange Commission "should study the use of mandatory arbitration clauses in investor contracts," and then pursue legislation if appropriate, it says.

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On June 11, the Public Investors Arbitration Bar Association, or Piaba, a lawyers' group representing investors, filed a petition with the SEC asking that the agency nix the practice of reserving a spot for a brokerage industry representative on arbitration panels. Smart money says the petition will lead to a couple more studies.

SEC spokesman John Heine declined to comment on the proposal. Travis Larson, a spokesman for the Securities Industry and Financial Markets Association, said his group instead is supporting a stalling tactic -- sorry, I meant to say "pilot program" that allows a test group of investors to arbitrate without a Wall Street judge.

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The petition, in any event, "will eventually end up in a trash heap" at the SEC, said Los Angeles lawyer Herbert Leslie Greenberg in a June 20 letter to the SEC. Greenberg

should know. His own petition for an arbitration overhaul in 2005 landed in the SEC's circular file.