MAXINE WATERS, CA
CHAIRWOMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

PATRICK MCHENRY, NC
RANKING MEMBER

November 10, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: November 16, 2021, Full Committee Markup

The full Committee will convene to mark up the following measures, in an order to be determined by the Chairwoman at 10:00 a.m. on Tuesday, November 16, 2021 and subsequent days if necessary, in a hybrid format in room 2128 of the Rayburn House Office Building as well as on the WebEx platform.

1. **Amendment in the Nature of a Substitute to H.R. 2311, the "Credit Union Governance Modernization Act of 2021" (Emmer)**

Summary: This bill would reform the process governing expulsion of Federal credit union members. It would give Federal credit unions the option to either expel a member under the current bylaws, which is based on a vote of credit unions members present at a special meeting, or pursuant to a new policy adopted by the National Credit Union Administration (NCUA) Board. The bill would provide new procedures for the expulsion of, and reinstatement of, a member under certain circumstances defined in the bill, while ensuring fairness and due process for the member in question.

Background: Under current law, there are special requirements that a Federal credit union must follow if it is seeking to expel a member for any reason, including non-participation and disruptive or abusive behavior. In particular, the credit union must call a special meeting with notice requirements, provide the member in question the opportunity to be heard, and obtain a two-thirds vote of the members present at the special meeting.[1]

Officials from the National Association of Federally-Insured Credit Unions (NAFCU) have stated that such requirements to hold a special meeting make the expulsion of a member onerous. For example, credit unions must provide written notice to each credit union member at least 7 days before the meeting date and hold the meeting within 30 days of the receipt of a written request from 25 members or 5% of the members, whichever number is larger.[2] NAFCU also noted that the current policy is problematic for credit unions attempting to address threatening, dangerous or fraudulent behavior, and that, "credit unions may limit some services that members may access, but that…has not been sufficient."[3] According to the Credit Union National Association (CUNA), "Although extremely rare, some members prove to be a threat and engage in dangerous or illegal conduct. This can include physical damage to property, harassment, or fraud."[4] In August 2020, the Defense Credit Union Council reported instances where a

---

[1] NCUA, Appendix A to Part 701—Federal Credit Union Bylaws (accessed Nov. 9, 2021); and see Letter from the National Association of Federal Credit Unions to Chairman Perlmutter and Ranking Member Luektemeyer (Sep. 28, 2021).
[2] *Id*. at 7.
[3] David Baumann, Legislation Introduced to Make It Easier for Credit Unions to Expel Members, *Credit Union Times* (Apr. 6, 2021).
[4] Letter from the Credit Union National Association Letter from the National Credit Union Association to Chairman Perlmutter and Ranking Member Luektemeyer prior to hearing on the future of banking (Sep. 29, 2021).

member threatened the life of the installation commander, physically attacked credit union member service representatives, or engaged in multiple acts of fraud.[5]

This legislation would streamline the procedures and notice requirements for a special members meeting or vote by a quorum of Federal credit union directors. It would also clarify the violations, and dangerous or illegal behavior that would warrants this process as expulsion for cause. Mark Cummins, President and CEO of the Minnesota Credit Union Network, said this bill is "important to protect the safety and security of credit union employees, and is a much needed update to the federal credit union charter."[6] To ensure fairness for the member in question, the bill provides an appeal process and also ensures that neither the National Credit Union Administration Board nor any credit union may expel an entire class of members. Whereas some states already have adopted related policies, this bill would provide a federal standard and parity with several state-chartered credit unions' model or standard bylaws, which often have a "for cause" provision or a board-adopted policy for expulsion.[7]

This bill is supported by the following organizations: Credit Union National Association and National Association of Federally-Insured Credit Unions.

Section-by-Section: *See Appendix A*.

2. Amendment in the Nature of a Substitute to H.R. 2620, the "Investor Choice Act of 2021" (Foster)

Summary: This bill would prohibit broker-dealers, investment advisers, and issuers from including pre-dispute binding mandatory arbitration clauses in their customer agreements.

Background: Since *Shearson/American Express, Inc. v. McMahon* was decided in 1987, the use of pre-dispute binding mandatory arbitration provisions has proliferated in the securities industry.[8] Nearly all broker-dealers include pre-dispute arbitration clauses in their contracts with investors that limits an investor's right to join a class action lawsuit and to requires an investor to resolve a dispute only through FINRA arbitration.[9] Most investor disputes are handled through FINRA arbitration rather than through the courts, although pre-dispute binding arbitration clauses do not prevent an investor from appealing a FINRA arbitration decision in court. Currently, the FINRA arbitration system does not provide an appeals process, and instead, investors can appeal a FINRA arbitration decision in a court of law for corruption, fraud, undue means, partiality or misconduct of arbitrators, or no factual or reasonable basis for the award.[10]

Problems and concerns with pre-dispute mandatory arbitration and the reliance of FINRA as the arbitration venue include: cases being decided by non-lawyers; decisions are not bound by legal precedent and do not follow federal or state rules of evidence; documents and evidence submitted are not made publicly available; and nearly of 30% of arbitration awards against brokers went unpaid in 2020.[11] Access

---

[5] Anthony Hernandez, Member expulsion – Time to update procedures? *CUInsight* (Aug. 19, 2020).
[6] *Emmer and Perlmutter Introduce Credit Union Governance Modernization Act* (Apr. 1, 2021).
[7] David Baumann, Legislation Introduced to Make It Easier for Credit Unions to Expel Members, *Credit Union Times* (Apr. 6, 2021).
[8] *See* The arbitration epidemic: Mandatory arbitration deprives workers and consumers of their rights | Economic Policy Institute.
[9] *See* https://www.sec.gov/oiea/investor-alerts-bulletins/ib_arbitration.html (noting that "[m]ost, if not all, account agreements between broker-dealers and their customers have arbitration clauses).
[10] *See* FINRA Dispute Resolution Services, Decision & Award.
[11] *See* The End of Forced Arbitration? - The American Prospect (Oct. 6, 2021) and The arbitration epidemic: Mandatory arbitration deprives workers and consumers of their rights | Economic Policy Institute (Dec. 7, 2017).

to the judicial process plays an important role in allowing harmed investors seek full compensation for their losses. As identified by both the Consumer Federation of American and the North American Securities Administrators Association, pre-dispute arbitration provisions have failed to detect, punish, or deter fraud or misconduct by some industry professional and the firms they work for.[12] Forced arbitration provisions have resulted in less than desirable outcomes for investors as awards by arbitration panels can be lower than litigation and are not a fair method to resolve a dispute as securities industry insiders can be part of the arbitration panels hearing and deciding the outcome of the arbitration and damages, if any.[13] While arbitration is a valuable alternative to the judicial process, investors often do not understand that they are forgoing their right to access the judicial process when they sign standard customer contracts. In a letter to the House Financial Services Committee regarding the October 5, 2021 hearing entitled "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop is Finally Back on the Beat," on behalf of Public Citizen, Mr. Bart Naylor wrote "Mandatory arbitration essentially invites corporations to abuse customers knowing that they are shielded from true accountability."[14]

This bill is supported by the following organizations: Consumer Federation of America; North American Securities Administrators Association; Public Citizen; Americans for Financial Reform.

Section-by-Section: *See Appendix B.*

3. Amendment in the Nature of a Substitute to H.R. 5910, the "Holding SPACs Accountable Act of 2021" (San Nicolas)

Summary: This bill would exclude a special purpose acquisition company (SPACs) from a safe harbor for forward-looking statements, subjecting SPACs to liability for making false or misleading forward-looking statements.

Background: A SPAC is a Securities and Exchange Commission (SEC) registered investment vehicle established by a management team—the SPAC sponsor—with the intention of raising capital by completing an initial public offering (IPO) and then using the funds generated by that public offering to acquire one or more operating companies within two years of going public.[15] Although SPACs are required to file a registration statement with the SEC prior to an IPO, because they are effectively shell companies and have no operations, their Form S-1 filings, compared to a traditional IPO, generally provide investors with very little detailed information. SPACs are, however, required to make additional disclosures prior to a shareholder vote on the acquisition of a target company and after a "de-SPAC" transaction[16] has been completed. If shareholder approval is required for the SPAC to complete a merger with the target company, under Section 14(a) of the Securities Exchange Act, the SPAC sponsor is required to provide shareholders with a proxy statement prior to the vote.[17]

---

[12] *See* CFA Letter to HFSC for Oct. 5, 2021 hearing, and NASAA Letter to Senator Merkley regarding S. 1171, the "Investor Choice Act of 202" (May 7, 2021).
[13] *See FINRA Arbitrator Selection, available at,* *https://www.finra.org/arbitration-mediation/arbitrator-selection* (noting that with an investor case with a claim exceeding $100,000 and requiring a panel with three arbitrators, the parties receive lists of public and non-public arbitrators, that the parties can strike members from the arbitrator lists, and thus leaving the possibility that an arbitrator could be filled by an "non-public" industry insider).
[14] *See Public Citizen* *Letter to HFSC for Oct. 5, 2021 hearing*.
[15] *See* item 6 *ibid,* for a fuller discussion on SPACs.
[16] The process of de-SPACing is, following an IPO, the proceeds are placed into a trust account and the SPAC has a short 18 to 24-month window to identify and complete a merger with a target company. *See* PWC, How SPACs work, https://www.pwc.com/us/en/services/audit-assurance/accounting-advisory/spac-merger.html.
[17] *See* Securities and Exchange Commission, Investor Bulletin - What You Need to Know About SPACs (Dec. 10, 2020).

Since the enactment of the Private Securities Litigation Reform Act (PSLRA) of 1995, SPAC sponsors are granted a measure of protection from liability for overly optimistic projections as a result of the safe harbor for "forward looking statements."[18] One witness testified before the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets that:

> SPACs rely on a safe harbor from being held accountable for forward looking statements…. Whereas in an IPO, issuers and underwriters are liable for making false and misleading forward-looking statements, SPACs are not subject to that same standard. That has emboldened many pre-revenue companies in highly speculative industries such as electric vehicles, cryptocurrency, and space exploration to make what might generously be called very rosy projections. If we look at nine electric vehicle companies that have come public through a SPAC in 2020, their combined annual revenue was $139 million. But between them they projected to investors that they will generate $26 billion in annual revenue by 2024.[19]

Another witness at that same hearing testified that:

> SPACs have a "regulatory advantage over IPOs" and "have enjoyed a safe harbor from private liability to make forward-looking statements about the proposed merger" yet "the two parties making the forward-looking projections – the SPAC sponsor and the target company – both have incentives to promote the merger." In contrast, with an IPO, "the issuer and underwriter enjoy no safe harbor from private litigation for making any forward-looking statements" and as such "IPOs generally avoid making forward-looking statements". As such, the "disparate regulatory treatment of forward-looking statements make for an unlevel playing field."[20]

This bill would remove SPACs from this safe harbor, and subject SPACs to the same regulatory accountability as other registered companies issuing shares in the public markets. H.R XXXX is supported by the following organizations: Americans for Financial Reform, Consumer Federation of America, Public Citizen.

Section-by-Section: *See Appendix C.*

4. <u>Amendment in the Nature of a Substitute to H.R. 5911 the "Fair Hiring in Banking Act" (Beatty)</u>

Summary: This bill would expand employment opportunities at banks and credit unions by reducing barriers to employment based on past minor criminal offenses. The bill specifically reduces the look back at criminal charges from an indeterminate timeline to those that are over 7 years if a person has been released from incarceration for 5 years or more and provides a clear definition for the term, "criminal offense involving dishonesty." The bill also makes it clear that criminal offenses that have been expunged, sealed, or dismissed are not included in the FDIC or NCUA review of eligibility to work for an insured bank or credit union.

---

[18] *See* SEC Statement by John Coates, Acting Director, Division of Trading and Markets, d (Apr. 8, 2021) (noting that at the time, PSLRA was passed to "stem what was considered to be a rising tide of frivolous or unwarranted securities lawsuits aimed at operating companies filing routine annual and quarterly reports).

[19] *See* testimony of Andrew Park, Senior Policy Advisor, Americans for Financial Reform before the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets (May 24, 2021), citations omitted, p.3.

[20] *See* testimony of Stephen Deane, Senior Director of Legislative and Regulatory Outreach, CFA Institute (May 24, 2021).

Background: For decades, banks and credit unions limited employment opportunities to applicants with criminal records based on its interpretation of Section 19 of the Federal Deposit Insurance Act and section 205(3) of the Federal Credit Union Act—both prohibit federally insured banks and credit unions from hiring someone who has been convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering without prior written consent. One witness testified before the Subcommittee on Diversity and Inclusion that:

> "The FDIC's previous Statement of Policy governing Section 19, adopted in 1998, included several troubling key provisions that unduly prevented justice-involved people from seeking employment in the banking industry. First, it provided an upfront deterrent that likely kept many individuals from even applying for jobs, by advising banks to inquire into prior convictions in the initial employment application process. Second, it inexplicably interpreted 'dishonesty or breach of trust or money laundering' under the statute to include 'all convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances,' which means that an applicant with any such conviction would automatically require a waiver from the FDIC to be hired. Third, it included only a very narrow category of de minimis offenses for which a waiver would not be necessary.[21]

In July 2020, the FDIC approved a final rule to revise and incorporate into the agency's regulations a longstanding Statement of Policy (SOP) related to Section 19 which expanded the *de minimis* exceptions, clarified how to handle expungements, defined some convictions, and clarified that banks should ask about an applicant's prior record only after they have received a conditional offer of employment.[22] In 2019, the National Credit Union Administration (NCUA) Board approved a final interpretive ruling and policy statement allowing people convicted of certain minor offenses to return to work in the credit union industry without applying for the Board's approval.[23]

Advocates have recommended that more improvements are needed to reduce barriers to employment in the financial services industry, requiring legislative action.[24] In particular, the actions of the FDIC and board of the NCUA did not address the treatment of drug-related offenses, consideration of a person's role (there is no distinction made between a bank president and a custodial position), the length of time since the offense occurred, and the process of gaining consent from the FDIC and NCUA when a waiver is sought. [25] A prior version of this bill was considered at a Consumer Protection and Financial Institutions subcommittee hearing, "Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions"[26] on May 19, 2021 and again at a Diversity and Inclusion subcommittee hearing, "Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals," on September 28, 2021.[28] On March 11, 2020, a similar bill, Fair Hiring in Banking Act (S.3441), was introduced by Sen. Doug Jones (D-GA) and cosponsored by Sen. Thom Tills

---

[21] *See* testimony of Sakira Cook, Senior Director, Justice Reform Program, The Leadership Conference on Civil and Human Rights before the Subcommittee on Diversity and Inclusion (Sept. 28, 2021), citations omitted, p.7

[22] FDIC, FDIC Final Rule Revises and Codifies Policy to Allow Greater Employment Opportunities for Individuals with Certain Minor Criminal Offenses on Their Records (Jul. 24, 2020).

[23] NCUA, Board Approves Second-Chance Policy Changes (Nov. 21, 2019).

[24] National Employment Law Project, Federal Deposit Insurance Act Section 19 Final Regulations Side-by-Side Comparison with Recommendations (Aug. 6, 2020)

[25] Statement for the Record, National Employment Law Project, submitted for consideration before the Subcommittee on Diveristy and Inclusion (Sept. 28, 2021).

[26] House Committee on Financial Services, Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions, 117th Cong. (May 19, 2021).

[28] House Committee on Financial Services, Access Denied: Eliminating Barriers and Increasing Economic Opportunity for Justice-Involved Individuals, 117th Cong. (Sept. 28, 2021).

(R-NC), Joe Manchin (D-WV), John Cornyn (R-TX), and Chris Coons (D-DE). This bill has not been reintroduced this session in the Senate.

This bill is supported by the following organizations: Credit Union National Association (CUNA), National Association of Federally Insured Credit Unions (NAFCU), and National Bankers Association (NBA)

Section-by-Section: *See Appendix D*.

5. Amendment in the Nature of a Substitute to H.R. 5913, the "Protecting Investors from Excessive SPACs Fees Act of 2021" (Sherman)

Summary: This bill would authorize the SEC to require disclosures by SPACs. SPACs that do not provide the required disclosures and award high levels of promote—a type of a compensation arrangement—to the sponsor of the SPAC, would be prohibited from having their securities marketed and sold to retail investors by financial professionals.

Background: A SPAC is an SEC-registered shell company which is established by a management team—the SPAC sponsor—with the intention of raising capital by completing an IPO and then using the funds generated by that public offering to acquire one or more operating companies within two years of going public.[29] When a SPAC undergoes its IPO, it will generally issue "units" in the SPAC rather than simple equity shares. [30] Units are typically offered at an initial price of $10-per-unit and are comprised of a share of common stock of the SPAC and a warrant to purchase additional shares of the stock at a discounted price.[31] The SPAC sponsors are typically compensated through a "promote," a financial arrangement that generally consists of 20 percent of post-IPO equity in the SPAC. During the period between the IPO and de-SPAC transaction, early investors—typically hedge funds and other institutional investors—redeem their shares at the $10-per-unit price (often at the same price they initially paid) but keep the warrants that they can exercise post-merger, often at a price below what the SPAC is trading.[32] Finally, SPACs also compensate underwriters to advise both the initial formation of the SPAC and the merger (the de-SPAC) stage.[33]

These fees to underwriters, the warrants extended to early investors, and the promote (which are essentially free shares) paid to the SPAC sponsor have the effect of diluting the value of SPAC shares for retail investors who hold their shares through the de-SPAC transaction. These dilution costs are typically undisclosed and less-understood, and predominantly affect retail investors.[34] An academic study—forthcoming in the Yale Journal on Regulation—finds that these fees reduce the cash-per-share amount at the time of de-SPAC to $6.67 (down from $10-per-share).[35] This means that those investors who do not redeem their shares at the time of the merger—typically retail investors—are "bearing the cost of the dilution built into the SPAC structure, and in effect subsidizing the companies they bring public."[36] Given this dilution, the post-merger price of the SPAC shares would need to increase significantly for retail

[29] Harvard Law School Forum on Corporate Governance, Special Purpose Acquisition Companies: An Introduction (Jul. 6, 2018).
[30] *Id.*
[31] *See* testimony of Andrew Park, Senior Policy Advisor, Americans for Financial Reform before the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets (May 24, 2021).
[32] *See* SEC Investor Alerts and Bulletins, What you Need to Know About SPACs (May 25, 2021).
[33] *See* Forbes, 10 Key Questions And Answers About SPACs (Nov. 11, 2020).
[34] *See* Reuters, Breakingviews – The house always wins with SPACs (Feb. 26, 2021).
[35] *See* Michael Klausner, Michael Ohlrogge, and Emily Ruan, "A Sober Look at SPACs," Yale Journal of Regulation, *forthcoming.*
[36] *Id.,* p.1.

investors to break even.[37] But most SPACs struggle. As Mr. Stephen Deane testified before the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets:

> The SPAC sponsor arranges its IPO, manages the search for a merger target, and negotiates with the target on merger terms. As compensation, the SPAC receives 20% of the post-merger shares for a nominal price. This is called the sponsor's "promote," and it represents dilution of the future returns of the post-merger public company.[38]

Additionally, Mr. Andrew Park testified:

> Retail investors who chase these SPACs with high hopes are losing. A 2012 analysis of 158 SPACs issued between 2003 and 2008 found their average one-year return was -33% while that loss deepened to -54% after three years. Between 2010 and 2018, the average one-year return following a merger was -15.6%. Even more recently, a Goldman Sachs index of 200 SPACs in April saw average losses of -17% compared to a 10% return this year in the S&P 500.[39]

To provide retail investors with information to make informed investment decisions, this bill would require SPAC sponsors to disclose all fees that risk diluting the shares of investors. If the SPAC sponsors fail to disclose these fees, its shares cannot be marketed or recommended to retail investors unless the SPAC sponsor's "promote" is less than 5 percent.

This bill is supported by the following organizations: Americans for Financial Reform; Consumer Federation of America; Public Citizen.

Section-by-Section: *See Appendix E.*

6. Amendment in the Nature of a Substitute to H.R. 5914, the "Empowering States to Protect Seniors from Bad Actors Act" (Gottheimer)

Summary: This bill would move the responsibility for administering the Senior Investor Protection Grant Program established by Sec. 989A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) from the Consumer Financial Protection Bureau to the Securities and Exchange Commission. The bill would establish an interdivisional task force within the SEC to review grant applications and oversee the administration of the program. The bill would authorize $10 million annually in appropriations for the program for the period of FY 2023-2028. The bill would provide that the entities that would be eligible to apply for grants under the program are state securities regulators and state insurance regulators, and would cap the amount of grant funding that could be awarded to any single "eligible entity" at $500,000.

Background: Section 989(A) of the Dodd-Frank Act established a grant program within the Consumer Financial Protection Bureau (CFPB) to provide state regulators with funding for technology, equipment, and training to increase the successful prosecution of salespersons and advisers who target seniors for fraud. The grants are also permitted to be used to fund educational materials and training to raise awareness and understanding of misleading or fraudulent marketing practices among seniors.

---

[37] *See* testimony of Andrew Park, p.4.
[38] *See* testimony of Stephen Deane, Senior Director of Legislative and Regulatory Outreach, CFA Institute (May 24, 2021).
[39] *See* testimony of Andrew Park, citations omitted, p.5.

To date, the Senior Investor Protection Grant Program has not been established because it has not received an appropriation from Congress. By moving the Senior Investor Protection Grant program from the CFPB to the SEC, the legislation would reconstitute the program within the primary federal agency charged with investor protection. Moreover, because the SEC is funded by an annual appropriation from Congress, such a change would allow Congress to review the program and funds the grants annually, as it deems appropriate.

This bill is supported by the following organizations: North American Securities Administrators Association (NASAA), National Association of Insurance Commissioners (NAIC), Certified Financial Planner Board of Standards, Inc., Financial Planning Association (FPA), Consumer Federation of America (CFA), National Association of Personal Financial Advisors (NAPFA), Americans for Financial Reform (AFR)

Section-by-Section: *See Appendix F*.

Appendix A: Section by Section for ANS to H.R. 2311, the "Credit Union Governance Modernization Act of 2021" (Emmer)

Section 1. Short title.

- This section establishes the short title of the bill as "Credit Union Governance Modernization Act of 2021".

Section 2. Expulsion of Federal Credit Union Members For Cause.

- This section would establish that a member of a Federal credit union may be expelled for cause by two-thirds vote of members present at a meeting called for the purpose of expelling the member or by a two-thirds vote of a quorum of the Federal credit union's board of directors pursuant to a policy established by the National Credit Union Administration Board.
- This section provides procedures for expelling a member, including notifying the member in advance of the expulsion along with the reason for expulsion, the member's right to a hearing, and requires notification of the member when they have been expelled.
- This section also provides a process for the reinstatement of an expelled member, clarifying that a member may be reinstated by a majority vote of the Federal credit union's board of directors or by a majority vote of members at a special meeting.
- This section would also define the causes for a credit union member's expulsion to mean a:
    - a substantial or repeated violation of the Federal credit union's terms and conditions;
    - a substantial or repeated disruption to the credit union's operations, including dangerous or abusive behavior; or
    - fraud and other illegal behavior that has been convicted.
- This section also prohibits the NCUA Board and any Federal credit union from expelling a class of members.

Appendix B: Section by Section for ANS to H.R. 2620, the "Investor Choice Act of 2021" (Foster)

Section 1. Short title.

- This section establishes the short title of the bill as "Investor Choice Act of 2021".

Section 2. Findings.

- Lays out Congressional findings that (1) investor confidence is essential to health and stability of financial markets; (2) public companies, broker-dealers, and investment advisers use their position of power to impose mandatory arbitration clauses that limit an investors right to legal redress; and (3) investors should be free to chose arbitration or legal action through the courts.

Section 3. Arbitration Agreements in the Securities Exchange Act of 1934.

- Modifies the Exchange Act to prohibit a publicly listed company, broker-dealer, funding portal, or municipal securities dealer to enter or mandate pre-dispute arbitration agreements, and voids pre-dispute arbitration clauses.

Section 4. Arbitration Agreements in the Securities Act of 1933.

- Modifies the Securities Act to prohibit a publicly listed company to enter or mandate pre-dispute arbitration requirements.

Section 5. Arbitration Agreements in the Investment Advisers Act of 1940.

- Modifies the Advisers Act to prohibit an investment adviser to enter or mandate pre-dispute arbitration, and voids pre-dispute arbitration clauses.

Section 6. Application

- Pre-dispute arbitration clauses to be limited after the enactment of this Act.

Appendix C: Section by Section for ANS to H.R. 5910, the "Holding SPACs Accountable Act of 2021," (San Nicolas)

Section 1. Short title.

- This section establishes the short title of the bill as "Holding SPACs Accountable Act of 2021".

Section 2. Certain Special Purpose Acquisition Companies Excluded from Safe Harbor Forward-Looking

- Removes SPACs from the safe harbor for forward looking statements.
- Amends the Securities Act of 1933 by updating the definition of "blank check company" with "development stage company", an entity that has no specific business plan or purpose or its business plan is to acquire or merge with an unidentified company, entity or person.

Appendix D: Section by Section for ANS to H.R. 5911 the "Fair Hiring in Banking Act" (Beatty)

Section 1. Short Title.

- This section establishes the short title of the bill as "*Fair Hiring in Banking Act*".

Section 2. Federal Deposit Insurance Act.

- Amends Section 19(a) of the Federal Deposit Insurance Act, which establishes the criminal background lookback periods for depository institutions insured by the Federal Depositor Insurance Corporation (FDIC).
- Reduces the look back period to 7 years since the offense occurred or 5 years since the individual was released from supervision. It reduces the criminal look back period to 30 months for individuals who were under the age of 21 years old when the offense was committed. This section also prevents the examining of offenses that have been pardoned, sealed, or expunged.
- Requires the board to accept consent applications from insured credit unions on behalf of individuals.
- Requires that companies use FBI criminal background checks in their reviews and allow applicants to review for accuracy; and not require individuals to provide copies of criminal records unless there is a clear and compelling justification.
- Provides the opportunity for contextual evaluation, companies should factor in evidence of rehabilitation, age during time of conviction or probation, and relevance of offense to the position. Companies should also assume that an individual is rehabilitated if four years has passed since the offense and there are no other convictions.
- Requires companies to consider an individual's employment history, letters of recommendation, participation in substance abuse programs, successful participation in job preparation and educational programs, and other relevant information.
- Requires prior consent of the board is required for changes in the individual's security-related duties or responsibilities, such as promotions or additional credentials.
- Defines criminal offenses involving dishonesty.

Section 3. Federal Credit Union Act.

- Amends Section 205(3) of the Federal Credit Union Act, which establishes the lookback period for credit unions insured by the National Credit Union Administration (NCUA).
- Reduces the look back period to 7 years since the offense occurred or 5 years since the individual was released from supervision. It reduces the criminal look back period to 30 months for individuals who were under the age of 21 years old when the offense was committed. This section also prevents the examining of offenses that have been pardoned, sealed, or expunged.
- Requires the board to accept consent applications from insured credit unions on behalf of individuals.
- Requires that companies use FBI criminal background checks in their reviews and allow applicants to review for accuracy; and not require individuals to provide copies of criminal records unless there is a clear and compelling justification.
- Provides the opportunity for contextual evaluation, companies should factor in evidence of rehabilitation, age during time of conviction or probation, and relevance of offense to the position. Companies should also assume that an individual is rehabilitated if four years has passed since the offense and there are no other convictions.

- Requires companies to consider an individual's employment history, letters of recommendation, participation in substance abuse programs, successful participation in job preparation and educational programs, and other relevant information.
- Requires prior consent of the board is required for changes in the individual's security-related duties or responsibilities, such as promotions or additional credentials.
- Defines criminal offenses involving dishonesty.

<u>Section 4. Review and Report to Congress</u>

- Requires the FDIC and the NCUA to review the rates and approval and denial for consent application; this information must be made available to the public.
- Requires a report to congress involving recommendations for expanding employment opportunities for those with past minor criminal offenses.

Appendix E: Section by Section for ANS to H.R. 5913, the "Protecting Investors from Excessive SPACs Fees Act of 2021" (Sherman)

Section 1. Short title.

- This section establishes the short title of the bill as "Protecting Investors from Excessive SPAC Fees Act of 2021".

Section 2. Prohibition Relating to Certain Special Purpose Acquisition Companies.

- Amends the Investment Advisers Act of 1940 to limit the transaction or recommendation of SPACs to a person who is not an accredited investor unless: (1) the promote or economic compensation is less than 5%; or (2) the SPAC makes SEC disclosures.
- Amends the Securities and Exchange Act of 1934 to limit the transaction or recommendation of SPACs to a person who is not an accredited investor unless: (1) the promote or economic compensation is less than 5%; or (2) the SPAC makes SEC disclosures.

<u>Appendix F: Section by Section for ANS to H.R. 5914, the "Empowering States to Protect Seniors from Bad Actors Act" (Gottheimer)</u>

<u>Section 1. Short title.</u>

- This section establishes the short title of the bill as "The Empowering States to Protect Seniors from Bad Actors Act of 2021."

<u>Section 2.</u>

- Defines the universe of "eligible entities" that may apply for grants;
- Establishes the scope of activities for which the SEC may award grants;
- Establishes an interdivisional task force within the SEC for purposes of carrying out the grant program and specifics the authorities of the task force; authorizes other federal Executive Branch agencies to detail personnel to the SEC for purposes of helping to administer the program;
- Establishes certain procedures for eligible entities that wish to apply for the grants;
- Establishes certain performance objectives and performance and auditing requirements;
- Directs the SEC "task force" to make certain reports to Congress regarding the program;
- Provides that no eligible entity may receive more than $500,000 in grant funding; and
- Authorizes to be appropriated $10 million for each of the fiscal years 2023 through 2028.