Consumer Federation of America

November 16, 2021

The Honorable Maxine Waters
Chairwoman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services
4340 O'Neill House Office Building
Washington, D.C. 20024

Dear Chairwoman Waters and Ranking Member McHenry:

I am writing on behalf of the Consumer Federation of America to express support for several bills that the Financial Services Committee is scheduled to consider during its November 16, 2021 legislative markup. I appreciate your attention to CFA's views.

The Empowering States to Protect Seniors from Bad Actors Act (H.R. 5914)

First, CFA strongly supports H.R. 4914, which would reauthorize and improve the Senior Investor Protection Grant program and house the program within the U.S. Securities and Exchange Commission.[1] We applaud Congress's interest in fixing the 989A program, we are excited about the tangible benefits these additional resources and expertise will have on the ground, when deployed to assist state financial services regulators tasked with policing scams.

Senior financial exploitation is an urgent nationwide concern. It is estimated that roughly one in five citizens over the age of 65, or 7 million seniors, have been victims of financial exploitation. Abuses include inappropriate investment recommendations, unreasonably high fees, and outright fraud, costing these older Americans an estimated $2.9 billion.[2]

State regulators help form the front line of investor protection for a majority of elderly investors. In recognition of that fact, Section 989(A) of the Dodd-Frank Act of 2010 established a federal grant program designed to help state securities and insurance regulators enhance their tools to protect this vulnerable population against fraud.[3] Unfortunately, for reasons the Committee has established, the 989A program was not implemented as Congress intended. CFA was among the

[1] CFA was prepared to support an aspect of previously proposed legislation which would have empowered the SEC Office of Investor Advocate to implement the program directly, we agree that the revised framework is workable.
[2] *See* U.S. Senate Special Committee on Aging, *Fighting Fraud: Senate Aging Committee Identifies Top 10 Scams Targeting Our Nation's Seniors* (Nov. 1, 2019), https://www.aging.senate.gov/imo/media/doc/Fraud%20Book%20%202020.pdf.
[3] As CFA has previously noted, it has advocated for establishment of a grant program to assist state regulators in prioritizing fraud targeting the elderly since at least 2010. (*See* Letter from CFA, NASAA, AARP and Fund Democracy to Senate Banking Committee regarding the "Restoring American Financial Stability Act of 2009" Committee Print (Feb 2, 2010), https://bit.ly/2QcVQq9).

organizations that voiced its strong support for the Senior Investor Protection Grant Program when it was considered and passed by Congress is 2010.[4] We continue to support the program.

Unfortunately, in the eleven years since the enactment of that statute, the CFPB has been unable to establish this important grant program due to uncertainty about the funding mechanism.

H.R. 5914 will fix the legislative and structural gremlins in Sec. 989A by assigning responsibility for the administration of the grant program to the SEC. Under the bill, as originally intended, the program will provide available eligible recipients, including for such purposes as hiring staff to investigate and prosecute cases of senior financial fraud; funding technology and training for state regulators and law enforcement units tasked with shutting down senior scams; and funding education and outreach to older Americans to increase their awareness of scams. In addition, H.R. 5914 will authorize appropriations of up to $10 million annually for purposes of the program, through FY 2028, and cap the annual amount of grand funds that any one state agency can receive for the program at $500,000.

CFA strongly supports H.R. 5914 and urges its passage.

The Investor Choice Act (H.R. 2620)

The Investor Choice Act would prohibit the use of pre-dispute mandatory arbitration contracts in several key areas of the securities industry and regulatory regime. Most notably, the bill would prohibit broker-dealers and investment adviser from including "forced" arbitration clauses in their customer agreements. This will ensure that investors injured by bad actors will be able to bring valid claims in court and would not be forced into a FINRA controlled arbitration forum by nonnegotiable contracts.

The bill would also prohibit issuers of securities from mandating arbitration for a dispute between the issuer and its shareholders in any governing document or contract. This is an important and especially timely reform. While the concept of mandatory arbitration of shareholder claims has been discussed or explored by issuers a few times in the past, during the past several years there has been a concerted push by ideologically motivated shareholders to compel corporate boards to amend bylaws to adopt a mandatory arbitration bylaw applicable to disputes between a stockholder and the corporation.

CFA strongly supports the Investor Choice Act.

The Holding SPACs Accountable Act (H.R. 5910)

CFA shares the Committee's view that Special Purpose Acquisition Companies (SPACs) should to be more closely scrutinized, including by regulators and policymakers, and has written to the Committee on SPAC issues in the past.[5] Further, CFA agrees with the general proposition that

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[5] *See* Americans for Financial Reform and CFA, *Letter to Members of the House Financial Services Committee Re: Special Purpose Acquisition Companies* (Feb. 16, 2021), https://consumerfed.org/wpcontent/uploads/2021/02/AFR-Letter-on-SPACs-to-HFSC.pdf.

the securities laws should subject issuers conducting initial public offerings (IPOs) to similar liability requirements, regardless of whether such issuers undertake to raise public capital through a "traditional" IPO, or an alternative method IPO, such as a so-called SPAC IPO.

The Private Securities Litigation Reform Act (PSLRA) of 1995 establishes a "safe harbor" from liability in private litigation for "forward-looking" statements made by issuers in certain filings.[6] The safe harbor is expressly denied to forward-looking statements made in connection with an IPO, or an "offering of securities by a blank check company." To the extent that there is uncertainty regarding whether the PLSRA's safe harbor is or is not applicable to certain SPAC IPOs in the same manner as traditional IPOs, H.R. 5910 will eliminate such ambiguity by amending the definition of "blank check company" to plainly encompass SPAC IPOs. The effect of such a change will be to ensure that forward looking statements in SPAC IPO offerings are, in fact, subject to the same liability as similar projections in traditional IPOs.[7]

CFA looks forward to working with the SEC and Congress to ensure responsible oversight of SPACs and other so-called "blank check" companies like SPACS. We support the intent of H.R. 5910, the Holding SPACs Accountable Act, and urge the Committee to advance the bill.

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Thank you for the opportunity to comment on the legislation posted in connection with today's hearing.

Sincerely,

Dylan Bruce
Financial Services Counsel
Consumer Federation of America

[6] The safe harbor is only applicable if the projections are made in good faith and accompanied by meaningful cautionary language.
[7] *See* Andrew Park, Senior Policy Advisor, Americans for Financial Reform, *Testimony before the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets*, at 3 (May 24, 2021), https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.