american securities association

America's Voice for Main Street's Investors

November 16, 2021

The Honorable Maxine Waters
Chairwoman
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

Re: November 16th House Financial Services Committee Markup

Dear Chairwoman Waters and Ranking Member McHenry:

The American Securities Association (ASA)[1] opposes three bills that the Financial Services Committee is scheduled to markup on November 16th.

<u>H.R. 2620 the "Investor Choice Act of 2021"</u>

The ASA strongly opposes this bill that would severely harm investors by banning the use of arbitration agreements in customer agreements.

Arbitration has long been recognized as an efficient and effective dispute mechanism for consumers and investors. Much of the criticism over arbitration is false or misleading and is based upon the notion that consumers and investors should always have "their day in court." However, litigation typically involves significant costs and delays, and class action lawsuits typically and result in no recovery at all for consumers.

Arbitration, by contrast, involves a speedier process where consumers and investors are often compensated for harm done to them. The Financial Industry Regulatory Authority (FINRA) has found that arbitration disputes take slightly over a year to resolve, and that a large chunk of cases are ultimately settled or withdrawn before a decision by an arbiter can be made. The evidence is clear that arbitration is beneficial for consumers and that it has worked well in practice for decades.

Curiously, the supporting documents for this legislation cite an article in the American Prospect which asserts that "30% of arbitration awards against brokers went unpaid in 2020." However, that assertion does not exist in the article – nor does it exist anywhere else. As FINRA explains: "In FINRA arbitration, the majority of customer cases—approximately 69 percent—result in

[1] The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership of almost one hundred members that spans every region of the United States.

settlements reached by the parties; typically, approximately 18 percent of cases proceed to award, and **two percent** result in unpaid awards."[2] While the insertion of this quote may have been an oversight, it does raise serious questions about the motivation for this bill. Sound policy making must be based on and supported by verified data.

The biggest beneficiary of class action litigation is the trial bar, while investors or consumers are left waiting years for a resolution. H.R. 2620 would be a giant gift to the trial bar while providing no corresponding benefits to investors.

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

This legislation would prohibit a special purpose acquisition company (SPAC) from the safe harbor for forward-looking statements provided by the Private Securities Litigation Reform Act (PSLRA).

While ASA has previously provided the Committee with a number of recommendations to improve regulations for SPAC offerings[3], we strongly oppose this legislation which would severely diminish the amount of disclosure SPACs provide to the market and deprive investors of decision-useful information.

The PSLRA was a major piece of reform legislation that guards against securities class action abuses by the trial bar and facilitates the dissemination of information to the marketplace. There is no compelling reason to treat SPACs differently than public companies under the PSLRA.

SPACs and their underwriters remain subject to prohibitions against false or misleading statements which is a critical investor protection and a core tenet of our securities laws. Accordingly, we urge members of the Committee to vote ***against*** this bill.

H.R. 5913, the "Protecting Investors from Excessive SPACs Fees Act of 2021"

Earlier this year the ASA submitted the following recommendations to improve SPAC transactions:

- SPAC sponsors should provide disclosure regarding their economic stake and potential outcomes from a future merger transaction;
- SPACs should clearly disclose to investors that a deal may not come to fruition and that shares may only be redeemed at a certain price;

[2] https://www.finra.org/arbitration-mediation/statistics-unpaid-customer-awards-finra-arbitration,
[3] https://www.americansecurities.org/post/direct-listings-harm-investors-and-undermine-market-confidence

- Investors should also be provided with merger information and a proxy statement (or a summary document of the merger document), including information for how the valuation was calculated;
- A Form S-4 and proxy statement should be filed at the same time (or shortly thereafter) a deal is announced;
- SPACs should also publicly file a description of the transaction and how they determined valuation;
- SPAC sponsors should be subject to at least a one-year lockup in their shares from the date that the merger is completed; and
- Any sales within a certain period (e.g. three years) by a SPAC sponsor should be considered a "distribution" under SEC rules.

We believe these reforms would provide necessary transparency to investors while still allowing the SPAC market to function efficiently.

H.R. 5913, by contrast, takes a heavy-handed approach by mandating certain disclosures – some of which involve projections that would be difficult for SPACs to make – or prohibiting a SPAC from being offered to non-accredited investors. So, hedge funds on Wall Street could make money while hardworking Americans could not.

Finally, much of the authority that Congress would delegate in the legislation is already under the SEC's jurisdiction. The SEC currently has sufficient tools to crack down against bad actors in SPACs as they do in every other area it oversees.

For these reasons we ***oppose*** this bill and instead encourage Congress to consider some of the reforms that ASA has already put forward.

Conclusion

The ASA encourages the Committee to focus on bipartisan legislation that will encourage small business capital formation instead of controversial and partisan bills that have little to no chance of being signed into law. The ASA has previously submitted to Congress a number of pro-growth, capital formation ideas that would gain bipartisan support in Congress.[4]

We also do not believe that the mere existence of a bill in Congress provides any type of "authorization" for the SEC to act upon the specific language or provisions of that bill. Congress must work across party lines to advance legislation that can win the backing of both parties and a wide spectrum of market participants.

[4] ASA Releases Proposals to Foster Economic Growth and Small Business Capital Formation (americansecurities.org)

The ASA looks forward to continuing to work with the Committee and all members of Congress on these critical issues.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
Chief Executive Officer
American Securities Association