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What US Can Learn From Brazil's Securities Arbitration Model

By **Francisco Satiro and Bruno Salama** (December 9, 2025, 3:09 PM EST)

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On Sept. 17, the U.S. Securities and Exchange Commission **reversed** its long-standing informal opposition to mandatory arbitration clauses in public company registration statements. Under the new policy, the presence of such clauses will no longer, by itself, prevent acceleration of a registration statement.

This marks an important turning point in U.S. securities law. It gives public companies the opportunity to adopt arbitration structures that the SEC now views as legally permissible under the Federal Arbitration Act, so long as the provisions are adequately disclosed. At the same time, the shift revives long-standing debates over investor rights, transparency and access to courts.

We believe Brazil's two decades of integrating arbitration into its capital markets provide a useful road map for the SEC.

Where the U.S. Stands After the SEC Shift

Although never codified through rulemaking, the SEC staff developed a long-standing practice of declining to accelerate registration statements that included mandatory arbitration provisions. Its staff justified this approach on investor-protection grounds, including concerns that such clauses could limit shareholder rights under the federal securities laws — particularly access to federal class actions.

The September policy change relaxes that approach. Issuers may now include arbitration clauses in their charters, bylaws or other governing documents, so long as the provision is adequately disclosed. At the same time, the SEC emphasized that determining the validity or enforceability of an arbitration provision under the FAA or state corporate law is outside its purview, and that such issues should be addressed through disclosure rather than through the acceleration process.

In this context, Brazil's experience offers practical lessons on how a jurisdiction can integrate arbitration into public markets in a stable, transparent and investor-conscious manner.

The Brazilian Model: Arbitration Embedded in Capital Markets

Brazil's securities arbitration framework is notably cohesive, with centralized administration and standardized procedures across listed companies. The B3 Arbitration Chamber — the Câmara de Arbitragem do Mercado — created in 2001 by B3 SA, the Brazilian stock exchange, as part of broader corporate governance reforms, is central to this structure. Participation is mandatory for companies listed on B3's premium segments — such as Novo Mercado and Nível 2 — creating a high degree of institutional coherence.

Companies in these segments must include arbitration clauses in their bylaws, binding shareholders, management and the company to arbitration for corporate and securities disputes. Even companies outside the premium segments often voluntarily adopt similar clauses.

Although proceedings remain confidential, Brazilian securities rules require listed companies to disclose material facts related to arbitration, including the existence of disputes when they are material to investors. The B3 Arbitration Chamber provides public access to anonymized arbitral decisions, including the legal reasoning, thereby promoting legal predictability without breaching confidentiality.

Arbitrators typically have expertise in corporate and securities law. The B3 Arbitration Chamber itself has evolved into a permanent, specialized institution with standardized procedures and a reputation for neutrality.

Brazil's 1996 Arbitration Act, upheld by the Supremo Tribunal Federal, or the Supreme Federal Court, in 2001, provides a strong legal foundation for enforcement. Over more than 20 years, this architecture has become integral to Brazil's capital markets governance.

A Legislative Package Signals Further Strengthening

In 2024, the Câmara dos Deputados, or Brazil's Chamber of Deputies, approved a capital markets reform package — PL 2,925/2023 — aimed at modernizing minority-shareholder protections and clarifying the framework for collective redress in securities arbitration. The proposal has not yet been enacted into law, but it signals a clear direction for future reform and aligns with Brazil's broader effort to consolidate best practices in corporate governance.

Key elements include:

- The introduction of a statutory framework for collective redress in securities disputes, including rules on when claims involving common shareholder interests may proceed collectively, how representative investors are designated and the binding effects of arbitral decisions on nonparticipating shareholders;
- Strengthened transparency in securities arbitrations that define when arbitral proceedings constitute material events requiring disclosure, require publicity in certain types of arbitrations and obligate arbitral institutions to publish anonymized precedents;
- Reinforced minority-shareholder safeguards by clarifying rights to information, establishing who may represent investors in collective or class-type proceedings, and setting procedural standards for arbitrations involving conflicts with controlling shareholders; and
- Incorporated procedural standards into federal law previously found only in B3 and Comissão de Valores Mobiliários — Brazil's securities regulator — practice, helping to create a more uniform and predictable framework for securities arbitration.

Whether or not these provisions ultimately become law, the reform effort illustrates the level of institutional attention Brazil devotes to balancing arbitration efficiency with investor confidence.

Five Lessons for the U.S. Market

1. Regulatory certainty builds market confidence.

Brazil's regulators, courts and market actors recognize arbitration as a legitimate and valuable dispute resolution mechanism in capital markets. This has created a stable and predictable environment.

In contrast, the SEC's new policy, while permissive, leaves some important questions unanswered. For arbitration to gain acceptance in the U.S., regulators may need to provide greater clarity.

2. Arbitration and investor protection are compatible.

Critics of mandatory arbitration often argue that it undermines investor rights. The Brazilian experience shows that with proper institutional design — including arbitrator neutrality, procedural fairness and adequate disclosure — arbitration can protect investors while offering benefits such as speed and specialization.

3. Standardization prevents abuse.

Brazilian listing rules and arbitration procedures follow standardized language and best practices. This consistency reduces the risk of abusive clauses and builds trust among market participants.

U.S. regulators and stock exchanges could develop model provisions or minimum standards to ensure fairness and clarity.

4. Institutions matter.

The B3 Arbitration Chamber is a permanent, specialized institution subject to oversight and continuous improvement. In the U.S., companies sometimes turn to private arbitration providers, raising concerns about impartiality. A regulated or industry-backed forum could potentially offer the same legitimacy that B3 has achieved.

5. Transparency can coexist with confidentiality.

While arbitration is generally confidential, Brazil's system introduces limited transparency through mandatory disclosure by listed companies of material developments in arbitration and the publication of anonymized summaries and legal reasoning. This helps develop jurisprudence and maintains accountability. The U.S. could explore similar mechanisms.

Addressing U.S. Skepticism

The U.S. legal culture is deeply attached to class actions and open courts. Many institutional investors view arbitration with suspicion, fearing it tilts the playing field toward issuers. These concerns are valid, but not insurmountable.

Brazil faced similar debates in the early 2000s. Over time, as arbitrations accumulated and were resolved, market skepticism diminished. Thoughtful regulation, stakeholder engagement and practical experience demonstrated that arbitration can be fair, efficient and legitimate.

A Cross-Border Dialogue Worth Having

The SEC's recent policy change is not an end point but a beginning. U.S. market participants now face the task of designing arbitration frameworks that serve both issuers and investors.

Brazil's experience does not offer a one-size-fits-all solution. But it does show that with clear rules, strong institutions and regulatory support, arbitration can complement rather than undermine the goals of securities regulation.

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