



July 27, 2021

The Honorable Maxine Waters
Chairwoman
House Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services
U.S. House of Representatives
4340 O'Neill House Office Building
Washington, DC 20024

Re: Full Committee Markup on H.R. 935, 2265, 4616, 4617, 4618, and 4619

Dear Chairwoman Waters and Ranking Member McHenry,

The Securities Industry and Financial Markets Association (SIFMA)¹ respectfully submits this letter in connection with the July 28th committee markup. We appreciate the Committee's attention to these issues and thank you for the opportunity to provide our views.

H.R. 4616, the "Adjustable Interest Rate (LIBOR) Act," sponsored by Rep. Brad Sherman (D-CA), would establish a process for certain financial contracts that reference the London Interbank Offered Rate (LIBOR) and do not contain sufficient language that would allow them to continue to function as originally intended after LIBOR is discontinued, to instead reference Secured Overnight Financing Rate (SOFR), or an appropriately adjusted form of SOFR without the need to be amended or subject to litigation. SIFMA supports H.R. 4616 and commends Chairwoman Waters, Chairman Sherman and the Committee for their work on this legislation. It is needed to address the variety of issues associated with the cessation of all tenors of U.S. dollar LIBOR and facilitate a smooth transition to alternative reference rates. As a result of this discontinuation, trillions of dollars of contracts, securities, and loans that use LIBOR but lack adequate

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

fallback language will be left outstanding. One specific subset, commonly referred to as “tough legacy” contracts – has no clear direction, thereby posing a significant risk to the financial system and the underlying borrowers, investors, and banks. While the Alternative Reference Rates Committee (ARRC) has successfully developed language that was recently implemented in New York and Alabama, a variety of inconsistent, or non-existent, state legislation cannot provide the benefits of a uniform Federal law – contract certainty, fairness and equality of outcomes, avoidance of years of litigation, and market liquidity. Such a patchwork could compromise the very intent to provide a smooth transition. SIFMA, as a member of the Alternative Reference Rates Committee (ARRC), has actively advocated at both the federal and state level for a smooth transition from LIBOR to an alternative reference rate. Finally, as the legislation moves forward, we encourage Congress to avoid narrowing the scope of the legal safe harbor as we believe it would defeat the purpose of providing certainty of outcomes to consumers and would result in unnecessary litigation.

H.R. 4617, sponsored by Rep. Brad Sherman (D-CA), directs the SEC to carry out a study on payment for order flow (PFOF) received by brokerage firms for routing customer orders to market centers, including wholesale brokerages, alternative trading systems, internalizers and exchanges. We note that the U.S. has the deepest and most liquid stock market in the world. Innovation, competition, and regulation have made the equity markets more efficient and better for investors today than ever. Spreads have tightened, transaction costs have decreased dramatically, and execution speeds and price improvement have increased. Even so, SIFMA has long called for a comprehensive review of Regulation NMS to ensure it continues to work in the best interest of all investors. As part of this holistic review, the SEC also should consider the interplay of the various requirements in Regulation NMS including the Order Protection Rule (SEC Rule 611) and the Access Rule limiting exchange fees (SEC Rule 610). Importantly, Congress and policy makers must carefully balance changes to market structure rules with the impact on investors, particularly retail investors. Recent action by the SEC to address issues related to market data will have a positive effect by modernizing the governance of NMS market data distribution and updating and expanding the content of NMS market data to meet the diverse needs of investors. We believe it is important for Congress and regulators to consider that the current market structure includes PFOF arrangements consisting of both exchange rebates and wholesaler payments. These arrangements can benefit investors by facilitating a low or zero commission rate environment, leading to greater access to and democratization of the equity markets. In our view, the SEC study should thoroughly evaluate the efficacy of current disclosure requirements related to PFOF arrangements, including SEC Rule 605, and comprehensively consider the benefits of PFOF arrangements in the current equity market structure before any legislative or regulatory actions are taken. SIFMA suggests that H.R. 4617 be amended to reference the definition of PFOF in SEC Rule 10b-10(d)(8) (17CFR 240.10b-10(d)(8)), which is a comprehensive definition that includes exchange rebates and all forms of cash and non-cash payments. The SEC has long recognized that PFOF arrangements come in many forms such as exchange rebates, and accordingly, the study should take this into account.

H.R. 4618, the “Short Sale Transparency and Market Fairness Act,” sponsored by Chairwoman Maxine Waters (D-CA), would change the 13(f) disclosure regime. Short selling is a critical component of the capital markets ecosystem that 1) promotes price discovery; 2) serves as a risk-management and hedging tool; and 3) contributes to market liquidity. SIFMA appreciates improvements made to the legislation, including requiring the SEC to focus on rulemaking under 929X for aggregate short sale position disclosures as well as directing the Commission to determine reporting frequency. However, we are concerned with other impacts of the bill. Specifically, more frequent 13(f) reporting may significantly harm managers and investors that retain their services by allowing other firms to replicate their intellectual capital by merely reviewing 13(f) reports. Many investment strategies take time to properly construct, and early disclosures of investment positions can cause material harm to the unique aspects of these strategies to the detriment of main street investors. Further, any reduction to the timeframe for reporting exacerbates the above concern and causes a significant operational burden on managers who need time to compile and review the required data. We are also concerned with the inclusion in the bill of derivatives on equity securities.² The SEC has recently adopted a comprehensive swap reporting framework as part of Dodd-Frank rulemaking which goes into effect this fall (Regulation SBSR) and will subject securities-based swaps (including total return swaps) to extensive disclosure requirements to increase transparency. We understand the inclusion of derivatives if they confer the same ownership rights as a direct holder of equity securities but would oppose the inclusion of all derivatives at this point as overly broad. We respectfully suggest that a review of required derivatives disclosures should be deferred until after the SBSR rules have been in effect.

H.R. 4619, sponsored by Rep. Al Green (D-TX), would amend the Securities Exchange Act of 1934 to prohibit trading ahead by market makers. It is important to note that FINRA Rule 5320 already prohibits market makers and other FINRA members from trading ahead of customer orders and requires them to have a written methodology in place governing the execution and priority of all pending orders that is consistent with FINRA Rule 5310 (Best Execution and Interpositioning). FINRA Rule 5320 provides significant protections to all market participants and SIFMA members must comply with its requirements. Second, we believe that the systems and procedures needed to implement the CEO attestation requirement would not change the compliance posture of firms because they are already subject to the requirements of the FINRA rule. Similar to the CEO attestation requirement codified under the final Volcker rule, our members would have to expend significant time focusing on attestations and sub-attestations relating to compliance that would be much better spent focusing on core compliance itself, as is the case with most

² In addition to our comments herein, we also note that the current language in (8)(B), should it remain in the final bill, could create some interpretive issues and double counting of certain equity positions and look forward to working with the Committee on clarifying edits. One technical edit would be to insert “of a class described in subsection (d)(1) after “an equity security”.

other statutes governing banking entities' activities. Therefore, we oppose this provision and respectfully do not believe the broader bill is necessary.

H.R. 935, "Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act," sponsored by Rep. Bill Huizenga (R-MI), as currently drafted would expose small business owners and investors to unnecessary risks without any meaningful benefit from reduced regulatory compliance. Many of our member firms, particularly small and regional registered broker-dealers, have helped small businesses successfully navigate change of ownership transactions through their mergers and acquisitions (M&A) practices. Small business owners rely on their M&A advisors for the specialized knowledge and expertise needed to facilitate these transactions, which are typically the most significant event in the life of a small, family-owned business. Registered broker-dealers are subject to a variety of regulatory requirements that non-broker-dealer M&A advisors are not, and this bill risks promoting lower standards, less rigor, and an unlevel playing field in the provisioning of this important advice. SIFMA respectfully opposes H.R. 935.

H.R. 2265, "Financial Exploitation Prevention Act," sponsored by Rep. Ann Wagner (R-MO) would permit a registered open-end investment company or transfer agent for that company to delay the redemption period of any redeemable security if it is reasonably believed that such redemption was requested through the financial exploitation of a senior or individual unable to protect their own interests. Additionally, the bill would require the Securities and Exchange Commission (SEC) to report to Congress on recommendations for legislative and regulatory changes on how to further combat senior financial exploitation. The bill directs the SEC to consult with a number of regulatory entities on these recommendations, including the Financial Industry Regulatory Authority (FINRA) and the North American Securities Administrators Association (NASAA), whose membership includes the 36 state securities regulators that have similar protections in their states. The population of senior investors is rapidly increasing. By 2030, seniors aged 65+ will account for 18% of the nation's population, and Americans over the age of 50 already account for roughly 77% of financial assets in the United States. It is estimated that senior investors are being exploited out of billions of dollars a year (roughly \$3 billion per year in media-reported cases alone, while only an estimated 1 in 44 cases are reported to the authorities). SIFMA strongly supports any efforts to combat exploitation and ensure that financial firms have the tools they need to best protect their senior clients. We believe H.R. 2265 will strengthen efforts to protect vulnerable investors from bad actors.

We appreciate your consideration of our views on this important mark-up.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Bentsen", with a long horizontal flourish extending to the right.

Kenneth E. Bentsen, Jr.
President and CEO

Securities Industry and Financial Markets Association