U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

April 1, 2025

The Honorable French Hill
Chairman
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

Re: Request for Feedback on Legislative Proposals to Increase Investor Access and Facilitate Capital Formation

Dear Chairman Hill:

The U.S. Chamber of Commerce ("Chamber") submits these comments and recommendations to the House Financial Services Committee's ("Committee") in response to its request for public feedback on legislative proposals to increase investor access and facilitate capital formation. The Chamber commends the Committee for its work during the 119th Congress to advance capital formation legislation that will help companies grow and create jobs, while also allowing more investors to participate in the financial success of America's best businesses.

The Chamber has been a leading voice on the need to modernize securities regulation to maintain the status of the U.S. capital markets as the gold standard for the world. The Chamber worked closely with Congress on the 2012 Jumpstart Our Business Startups ("JOBS") Act as well as subsequent legislation to build upon the JOBS Act's success.[1] The Chamber also continues to work with the Securities and Exchange Commission ("SEC") on initiatives to help the SEC fulfill its statutory mission of facilitating capital formation.

The Committee has driven much of the capital formation agenda in Washington over the last 15 years. Importantly, the Committee's work in this area has typically been done on a bipartisan basis and with the support of a diverse private sector coalition. Despite the incremental regulatory improvements that have been made, additional reforms are necessary to ensure that businesses of all sizes are able to raise the capital necessary to support their next phase of growth.

[1] See e.g. "Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public" (Spring 2018) https://www.uschamber.com/assets/documents/ipo_report_expanding_the_on-ramp.pdf; Testimony of Tom Quaadman before Senate Banking Committee (December 2022) https://www.banking.senate.gov/imo/media/doc/Quaadman%20Testimony%2012-12-22.pdf

The U.S. capital markets are not a zero-sum game. Expanding capital-raising avenues in one market does not by default weaken the other. Policymakers should seek ways to strengthen both private[2] *and* public capital markets. Public policy should facilitate access to capital at every stage of a company's lifecycle – from startup to initial public offering ("IPO") and each step in between and after.

The Committee's recent hearings and this request for feedback supports that goal. Several of the measures the Committee is currently considering benefit not just companies seeking capital, but also investors who would be given more opportunities to invest in growth-stage businesses. This access for investors matters in the private markets (e.g. through expansion of the accredited investor definition) as well as the public markets (e.g. through expansion of the JOBS Act "on-ramp" to improve the IPO process).

The Chamber understands that the Committee's work on capital formation is continuously evolving. While the below may not represent an exhaustive list of every bill the Chamber supports, it includes some of the Chamber's top priorities and certain legislation the Chamber has supported previously, organized by subject matter.

Amendments to the accredited investor definition

The private capital markets have grown substantially in recent years. Regulation D ("Reg D") of the Securities Act is a key capital-raising mechanism for many private businesses. However, current SEC rules severely limit the scope of individuals eligible to invest in Reg D or similar offerings. The SEC's "accredited investor" definition equates financial sophistication with wealth and largely prohibits individuals who do not meet certain income or net worth thresholds from investing in Reg D offerings. The rules therefore have the effect of being discriminatory and harmful to millions of investors who are left behind when private businesses become highly successful or eventually go public. The SEC's accredited investor rules should take a different approach that allows individuals to invest in private offerings – with certain limitations – regardless of their income or net worth. The Chamber therefore supports the following bills:

H.R.__, the Fair Investment Opportunities for Professional Experts Act (Rep. Hill) This bill would permit individuals that hold certain professional licenses, educational degrees, or have relevant job experience to be deemed accredited.

[2] See: U.S. Chamber of Commerce, "Large Private Companies Strengthen Communities Across America." (October 2024). https://www.uschamber.com/economy/large-private-companies-strengthen-communities-across-america

H.R.__, the Accredited Investor Definition Review Act (Rep. Huizenga) This bill would require that the SEC review and add certain qualifications or professional certifications to the list that would qualify someone as an accredited investor. The SEC would be required to conduct subsequent reviews every five years.

H.R.__, the Equal Opportunity for All Investors Act of 2025 (Rep. Flood). This bill would permit individuals to demonstrate their sophistication – and therefore become accredited under SEC rules – via an exam administered by the Financial Industry Regulatory Authority (FINRA).

H.R.__, the Risk Disclosure and Investor Attestation Act (Rep. Davidson) This bill would allow individuals to "self-certify" their accredited status for certain private offerings. Currently, businesses looking to raise capital or financial intermediaries must go through an extensive process to confirm that someone meets the accredited investor definition. This process causes delays and raises legal uncertainty for issuers. This bill is an important fix that would permit companies to rely on representations made by an individual at the time of their investment.

H.R.__, the Investment Opportunity Expansion Act (Rep. Stutzman) This bill embraces the "sliding scale" approach outlined by SEC Acting Chair Mark Uyeda and would allow an individual to invest 10% or less of the greater of their net assets or annual income in a private offering.[3]

H.R.__, a bill to amend the definition of an accredited investor to include individuals receiving advice from certain professionals. This bill would deem an individual to be an accredited investor if they receive advice to invest in a private offering from a professional (e.g. a registered broker or investment adviser) that is already defined as an accredited investor under SEC regulation.

<u>Unlocking capital for small businesses</u>

While the SEC has a statutory mission to facilitate capital formation, the agency has often demonstrated a benign neglect towards the need of small businesses and their investors. Regulatory costs can often fall disproportionately on smaller entities, and it has been left to Congress (via the JOBS Act and other measures) to amend SEC rules for the benefit of small or startup businesses. The Chamber supports the following bills which would amend certain SEC rules and make the agency more attuned to the needs of smaller entities.

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[3] Remarks at the 51st Annual Securities Regulation Institute. Commissioner Mark Uyeda (Jan. 22, 2024) https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012224

H.R.__, the Small Entity Update Act (Rep. Wagner) This bill would require the SEC to examine the definition of "small entity" under the Regulatory Flexibility Act and whether it accurately reflects today's markets. The SEC would be required to undertake a rulemaking pursuant to the findings of the study.

H.R.__, the Improving Access to Small Business Information Act (Rep. Kim) The SEC's Office of the Advocate for Small Business Capital Formation is an important voice for small businesses that are affected by SEC regulations. This bill would assist the Office in fulfilling its duty by maintaining its ability to collect information and data regarding small businesses to support the SEC's mandate to facilitate capital formation.

H.R.__, the Helping Angels Lead our Startups (HALOS) Act of 2025 (Rep. Lawler) This bill clarifies the original intent of Title II of the JOBS Act and would permit startup companies to discuss their business plans with potential investors at "demo days" without running afoul of the general solicitation rules under Rule 506.

H.R.__, the Unlocking Capital for Small Businesses Act of 2025 (Rep. Salazar) This bill would require that the SEC issue a final rule for its proposed 2020 exemption for "finders" which help connect accredited investors with businesses that raise capital.

H.R.__, the Small Entrepreneurs Empowerment and Development (SEED) Act of 2025 (Rep. Garbarino) This bill would establish the legal framework for "micro-offerings" which are offerings of a limited amount that would benefit from a tailored exemption for SEC registration requirements. Under the bill, the SEC's antifraud authority would still apply.

H.R.__, the Developing and Empowering our Aspiring Leaders (DEAL) Act of 2025 (Rep. Wagner) This bill would amend the definition of a qualifying investment for venture capital funds. This would allow more venture funds to invest in the shares of emerging growth companies ("EGCs") which would help expand the pool of investors in the shares of EGCs.

H.R.__, the Improving Capital Allocation for Newcomers Act of 2025 (Rep. Timmons) This bill would make changes to the requirements for a fund to be able to rely on the qualifying venture capital fund exemption under Section 3(c)(1) of the Investment Company Act. This legislation would help mitigate regulatory burdens that can disincentivize fund formation and choke off capital to startup firms.

H.R.__, the Regulation A+ Improvement Act of 2025 (Rep. Stutzman) This bill would make a public offering more economically feasible for companies that are not

prepared to undertake a full IPO by increasing the permissible amount for a public offering up to $150 million.

H.R.__, the Improving Crowdfunding Opportunities Act This bill would add continuity to the regulation of secondary transactions involving crowdfunding vehicles and clarify legal liability for crowdfunding portals.

Modernizing regulation for investment funds

H.R. 2225, the Access to Small Business Investor Capital Act (Rep. Sherman) This bill would exclude business development companies ("BDCs") from the acquired fund fees and expenses ("AFFE") rule. AFFE was adopted by the SEC nearly 20 years ago to provide fund investors with an idea of the total costs when a fund they held invested in other funds. However, because of the unique structure of BDCs, AFFE provides a fundamentally misleading portrait of the true costs of investing in BDCs. This led to the exclusion of BDCs from certain indices and an exit by some large institutional investors. BDCs should be fully exempted from AFFE so that investors receive accurate information about total fund expenses.

H.R.__, the Small Business Investor Capital Access Act (Rep. Barr) This bill would raise the assets under management ("AUM") threshold that determines when a private fund must register with the SEC. The 2010 Dodd-Frank Act set the threshold at $150 million, however it has not been raised since then nor even indexed for inflation, despite the growth of the private market since that time. This bill would raise the private fund AUM threshold for inflation since 2010, and annually for inflation thereafter.

H.R.__, the Increasing Investor Opportunities Act (Rep. Wagner) This bill would provide new opportunities for everyday investors by allowing publicly offered closed-end funds ("CEFs") the ability to invest up to all its assets in private securities.

H.R. 1013, the Retirement Fairness for Charities and Educational Institutions Act (Rep. Lucas) This bill would permit 403(b) retirement plans to invest in collective investment trusts ("CITs"). CITS are subject to the Employee Retirement Income Security Act ("ERISA") and invest the funds of tax-exempt retirement plans in various asset classes, thus diversifying the investments of these plans and improving long-term performance for beneficiaries. This legislation would level the playing field between 403(b) and 401(k) plans by permitting 403(b) plans to invest some of their assets in CITs.

Expanding the JOBS Act IPO "on-ramp"

Title I of the JOBS Act established the EGC as a class of SEC issuer and provided EGCs with certain tailored regulatory exemptions that reduce the overall compliance burden of going public. Title I proved to be highly successful, as it boosted the IPO market in the years following the JOBS Act and the vast majority of companies that have undergone an IPO since 2012 have filed as EGCs. Congress has an opportunity to extend certain regulatory relief of the JOBS Act and allow all public companies – not just EGCs – to take advantage of this relief. The Chamber appreciates the Committee's work on the following bills:

H.R.__, the Helping Startups Continue to Grow Act (Rep. Steil) This bill would extend the on-ramp for an issuer to qualify as an EGC from five years to ten years and increase the current revenue threshold to $3 billion. This would allow EGCs to grow into mature companies before being required to comply with certain mandates that are more befitting of larger companies.

H.R.__, the Encouraging Public Offerings Act of 2025 (Rep. Wagner) This bill allows all issuers to use two of the more popular provisions of the JOBS Act – the ability to "test the waters" with potential investors prior to an IPO, and to file a confidential draft registration statement with the SEC. While the SEC has already undertaken action to extend use of these two provisions, Congress should codify this approach into law.

H.R.__, a bill to amend the Securities Exchange Act of 1934 to specify certain registration statement contents for emerging growth companies, to permit issuers to file draft registration statements with the Securities and Exchange Commission for confidential review, and for other purposes (Rep. Nunn); and H.R. ___, a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes (Rep. Haridopolos). These bills stipulate that an EGC need only provide two years of audited financial statements (as opposed to the typical three), including for spin-off transactions.

<u>Expanding research coverage for small public companies</u>

A recent annual report from the SEC's Office of the Advocate for Small Business Capital Formation found that 44% of small and mid-cap stocks have no analyst coverage whatsoever.[4] While the JOBS Act attempted to address this problem, expanded research coverage for small public companies still has not materialized. The effects of the European Union's Markets in Financial Instruments Directive ("MiFID") II have also contributed to a lack of coverage for small capitalization stocks. To address this problem, the Chamber supports the following reforms:

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[4] https://www.sec.gov/files/2024-oasb-annual-report.pdf

H.R. ___, a bill to amend the Securities Act of 1933 to expand the research report exception to include reports about any issuer that undertakes a proposed offering of public securities (Rep. Williams) This bill would extend to all issuers a JOBS Act provision that provided an exemption to the definition of an "offer" for research reports published by broker-dealers regarding EGCs.

The Chamber also supports the **MiFID II Act (H.R. 2622 from the 118th Congress),** authored by Reps. Sessions and Wagner, which would permit U.S. broker-dealers to accept "hard" dollars for research without having to register as an investment adviser. This bill is necessary to correct the harmful consequences of MiFID II upon U.S. brokers which led to a collapse in the coverage of many public companies.

<u>Improving disclosures for investors</u>

Over the last decade, the Chamber has provided dozens of recommendations to Congress and the SEC about how corporate disclosure can be modernized in a way that provides investors with decision-useful information but protects investors from becoming overwhelmed by dense quarterly and annual public filings. The Chamber has also strongly opposed efforts to use the SEC's corporate disclosure regime to pursue political or social objectives. The Chamber supports the following efforts to modernize disclosures for investors:

Mandatory Materiality Act (H.R. 4168 / S. 2005 from 118th Congress) The Mandatory Materiality Act reinforces that the Supreme Court-articulated materiality standard remains the touchstone for SEC disclosure. In the 1976 *TSC Industries, Inc. vs. Northway, Inc.* decision, the Court established a meaningful standard of materiality that was designed to provide investors with the information they need to make informed voting and investment decisions. Unfortunately, the SEC veered from this standard in recent years when it adopted rules – for example on climate disclosure – that were not grounded in the Supreme Court's definition of materiality. The Mandatory Materiality Act codifies the standard expressed by the Court into law and would prohibit the SEC from mandating disclosure requirements that are outside the scope of the securities laws or are intended to promote objectives that are at odds with the interests of investors.

The Chamber also continues to support the repeal of certain mandates adopted under the Dodd-Frank Act that have created enormous costs for investors without providing any type of material information – including the conflict minerals rule, pay ratio rule, and resource extraction rule.

H.R.__, the Improving Disclosures for Investors Act of 2025 (Rep. Huizenga) Under this bill, SEC-registered investment companies would be permitted to fulfill their delivery obligations under the securities laws if they provided investors with prospectuses, performance information, and other data electronically as opposed to paper. E-delivery is not just convenient but a necessary evolution in our digital age and a preferred choice amongst investors. One report revealed that 85% of investors are comfortable with e-delivery being the default method for investor communications, provided they can opt-in to paper delivery if desired.

Corporate governance / proxy reforms

Over the last two decades, special interests have increasingly found ways to exploit securities laws to advance social or political objectives at public companies. These campaigns often occur during proxy season when shareholders are asked to vote on certain items – for example shareholder proposals and director elections – at a company's annual general meeting. In particular, activists have abused the SEC's shareholder proposal system to submit immaterial proposals to companies year after year. This system comes at significant cost as companies are often forced to hire outside counsel and the subject matter of certain proposals can distract company boards and management from focusing on a company's long-term performance. The opportunity costs for these engagements are severe.

Compounding many of the problems with the current proxy system are proxy advisory firms, an industry that has enormous influence over the outcome of votes at annual meetings. The proxy advisory industry is dominated by only two firms, owned by non-U.S. entities, who have significant conflicts of interest and an incentive to promote and support politicized shareholder proposals at public company meetings every year. Proxy advisory firms also tend to make major errors when providing vote recommendations.

Navigating the complexities and politicization of proxy season are not just issues for large, established public companies. Small public companies and those considering going public also must weigh the costs of the SEC's proxy rules and dealing with activist campaigns when making decisions about going or staying public. As the Chamber has pointed out previously, proxy advisory firms are often less responsive to concerns raised by smaller public companies compared to larger firms.[5] And private businesses may be wary about going public if they decide it is not in the best interest of their shareholders to deal with the costs and distractions associated with the proxy process.

[5] https://www.uschamber.com/assets/documents/proxyadvisoryrule_examine_nov2020.pdf

There is a bipartisan consensus in Washington that more companies going public is a good thing for the economy and for job creation as evidenced by broad support for the JOBS Act and subsequent bills examined by this Committee. Reforms to the proxy rules should be included as part of any plan to encourage more companies to go and stay public.

The Chamber has been a leading advocate in calling for changes to the proxy system. The most urgent priorities are establishing robust oversight of proxy advisory firms and reorienting the shareholder proposal system back towards the interests of *all* investors. In the summer of 2023, the Committee held a series of hearings on the proxy system and considered several bills that would amend the SEC's proxy rules. We believe that it is also important that any regulation of proxy advisory firms be expanded to include ESG rating firms who are growing in influence and have similar deficiencies to the proxy advisory firms.

In short, any recommendations made by a proxy advisory firm, or similar groups, must be linked to the fiduciary duty of their client and subsequently linked with economic return.

In particular, the Chamber supports Rep. Steil's **Putting Investors First Act (H.R. 448 from 118th Congress).** Under the legislation, proxy advisors would be required to register with the SEC and become subject to rigorous oversight. Proxy advisors would also be held accountable for making false or misleading statements to customers, and investment managers would be prohibited from following proxy advisor vote recommendations without first conducting proper due diligence regarding an underlying proxy matter. Activists would also be barred from submitting frivolous shareholder proposals to public companies or from resubmitting certain proposals that have previously garnered very low support. These are necessary provisions that will protect investors and improve the regulatory model for public companies in the United States.

Additionally, the Chamber supports Congressional repeal of the SEC's 2021 universal proxy rule. The SEC adopted this rulemaking without showing any evidence that investors misunderstood the process for electing directors at public companies. Universal proxy gives an incentive to special interests to launch proxy fights at public companies for no compelling reason.

More troubling, activists have also recently used the universal proxy rule to skirt the shareholder proposal system under Rule 14a-8 and force companies to include certain proposals with their proxy materials.[6] The SEC never considered the consequences of the universal proxy rule being used in such a manner. Investors as a

[6] See Cooley 2024 Shareholder Proposal Highlights (August 2024)
https://www.cooley.com/news/insight/2024/2024-08-06-2024-shareholder-proposal-highlights

whole will be harmed if a small minority of activists continues to exploit universal proxy by forcing companies to engage in immaterial debates. Congress should put an end to this politicization of the securities laws and repeal the universal proxy rule.

Additional legislation

H.R.__, a bill to expand WKSI Eligibility (Rep. Steil) Well-known seasoned issuers ("WKSIs") are a class of SEC issuer that benefit from certain regulatory relief which allows these companies to raise additional capital and communicate with potential investors in a more cost-effective manner. One of the more impactful items that WKSIs benefit from is the ability to use automatic "shelf" registration statements that permit a WKSI to raise capital more quickly. The Chamber supports expanding this important mechanism to more issuers as it will vastly improve the capital raising process for public companies.

Main Street Growth Act (H.R. 6623 / S. 2068 from 118th Congress) (Rep. Emmer) 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.

Conclusion

The Chamber looks forward to working with all members of the Committee on capital formation initiatives during this Congress and serving as a resource on these critical issues.