Statement of the U.S. Chamber of Commerce

ON: Hearing on "Examining How Capital Markets Serve Diverse Entrepreneurs and Investors"

TO: U.S. Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Securities, Insurance, and Investment

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Chairman Menendez, Ranking Member Scott, and members of the Subcommittee on Securities, Insurance, and Investment: my name is Tom Quaadman, executive vice president of the U.S. Chamber's Center for Capital Markets Competitiveness. Thank you for the opportunity to testify today regarding pro-growth legislation and the importance of helping small businesses and entrepreneurs raise capital.

Over a decade ago, members of this Committee and the House Financial Services Committee began working on a bipartisan basis on a series of capital formation initiatives intended to lower barriers to capital access for young businesses and improve the regulatory framework for businesses considering an initial public offering (IPO). These efforts eventually culminated in passage of the Jumpstart Our Business Startups (JOBS) Act, a bill that President Obama accurately described as a "game changer."

By just about any measure, the JOBS Act has been a success. The JOBS Act revived U.S. public listings and encouraged more companies to enter the public markets. In the five years preceding the JOBS Act, there were roughly 121 IPOs per year in the United States; from 2013-2021, the annual average was 344 per year.[1] The majority of these companies filed as emerging growth companies (EGCs) under Title I of the JOBS Act. In 2021, the IPO market in the U.S. hit an all-time high in terms of offerings, including roughly 400 traditional IPOs completed during that year.[2]

The JOBS Act also created opportunities for private and startup businesses to connect with investors. While some of these provisions – for example crowdfunding rules under Title III and the general solicitation rules under Title II – could benefit from further improvement, many businesses have been able to avail themselves of these new capital raising methods. Additionally, Title IV of the JOBS Act increased the threshold for companies to raise under Regulation A (Reg A) offerings. Since the initial JOBS Act was passed, Congress has subsequently passed (again on a bipartisan basis) further capital formation reforms,

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[1] Ten Years of the Jumpstart our Business Startups (JOBS) Act of 2012: How the Law Spurred Capital Formation, and How Congress Can Build on Its Success. House Financial Services Committee Republican Staff Report, April 2022. Available at https://republicans-financialservices.house.gov/uploadedfiles/jobs_act_at_10_report_final.pdf

[2] A Record Years for IPOs in 2021. Phil Mackintosh (Nasdaq) Available at https://www.nasdaq.com/articles/a-record-year-for-ipos-in-2021

including provisions of the 2015 FAST Act[3] and the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act.[4]

It is important to keep in mind the context in which the JOBS Act was passed and draw parallels to today. Congress was concerned that a lack of capital access would have negative short and long-term consequences for our economy, and that job creation would suffer as a result. The report of the 2011 IPO Task Force – whose work contributed significantly to the JOBS Act – stated that: "The dearth of emerging growth IPOs and the diversion of global capital away from the U.S. markets – once the international destination of choice – have stagnated American job growth and threatened to undermine U.S. economic primacy for decades to come." The U.S. economy is again at a precarious moment, necessitating the need for Congress to prioritize pro-growth legislation that will help create jobs and maintain the competitive edge of the United States in global capital markets.

Congress was compelled to pass the JOBS Act because the Securities and Exchange Commission (SEC) for years demonstrated a benign neglect towards its statutory mandate to "facilitate capital formation." Regrettably, the benign neglect once shown by the SEC has today become outright avoidance. Of the 53 items on the SEC's current rulemaking agenda, *not a single one could conceivably be considered a capital formation initiative.* Indeed, many of the rule proposals the SEC has issued over the last 18 months would impose new burdens on the economy and likely make it *more difficult* for small businesses to raise capital.

The SEC has also actively sought to undermine recent reforms that would have improved the regulatory environment for companies to go and stay public. For example, the SEC recently finalized a rulemaking that cripples reforms to the proxy advisory system the SEC adopted just two years ago. The SEC has also proposed rules to undermine reforms to the shareholder proposal system under Rule 14a-8 that were designed to protect investors from abusive practices by special interests. There is again an opportunity – and a need – for members to work on a bipartisan basis to make capital formation a priority for the next Congress.

Much has been learned in the 10+ years since the JOBS Act was signed into law. We've learned that the JOBS Act boosted job creation and helped hundreds of businesses access the capital markets that otherwise may have stayed private or sold themselves to larger companies. We've learned that businesses and entrepreneurs have engaged with the SEC and Congress regarding capital formation ideas on a level not seen before. And perhaps most importantly, despite some of the dire predictions made 10 years ago, we've learned that barriers to capital can be lowered without compromising critical investor protections.

There's another reason why it's imperative for Congress to act on the capital formation agenda. It is well known that the United States capital markets are the deepest and most liquid in the world, creating a crucial advantage for our economy and contributing to its

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[3] Division G – 2015 Fixing America's Surface Transportation Act (Pub. L. 114-94)
[4] Title V – 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115-174)

success. The competitive edge that the U.S. has in its capital markets cannot and must not be taken for granted. It is important, therefore, for Congress to act in a bipartisan fashion to address growing competition from other major markets around the globe to ensure we maintain that edge and the U.S. remains the premier location to pursue ideas and create jobs.

The Importance of Public Companies to Job Growth and Investor Opportunity

The Chamber has long held concerns about the secular decline in U.S. public companies over the last 25 years. When more companies access public markets, more jobs are created and overall economic growth increases. Past research has shown the vast majority of a company's job creation occurs after an IPO, while a recent study estimates that companies that go public double their employment by the second post-IPO year relative to firms that withdraw an offering and remain private.[5]

The report accompanying the initial House version of the JOBS Act noted:

> The President's Council on Jobs and Competitiveness found that if the U.S. had maintained its 2007 level of start-up activity, nearly two million more Americans would be working today. Research indicates that 90% of the jobs that companies create are created after their IPO…Small companies are critical to economic growth in the United States. In order to grow and create jobs, small companies must have access to capital.[6]

Another recent study estimated the positive impact that the JOBS Act has had on the biotechnology industry and its workers. The study found that from 2012 to 2018, biotechs made up roughly 40 percent of all U.S. IPOs, and that these companies expanded their workforce by an average of 150 percent in the first three years following the IPO.[7] The relationship between IPOs and job creation is incontrovertible.

Increasing the number of public companies also benefits the millions of households in America who depend on robust public markets to make investments for retirement, higher education, or other financial goals. Since the SEC's accredited investor rules restrict the vast majority of Americans from participating in private offerings, the public markets are typically the only way for individuals to invest their savings. When options in these markets are limited and companies are disincentivized from going public due to regulatory costs, Main Street investors can be harmed.

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[5] Access to Public Capital Markets and Employment Growth (A. Borisov, A. Ellul, M. Sevilir) May 2021. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2178101

[6] H. Rept. 112-406 – Reopening American Capital Markets to Emerging Growth Companies Act of 2011, available at https://www.congress.gov/congressional-report/112th-congress/house-report/406/1

[7] Deregulating Innovation Capital: The Effects of the JOBS Act on Biotech Startups, Vanderbilt Owen Graduate School of Management Research Paper (C. Lewis, J. White) December 7, 2021, available at https://ssrn.com/abstract=3640852.

A 2022 report from the American Council for Capital Formation (ACCF) estimated that there are currently roughly 800 fewer companies traded on U.S. exchanges due to the high regulatory cost of going public.[8] This public company 'gap' has hurt job creation in particular. Specifically, the ACCF report found:

- **There were at least 800 fewer US companies traded on major US exchanges at the end of 2019 because of mandatory reporting requirements**. Because they have a significant initial fixed cost, mandatory reporting requirements primarily contribute to a reduction in IPOs.

- **The median US company that would have been public – but is now, instead, private – is estimated to have 650 workers.** Across the approximately 800 fewer public companies in 2019, this amounts to more than 500,000 workers.

- **The median US company that would have been public – but is now, instead, private – is estimated to have nearly $300 million in revenue.** Across the approximately 800 fewer public companies in 2019, this amounts to upwards of $250 billion in revenue.

- **The median US company that would have been public – but is now, instead, private – is estimated to have over $750 million in market capitalization.** Across the approximately 800 fewer public companies in 2019, this amounts to nearly $600 billion in market capitalization.

- **More costly reporting requirements could be expected to reduce the number of public companies.** The ACCF analysis estimates that a 10% increase in reporting requirement cost over the 2000-2019 period would have reduced the number of US companies traded on major exchanges further by 80 companies, with a combined 51,000 employees, $60 billion in revenue, and over $23 billion of market capitalization.

Other recent research looked at the relationship between financial reporting directives in the European Union and innovation by small businesses. This research – conducted by Matthias Breuer (Columbia Business School), Christian Leuz (Chicago Booth School of Business) and Steven Vanhaverbeke (Erasmus University) – found that the more businesses spent to comply with financial reporting mandates, the less they spent on innovation.[9] The researchers noted that compliance burdens also disproportionately impact small business, "thereby concentrating innovation spending among a few large

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[8] The Declining Number of Public Companies and Mandatory Reporting Requirements. Ernst & Young, prepared for the American Council for Capital Formation (June 2022) Available at EY-ACCF-The-declining-number-of-public-companies-and-mandatory-reporting-requirements-June-2022.pdf

[9] Mandated Financial Disclosure Leads to Fewer Innovative Companies. Martin Daks, Chicago Booth Review (June 6, 2022) Available at https://www.chicagobooth.edu/review/mandated-financial-disclosure-leads-fewer-innovative-companies

firms." Congress would be wise to heed this evidence from Europe as the SEC pursues new and unprecedented corporate reporting requirements.

The Need for a "JOBS Act 4.0"

For several years, the Chamber has been at the forefront of the policy conversation regarding the JOBS Act and further capital formation proposals. In 2018, the Chamber led a joint organizational effort to produce 22 recommendations to build upon the success of the JOBS Act – a number of which have already been signed into law or implemented by the SEC.[10] The Chamber also released our "Growth Engine" report in November 2020, which includes additional proposals and is our roadmap for broadly revitalizing financial markets.[11] That report includes recommendations for policies related to closing the racial wealth gap, corporate governance reforms, financial stability requirements, consumer credit, and capital formation for small businesses.

The Chamber commends the many members of the Senate Banking Committee whose efforts are included as part of the "JOBS Act 4.0" package that was released earlier this year. As we noted in a June 2022 letter, we support several of the provisions contained in that legislation and urge the House and Senate to take them up in the new Congress. As with the initial JOBS Act and subsequent iterations, we believe many of these proposals can be taken up with strong bipartisan support.

Additionally, the Chamber also commends the work of Sen. Scott – along with Sen. Booker, Rep. Kind, and Rep. Kelly, and other bipartisan members – for introducing the Opportunity Zones Transparency, Extension, and Improvement Act earlier this year. The investments made through opportunity zones are critical to help many underserved communities bounce back from the pandemic and to navigate through an uncertain economic period. The Opportunity Zones Transparency, Extension, and Improvement Act is an important step towards progress on these goals and the Chamber looks forward to working with members on both sides of the aisle to get the bill signed into law.

Securities Litigation Reform

As noted in our June 2022 letter to the Banking Committee, the Chamber hopes that, in addition to the provisions currently included in JOBS Act 4.0, Congress will take up long overdue reforms to securities litigation. The frequent filing of frivolous and questionable securities fraud claims harms investors and undermines the integrity and reliability of the U.S. capital markets.

In 1995, Congress moved to crack down on repeat, professional plaintiffs that filed frivolous securities fraud class actions, often for cash kickbacks, by adopting the Private

[10] Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public. Joint report from U.S. Chamber, Biotechnology Innovation Organization, American Securities Association, National Venture Capital Association, Securities Industry and Financial Markets Association, TechNet, Nasdaq. Available at IPO-Report_EXPANDING-THE-ON-RAMP.pdf (centerforcapitalmarkets.com)

[11] Available at https://www.uschamber.com/assets/documents/ccmc_growthengine_final.pdf

Securities Litigation Reform Act (PSLRA). In 1998, Congress subsequently made additional reforms in the Securities Litigation Uniform Standards Act (SLUSA). Unfortunately, research has shown that professional plaintiffs, both individual and institutional, are still taking advantage of loopholes in Congress' securities litigation reform regime, including the PSLRA and SLUSA.[12] This harms shareholders on both sides of the lawsuits: those that ultimately pay for the litigation costs and lawyers' fees, and those that receive little or no benefit when the lawsuit ends.

Building off the discussion in our June 2022 letter, to close off these loopholes, Congress could craft legislation to:

- **Ensure cases are heard in federal court**. Congress should make clear that actions filed under the Securities Act of 1933 are required to be heard in federal court just like cases filed under the 1934 Act.

- **Broaden limits on repeat filers.** Much of filed securities litigation is brought by serial plaintiffs that are usually dismissed and result in no benefits to shareholders, just a payment to the plaintiff and their attorneys. The PSLRA prohibits individual shareholders from acting as lead plaintiffs in more than five class actions in a three-year period, yet this limitation is avoided when claims are settled or dismissed before appointment of a lead plaintiff or by filing as an individual action. The prohibition should instead prevent shareholders from filing more than five lawsuits in a three-year period. Any waivers of this limit in the class action context, such as for large institutional investors, should also be based on demonstrated results for class members in previously filed suits, rather than the de facto automatic waiver that typically occurs in most of these cases.

- **Correct the mechanism for determining lead plaintiffs and determining attorney's fees.** Rather than allowing lawyers to control cases at the expense of class members, courts should be required to disqualify lawyers who provide payments or legal services that would give the lawyers leverage over their clients. Furthermore, courts should look at fee agreements with plaintiff's counsel and how much of the recovery would go to attorneys' fees and then making clear that unjustified or excessive fee requests should be rejected.

- **Increase Transparency.** The PSLRA should also be improved by requiring disclosure of (1) any attorney payments to plaintiffs outside of their pro rata share of the recovery so any incentive payments will come to light, (2) the nature of the attorney's representation of the plaintiff outside of the current lawsuit before a court to reveal collaboration between serial filers and the law firms that enable this practice, (3) the presence of any third party litigation funding in the case, and (4) any contributions to elected officials with authority to retain counsel in these cases.

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[12] U.S. Chamber Institute for Legal Reform: Frequent Filers Revisited: Professional Plaintiffs in Securities Class Actions (April 2022), available at: https://instituteforlegalreform.com/research/frequent-filers-revisited-professional-plaintiffs-in-securities-class-actions/

JOBS Act 4.0 Recommendations

The Chamber is pleased to support the following bills, a number of which have already been considered in the House or Senate in previous Congresses. While this is not an exhaustive list of ideas and legislation that the Chamber supports, it represents some of the priorities that the Chamber has worked closely on with policymakers for several years.

Improvements to the JOBS Act

Helping Startups Continue to Grow Act - S. 4992 / H.R. 3448
This bill would allow emerging growth companies (EGCs) to continue operating under certain JOBS Act exemptions for an additional five years. The vast majority of EGCs have taken advantage of the options to 1) Streamline financial disclosure; 2) Confidential reviews of registration statements by SEC staff; and 3) An exemption from certain executive compensation requirements. Extending the IPO "on-ramp" an additional five years would allow these businesses to dedicate further resources towards hiring and growth.

The Crowdfunding Amendments Act (H.R. 4860–116th Congress)
The legislation would address some of the unnecessary compliance burdens that currently exist under the SEC's crowdfunding rules by allowing for the use of "crowdfunding vehicles" and also exempting securities issued in crowdfunding offerings from registration requirements under the Securities Exchange Act of 1934

Improving Crowdfunding Opportunities Act (S. 3967)
This bill would create legal certainty for businesses looking to crowdfund by pre-empting state regulation of secondary transactions involving crowdfunding vehicles and also clarifies the legal liability that applies to crowdfunding portals. These changes would help Title III of the JOBS Act achieve its intent and make crowdfunding a more a more viable path to capital-raising for certain businesses.

Public Company Registration Threshold Act (H.R. 5051—115th Congress)
The legislation would increase from 500 to 2,000 the number of non-accredited shareholders a company may have before being required to register with the SEC. This legislation would build on the 2012 JOBS Act, and would help many companies, including companies that raise money through crowdfunding and the private markets, avoid having to undergo costly registration with the SEC.

The SEC should continue to examine develop recommendations for how to increase research coverage of pre-IPO companies and small capitalization companies. Congress should pass S. 3965, the Increasing Access to Adviser Information Act.
In 2020, Congress passed legislation requiring the SEC to examine and report on the reasons why there is an ongoing dearth of research coverage for small public companies. The SEC was also required to produce recommendations to increase research coverage.

However, when the SEC staff issued its report in February 2022, its only tangible recommendation was to study the issue further.

Obtaining research coverage is critical to enhance institutional and retail investor interest in a company. Studies have shown that nearly two-thirds of companies with less than $100 million do not have any research coverage at all.[13] The Global Research Analyst Settlement, the EU's Markets in Financial Instruments Directive II (MiFID II), and certain aspects of JOBS Act implementation have all contributed to a decline in analyst coverage. Additionally, while changes made to the Securities Act to liberalize the "gun-jumping" rules to permit investment banks to publish pre-IPO research on EGCs (Sec 2(a)(3)), very few investment banks have published any pre-IPO research.

At a minimum, Congress should pass S. 3965, the Increasing Access to Adviser Information Act which would allow brokers to receive "soft dollar" payments for research without having to register as investment advisers. This bill is even more necessary given the sudden decision by SEC staff this past summer to terminate a no-action position the SEC has taken for several years regarding MiFID II and soft dollar payments.

<u>Corporate Governance</u>

Re-establish effective oversight of proxy advisory firms and reforms to the shareholder proposal system

Despite being plagued by conflicts of interest, a lack of transparency, and significant errors in voting recommendations, proxy advisory firms continue to carry a significant amount of influence over corporate governance at America's public companies. The two dominant proxy firms—Institutional Shareholder Services (ISS) and Glass Lewis—control roughly 97% of the proxy advisory industry, constituting a duopoly that has become the de facto standard setter for corporate governance in the U.S. without any meaningful input from shareholders or issuers. The status quo has created distortions in the capital markets and has made it more difficult for companies to go and stay public.

In July 2020, the SEC adopted a rule that provided investors using proxy voting advice more transparent, accurate, and complete information, along with supplemental guidance regarding proxy voting responsibilities of investment advisers. The rule codified the SEC's longstanding position that proxy advice is generally a "solicitation" under SEC rules and reaffirms that the anti-fraud provisions under Exchange Act Rule 14a-9 apply to proxy advisory firms. Findings from previous Chamber/Nasdaq proxy season surveys show public welcomed several aspects of the 2020 reforms, specifically the ability to "review and comment" on draft proxy advisory firm recommendations.

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[13] Capital Formation, Smaller Companies, and the Declining Number of Initial Public Offerings – Jeffrey Solomon, President of Cowen. (Presentation before the SEC Investor Advisory Committee) June 22, 2017, available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/jeffrey-solomon-presentation.pdf

The SEC also adopted meaningful reforms to the shareholder proposal process under Rule 14a-8 in 2020. The SEC reforms raised the "resubmission thresholds" that determine when a proposal which previously garnered low submitted can be submitted in a subsequent year and required greater transparency and disclosure from shareholder proponents. These reforms were well-calibrated to preserve the ability of shareholders to submit proposals while protecting against some of the abuses that have increasingly plagued this system.

Unfortunately, the SEC recently decided to gut the 2020 proxy advisor reforms *before those rules even went into effect.* The SEC has also proposed changes to Rule 14a-8 that will likely lead to an increase in proposals that deal with immaterial social and political matters and will do little or nothing to enhance shareholder value. These efforts by the SEC will create further disincentives for companies considering an IPO.

The Chamber welcomes the inclusion of S. 3945, the Restoring Shareholder Transparency Act as part of the JOBS Act 4.0 package. This bill would restore some of the important guardrails of the 2020 Rule 14a-8 SEC reforms and allow businesses to focus on long-term strategy and shareholder value rather than getting bogged down in social and political debates that are pushed by special interests.

Modernizing Corporate Disclosure

Repealing immaterial and harmful disclosure mandates / Dodd-Frank Material Disclosure Improvement Act (S. 3923)

For more than eight decades, materiality has been the lodestar of the public company disclosure regime under the federal securities laws. The longstanding materiality standard—namely, what is important to a reasonable investor focused on investment returns—has instilled in investors and issuers alike a confidence in the accuracy and integrity of information that promotes market efficiency, competition, liquidity, and price discovery.

In 1975, the SEC described its views on materiality, noting: "As a practical matter, it is impossible to provide every item of information that might be of interest to some investor in making investment and voting decisions… [C]ertain types of disclosure might be so voluminous as to render disclosure documents as a whole significantly less readable and, thus, less-useful to investors generally. In addition, disclosure to serve the needs or desires of limited segments of the investing public, even if otherwise desirable, may be inappropriate, since the cost to registrants, which must ultimately be borne by their shareholders, would be likely to outweigh the resulting benefits to most investors."

In recent years, however, a variety of groups have zeroed in on SEC disclosures by pressing for new mandatory disclosure requirements to advocate for social and political change. While these may be important causes, they are not material to investors and their voting decisions. Unfortunately, the Dodd-Frank Act included a number of nonmaterial disclosure

requirements for public companies and new legislation is often introduced in Congress requiring public companies to disclose information that is not material to investors.

Congress should pass S. 3923, which would repeal costly and immaterial disclosures mandates under the Dodd-Frank Act, including the conflict minerals, pay ratio, mine safety and resource extraction disclosures.

Mandatory Materiality Requirement Act of 2022 (S. 5005 / H.R. 9408)
This bill would codify the materiality standard expressed by the Supreme Court in 1976 into law and prohibit the SEC from mandating disclosure requirements that are outside the scope of the securities laws or are intended to promote objectives which are at odds with the interests of the vast majority of investors. This legislation is especially important given the unprecedented nature of the SEC's current agenda and efforts to prescriptively expand corporate disclosure on several topics including climate change, cybersecurity, human capital management, and others. The Chamber is hopeful that this bill will be included as part of JOBS Act 4.0 discussions in the coming months.

Simplify quarterly reporting requirements for public companies / Modernizing Disclosures for Investors Act (S. 3919 / H.R. 3454)
According to the 2011 report of the IPO Task Force, 92% of public company CEOs said that the "administrative burden of public reporting" was a significant challenge to completing an IPO and becoming a public company. As annual (10-K) and quarterly(10-Q) reports have grown in size and complexity over the years, companies find it increasingly difficult and costly to maintain compliance with a 1930's-style disclosure system. The length of annual and quarterly reports also has the potential to make it more difficult for investors to determine the most salient information about a business.

H.R. 3454 (Modernizing Disclosures for Investors Act) and S. 3919 (Reporting Requirements Reduction Act) would provide alternative means for public company quarterly reporting. H.R. 3454 would allow for quarterly reports to be issued through alternative methods (e.g. a press release) while S. 3919 would allow issuers to elect to report results semi-annually rather than quarterly. These approaches would reduce the overall cost of corporate reporting for investors while still requiring that material information be made public.

Improving Access to Capital for Businesses

Developing and Empowering our Aspiring Leaders (DEAL) Act of 2022 (S. 3914 / H.R. 4227)
Registered Investment Adviser (RIA) rules promulgated by the SEC have disincentivized some venture capital funds from investing in Emerging Growth Companies (EGCs). The 2010 Dodd-Frank Act sought to exempt venture capital funds from the costs and challenges associated with becoming an RIA. However, the definition of "venture capital fund" promulgated by the SEC pursuant to Dodd-Frank was too narrow and did not meet the Dodd-Frank statutory obligations of a full venture capital exemption. The current definition ignores critical elements and developments related to the venture capital industry,

including growth equity firms which can often be investors in EGCs around the time they are considering a public offering. Shares of EGCs, including the purchase of EGC shares on the secondary market, should be considered qualifying investments. Creating a more accurate venture capital exemption definition – which the DEAL Act would do – will expand the pool of possible investors for EGCs.

Access to Small Business Investor Capital Act (S. 3961 / H.R. 5598)
The legislation would permit funds that invest in businesses development companies (BDCs) to disclose their acquired fund fees and expenses (AFFE) as a footnote to their prospectus fee table. The SEC adopted the AFFE rule in 2006 as a means to provide greater transparency regarding fund expenses, but in practice it has become a fundamentally misleading disclosure for funds that invest in BDCs. The AFFE rule has led to the exclusion of BDCs from certain indices which in turn has caused an outflow of investment dollars by institutions. Passage of this bill will increase institutional investment in BDCs, which are a critical source of nonbank financing for small and middle market companies throughout the country.

Small Entrepreneurs' Empowerment and Development (SEED) Act of 2022 (S. 3939)
This legislation would provide an exemption from state and federal registration requirements for "micro" offerings that do not exceed $500,000 in the aggregate. This would benefit entrepreneurs who are looking to raise relatively small amounts of capital and cannot afford costly legal and registration requirements. Importantly, this bill also contains provision that would prevent bad actors from participating in such offerings.

Expanding American Entrepreneurship Act (S. 3976)
This bill would increase the number of investors and assets an angel fund may have without having to comply with costly SEC regulations. Funds would be permitted to have up to 500 investors and $50 million in assets (Up from 250 investors and $10 million currently). This bill would expand the pool of potential investors and capital available for early-stage angel investments and help provide funding for the next generation of innovative American businesses.

Equal Opportunity for All Investors Act (S. 3921)
An accredited investor is an individual who is permitted to trade securities that may not be registered with the SEC. Securities in early-stage, non-public companies, have a significant potential for growth, but are also considered to be higher-risk. The accredited investor definition is intended to limit investors from participating in this market.

Traditionally, the accredited investor threshold has been determined through asset and income tests, which have resulted in both an under- and overinclusive outcomes. The definition leaves out sophisticated and savvy investors who may not meet financial thresholds while including a wealthy person with no experience in financial markets.

In August 2020, the SEC finalized a rule expanding the definition of "accredited investor" to include more individual investors, such as those with professional qualifications in the

financial industry. S. 3921 would further expand the definition of accredited by allowing an individual to become accredited *regardless* of income status, and also allowing any individual to invest up to 10% of their income in a Reg D offering. The bill would also allow for self-certification of accredited status under Rule 506(c) which would improve the likelihood that businesses conduct "general solicitation" offerings that were permitted by the JOBS Act.

Small Business Audit Correction Act (Sec. 301 of JOBS Act 4.0)
The legislation would exempt privately held non-custodial brokerage firms from a requirement to have a Public Company Accounting Oversight Board (PCAOB)-registered firm conduct their annual audit. Small broker-dealers are often important sources of capital for startups or small businesses around the country, and there is no compelling reason to subject them to an audit process that is more fitting of a large company.

Amend Form S-3 to eliminate baby-shelf restrictions and allow all issuers to use Form S-3 (Accelerating Access to Capital Act, H.R. 4529, 115th Congress)
Forms S-3 and F-3 - commonly referred to as "shelf registration" forms – are the most simplified registration forms that a company can file with the SEC, and typically bring significant cost savings for those companies that are eligible to use one or the other. However, EGCs and many small issuers are prohibited from using these forms which leads to increased reporting and compliance costs that do not promote investor protection. The SEC's Annual Government-Business Forum on Small Business Capital Formation has recommended over the past several years that all issuers become eligible for use of Forms S-3 and F-3. The Accelerating Access to Capital Act would permit all companies to use a shelf registration statement without a limit on the amount they can raise, which would significantly improve the capital formation process for small public companies.

The Expanding Access to Capital for Rural Job Creators Act (S. 3503 / H.R. 5128)
The legislation would expand the focus of the Office of the Advocate for Small Business Capital Formation at the SEC to include ways to increase capital access for rural small businesses. The legislation would help ensure that rural areas receive due consideration during any future SEC rulemaking process.

Gig Worker Equity Compensation Act (S. 3931 / H.R. 2990)
The legislation would expand the pool of workers who can receive equity compensation under the SEC's Rule 701 to include independent contractors and "gig" economy workers. Rule 701 exempts certain sales of securities made to compensate employees, consultants and advisors.

On November 24, 2020, the SEC proposed temporary rules that would permit an issuer to provide equity compensation in certain "platform workers" who provide services available through the issuer's technology-based platform or system. This proposed rule was a step in the right direction, given it recognized the challenges for the gig economy, but was never finalized. The Chamber looks forward to working with members on both the House and Senate version of these bills in the next Congress.

A 2016 report from the Economic Innovation Group found that half of all post-recession business creation in the U.S. occurred across only 20 counties, and that many rural areas have not seen expected economic growth since the 2008 financial crisis. This bill is an incremental but important step that would focus the SEC on the needs of businesses in rural communities.

Congress should direct the SEC small business advocate to develop recommendations for how to help minority-owned businesses raise capital
Black entrepreneurs are nearly three times more likely than White entrepreneurs to have business growth and profitability negatively impacted by a lack of financial capital. Congress should initiate a formal process through the SEC to develop recommendations for changes in existing law and regulations that would improve access to capital for minority-owned businesses. This process could be conducted through the SEC's Office of the Advocate for Small Business Capital Formation by prioritizing outreach to minority-owned businesses to understand their financial needs and by working with financial companies to understand what public policy barriers stand in the way of providing capital.

Small Business Mergers Acquisitions, Sales, and Brokerage Simplification Act (S. 3391 / H.R. 935)
The legislation would simplify SEC registration requirements and provide a safe harbor for certain financial professionals who assist small and mid-size businesses that are looking to transfer corporate ownership. Importantly, the legislation also includes strong investor protections such as requiring the disclosure of relevant information to clients as well as the owners of eligible privately held companies. The bill does not impede in any way on the ability of the SEC to crack down on bad actors, or to prohibit past securities law violators from taking advantage of the exemption.

Secondary Market Trading Reforms

Main Street Growth Act (S. 3097 / H.R. 5795)
While the JOBS Act did a great deal to help EGCs raise capital in primary offerings, it did comparatively little to address the secondary market trading in these companies. The Main Street Growth Act provides the legal framework for the establishment of venture exchanges, which would remedy this issue by providing a tailored trading platform for EGCs and stocks with distressed liquidity. Companies that choose to list on a venture exchange would have their shares traded on a single venue, thereby concentrating liquidity and exempting these shares from rules that are more appropriate for deeply liquid and highly valued stocks. Venture exchanges would also be afforded the flexibility to develop intelligent "tick sizes" that could help incentivize market makers to trade in the shares of companies listed on the exchange. Importantly, both the creation of the venture exchange and the decision to list on such an exchange should be completely optional – companies should be allowed to choose whether not to list on a venture exchange.

The Chamber also welcomes S. 3947, the Intelligent Tick Study Act, as part of JOBS Act 4.0 This legislation would require the SEC produce a study and recommendations related to the widening of "tick sizes" for small issuers in order to improve liquidity and trading efficiency for investors.

Restoring Due Process

Right of removal to an Article III court / S. 3930, Administrative Enforcement Fairness Act of 2022

Since passage of the Dodd-Frank Act, the SEC has been permitted to bring a greater number of enforcement cases before through administrative proceedings as opposed to Article III courts. Administrative proceedings lack the fundamental due process and Constitutional protections of the Federal court system and not subject to the Federal Rules of Evidence or the Federal Rules of Civil Procedure.

The Chamber has supported for several the right of respondents in SEC cases to have their cases heard before a Federal court. We have supported legislation in the House (Due Process Restoration Act, and appreciate the inclusion of S. 3930 in JOBS Act 4.0) Businesses and investors must have confidence that the SEC operates in a fair manner when bringing enforcement actions – this legislation will help provide that confidence by reinforcing the due process rights of respondents.

Stress Test Reforms

Alleviating Stress Test Burdens to Help Investors Act (Sec. 407 of JOBS Act 4.0)

The Chamber has long argued against the misguided application of bank-centric regulation and supervision of non-bank companies. The professional staff of the Securities and Exchange Commission has concurred. In 2016, the SEC Chief Economist described how the application of stress tests to asset managers was premised on a "false parallel." This legislation would remove that misguided regulation and reduce unnecessary regulatory cost.

Conclusion

Thank you again for the opportunity to testify on these critical issues and legislative proposals. The Chamber looks forward to working with both Republicans and Democrats on capital formation and pro-growth initiatives in the coming months.