sifma
Invested in America

March 16, 2022

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader, House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Minority Leader McCarthy,

The Securities Industry and Financial Markets Association (SIFMA)[1] and its member firms appreciate the opportunity to submit our perspectives on H.R. 963, the "Forced Arbitration Injustice Repeal (FAIR) Act," legislation which would effectively ban arbitration provisions in private contracts. The broad nature of this legislation would prohibit broker-dealers and registered investment advisors from including pre-dispute arbitration clauses in customer contracts as well as invalidate any standing pre-dispute clauses in current employment and customer agreements. The current securities arbitration system promotes fair, efficient, and economical dispute resolution for all parties, especially consumers. As such, we strongly oppose the FAIR Act, which would dismantle the existing process and produce unfavorable dispute resolution outcomes for our firms' customers. **We urge you to vote NO and oppose passage of this legislation.**

We support arbitration in the Financial Industry Regulatory Authority's (FINRA's) arbitration forum as the exclusive dispute resolution forum for most disputes between brokerage firms and their customers. Our securities arbitration system has worked effectively for decades because it is conducted in public forums, subject to regulatory oversight by multiple independent regulators, and governed by robust rules of procedure, all of which benefit retail investors. In fact, FINRA's arbitration forum serves as a gold standard for consumer protection because it includes substantive and procedural due process protections comparable to those in court-based litigation, thereby ensuring fair and favorable case outcomes for customers. In 2021, nearly 75% of customers who filed an arbitration claim received a recovery, whether through settlement or arbitration award, while 9% of customers withdrew their claim.

FINRA's arbitration system is also supported by non-partisan, widely renowned legal authorities. Of particular note, in testimony before the House Financial Services Committee on April 3, 2019, Columbia Law School Professor John Coffee, the majority's witness, said, "I think I am the only

[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 one million employees, we advocate on 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.

person in the room who has been a FINRA arbitrator and I think it does work, but that is against the broker and that is being run basically by a government sponsored organization, FINRA."

Brokers-dealers are subject to extensive and regular regulatory oversight by the Securities and Exchange Commission (SEC) and FINRA, among others. Under FINRA Rule 12200 (Arbitration under an Arbitration Agreement or the Rules of FINRA), broker-dealers must arbitrate a customer's dispute if required by a written agreement (typically a pre-dispute arbitration clause), or if requested by the customer and the dispute is between a customer and a FINRA member (or its associated persons) and arises in connection with the business activities of the FINRA member (or its associated persons). Absent a pre-dispute arbitration agreement, this rule essentially imposes mandatory arbitration on broker-dealers and their associated person because it empowers the customer to unilaterally dictate whether to arbitrate (which is cheaper, faster, and closely supervised and regulated by the SEC and FINRA) or to pursue court-based litigation, including class action litigation. Notably, FINRA Rule 12204 prohibits pre-dispute arbitration clauses from banning participation in a class action suit and simply prevents class actions from being arbitrated.

FINRA and its many committees, task forces, and study groups – assisted by state regulators, claimants' lawyers, and industry representatives – have continually evaluated and amended the rules that govern the composition and diversity of securities arbitration panels to make the process fairer and more consumer-friendly. Increasing the diversity of arbitration panels – in terms of age, gender, race, and occupation – is just one way that the securities arbitration process has evolved over time. Additionally, customers have the option of an all-public panel, and current rules provide customers the ability, under certain circumstances, to have an arbitrator removed for alleged bias.

In sum, SIFMA opposes banning arbitration clauses in brokerage contracts because they provide significant benefits to customers. Again, we believe Congress should vote NO on the FAIR Act in order to preserve the current consumer-friendly FINRA arbitration forum that allows customers to resolve their disputes efficiently and effectively. Thank you for the consideration of our views.

Sincerely,

Kenneth E. Bentsen, Jr.
President & CEO
Securities Industry and Financial Markets Association (SIFMA)

cc: Members of the House of Representatives