AFR Americans for Financial Reform

September 13, 2018

Dear Representative,

On behalf of Americans for Financial Reform (AFR), we are writing to urge you to vote against six of the bills under consideration in today's Financial Services Committee markup.[1] As has generally been the case over the past year, this markup features a significant number of bills that reduce protections for consumers, investors and the public, counterbalanced by no serious efforts to strengthen regulation of Wall Street. On the tenth anniversary of the global financial crisis, it is disturbing that the House is continuing to prioritize Wall Street's agenda over the public interest.

Due to the brief advance notice provided for this hearing, we are continuing to examine this legislation and may take a position later on bills not discussed here. Below, we list the bills we currently oppose and describe reasons for opposing them. The bills are listed in numerical order.

HR 2128, the "Due Process Restoration Act", would permit parties to SEC enforcement actions to force the SEC to drop the administrative proceeding and pursue the case as a civil action in Federal court. It would also significantly raise the standard of proof in SEC administrative actions.

Joseph Borg, the President of the North American Securities Administrator Association (NASAA) and the Director of the Alabama Securities Commission, testified that this bill would be a "potential death knell for SEC administrative practice".[2] His testimony also describes the ways in which HR 2128, by blocking effective disposition of cases through the administrative process and encouraging wrongdoers to remove their cases to more time-consuming and cumbersome Federal court actions, would disrupt both our securities markets and the functioning of the Federal courts. We agree with NASAA's concerns about this bill and urge you to reject it.

HR 5534, the "Give Useful Information to Define Effective (GUIDE) Compliance Act" would require the Consumer Financial Protection Bureau (CFPB) to conduct a new rulemaking that defines a formal process for issuing guidance. The sweeping definition of guidance in the Duffy Amendment goes far beyond guidance bulletins and covers potentially most CFPB communications, including news releases, blog posts, and frequently asked questions. Requiring the CFPB to establish this type of formal procedure for issuing guidance takes away the Consumer Bureau's ability to rapidly respond to evolving forms of consumer harm. It also prevents the CFPB from responding to requests for guidance and clarification as they arise in an ever changing marketplace. This bill conflicts with the general guidance practice of federal agencies, which is intended to preserve their ability to address problems in a timely manner

[1] Americans for Financial Reform is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of coalition members is available at http://ourfinancialsecurity.org/about/our-coalition/

[2] https://financialservices.house.gov/uploadedfiles/hhrg-115-ba16-wstate-jborg-20180613.pdf

within the scope of existing rules and practices. By making it more difficult for the CFPB to issue guidance and to address concerns from both industry and the public, this bill will weaken the CFPB's ability to carry out its Congressional mandate to protect consumers.

The bill also requires the CFPB to issue a civil penalty matrix that would determine in advance the permissible size of civil monetary penalties. Binding the CFPB to a civil penalty matrix will restrict the flexibility the CFPB needs to hold scammers and corporate wrongdoers accountable when they develop new ways to abuse consumers.

HR 6021, the "Small Business Audit Correction Act of 2018", would amend the Sarbanes-Oxley Act to create a statutory exemption for certain non-custody brokers or dealers from the requirement to have their financial reports audited by a firm registered with the Public Company Accounting Oversight Board (PCAOB). The PCAOB was created in the wake of the pervasive accounting scandals in the late 1990s and early 2000s to establish rules and accounting standards and to oversee the audits of public companies. It was later expanded, under Dodd-Frank, to include annual audits of all broker and dealers registered with the SEC. The lack of impartial external audits of his brokerage firm was a major factor enabling Bernie Madoff to engage in a multi-decade multi-billion dollar investor fraud.

The exemption from audit requirements contained in HR 6021 is unnecessary and also would endanger investors. It is unnecessary since the PCAOB already has the power to tailor audit requirements based on firm size. It endangers investors because it does not include adequate protections and because smaller brokers are not immune to accounting abuses or other forms of malfeasance that may endanger investors. The exemption in HR 6021 would apply to all brokers with fewer than 150 representatives, regardless of the total financial activities of the brokerage firm. This is a category that includes the great majority of the market. While it requires exempted firms to currently be in "good standing", this is inadequate protection to replace sound auditing standards and requirements. This legislation should be rejected.

HR 6741, "The Federal Reserve Reform Act of 2018", contains numerous provisions affecting the operations of the Federal Reserve. Some of these provisions affect areas of monetary policy which AFR does not typically weigh in on, and there are other provisions we would not necessarily oppose. However, we strongly oppose Section 7 of the bill, which would bring funding for the Federal Reserve's regulatory activities under the Congressional appropriations process. Banking regulators have traditionally been independently funded in order to reduce opportunities for short-term and inappropriate political pressures on regulatory supervision and decisions. Today, the Federal Reserve is arguably the single most important banking and financial system regulator. While Congress is always free to pass legislation changing financial regulatory rules and procedures, the day-to-day funding of regulatory activities should be independent of the appropriations process.

HR 6743, "The Consumer Information Notification Requirement Act", would protect companies such as Equifax that fail to protect consumer data. Section 3 of the bill would preempt all state data breach, data security and other privacy laws as they apply to both "financial institutions and their affiliates." "Financial institution" is a term that includes numerous non-banks including Equifax and the other consumer reporting agencies, as well as debt collectors and payday lenders. This is unacceptable.

State protections are particularly critical since current Federal privacy protections, as restated in Section 2 of HR 6743, only require corporations to inform consumers of a privacy breach if the breached firm determines that the privacy violation is "reasonably likely" to result in certain economic harms. State privacy laws are significantly broader and more protective of consumer privacy rights. Section 3 of HR 6743 replaces the narrow preemption provision in the existing law with a far broader preemption provision that could not only eliminate all state data breach notice, data security and other privacy laws as they apply to financial institutions, but forestall further state innovation to protect their citizens from future privacy and data security threats. By replacing the existing notice standard in the overwhelming majority of states with a weaker preemptive federal standard, this bill would cause consumers to stop receiving notifications about breaches that they currently have a right to hear about — breaches that could lead to physical, financial, or emotional harm. The bill would also prevent states from responding to new threats with new protections, which is particularly dangerous since many States have moved more quickly to protect the public than Congress has.

HR 6745, "The ACCESS Rural America Act" would raise the number of non-accredited investors rural telecommunications companies may have before the firm must register equity securities with the SEC from the current 500 to 1,200. This would tend to undermine the public equities markets in favor of private market fundraising with inadequate disclosure requirements and investor protections. To address the lack of public disclosure the bill also requires the SEC to design a new disclosure form for companies that use the exclusion in this bill. However the elements in the new disclosure form are far less comprehensive and informative than current disclosures required upon registration of public securities.

Thank you for your attention to this matter. For more information please contact AFR's Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,
Americans for Financial Reform