CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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The Honorable Maxine Waters
Chair
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chair Waters and Ranking Member McHenry:

The U.S. Chamber of Commerce appreciates the Committee holding the markup scheduled for November 16, 2021. We write to express our positions on the following measures:

Support

H.R. 5911, Fair Hiring in Banking Act

This bill would amend the Federal Deposit Insurance Act and the Federal Credit Union Act to expand employment opportunities for those with a previous minor criminal offense, and for other purposes. Sec. 19 of the Federal Deposit Insurance Act prohibits a person from participating in the affairs of an FDIC-insured institution if he or she has been convicted of a crime involving dishonesty, breach of trust, or money laundering, or has entered into a pretrial diversion or similar program in connection with a prosecution for such an offense, without the prior written consent of the FDIC.

In 2020, the FDIC issued an interpretive rule that makes important reforms, such as excluding covered offenses that have been expunged or sealed and expanding the *de minimis* offenses. However, congressional action would permit for more reforms. Replacing the lifetime ban for certain offenses with an approach that focuses on rehabilitation and reintegration could permit for more second chance hiring.

Oppose

H.R. 4277, the Overdraft Protection Act of 2021

This bill would make it more difficult for consumers to manage their finances by restricting the type of overdraft protection products that can be offered by financial institutions. Overdraft payment services are already regulated; consumers receive fee disclosures and are only eligible for overdraft protection if they opt-in to the service.

There are many circumstances in which consumers benefit from overdraft protection from their bank. For example, it may help them make a payment on a debt obligation so they can avoid a late fee. The legislation also seems to disregard that consumers have many options for accounts that do not offer overdraft payment services.

H.R. 2620, Investor Choice Act of 2021

This bill would prohibit *all* arbitration agreements between issuers and shareholders, whether pre- or post-dispute. It would also prohibit pre-dispute arbitration, forum selection, or class action waiver clauses between brokers, dealers, or investment advisors and their customers. Most of these prohibitions would be applied retroactively.

Arbitration is a fair, effective, and less expensive means of resolving disputes compared to going to court. Securities-related arbitrations that are handled by the Financial Industry Regulatory Authority (FINRA), have numerous procedures that protect investors. FINRA is also subject to layers of regulatory and court oversight that could step in if the process was found to be biased in any way. Furthermore, the SEC already has tools to handle any issues that develop in this space.

If this bill is enacted, it will exacerbate existing problems in the securities litigation system and reduce the efficiency and reliability of the securities system for everyone. We urge you to oppose H.R. 2620.

H.R. 5910, Holding SPACs Accountable Act of 2021

This bill would alter the safe harbor for forward looking statements granted under the Private Securities Litigation Reform Act (PSLRA) of 1995 to specifically exclude Special Purpose Acquisition Companies (SPACs).

The sponsor identifies the purpose of this legislation as putting an end to false or misleading forward-looking statements. Fundamentally, this legislation is not needed. First, companies have an existing responsibility not to make false or misleading statements. Next, the Securities and Exchange Commission (SEC) has existing and broad authority to compel information from companies and has strong enforcement mechanisms in place to inform the actions and decisions of market actors. Moreover, the SEC is granted broad authority under the PSLRA to extend and shrink safe harbors as it deems appropriate.

While the popularity of SPACs has increased in recent years, the SPAC market is still nascent. The operational nature of the SPAC market may change as it matures. Therefore, enacting legislation to limit the SEC's flexibility to extend or shrink the safe harbor for forward-looking statements in response to market conditions may ultimately have the consequence of deterring the disclosure of information. This would ultimately prove harmful to investors.

Additionally, the PSLRA was enacted to reorient the securities class action system away from plaintiffs' lawyers and toward investors. Altering the PSLRA in the way envisioned by H.R. 5910 could mark a crescendo in the kinds of cases that Congress sought to reduce in 1995.

This would apply particularly to cases that were principally driven by lawyers rather than investors and had a tendency to be plagued by abusive practices.

Thank you for considering our views.

Sincerely,

Tom Quaadman

cc: Members of the House Committee on Financial Services