U.S. Chamber of Commerce

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March 8, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McHenry and Ranking Member Waters:

The U.S. Chamber of Commerce appreciates the House Financial Services Committee prioritizing legislation that would promote capital formation and improve the regulatory environment for businesses that are considering an initial public offering (IPO). The Chamber has long been concerned about the decline in U.S. public companies over the last two decades and the ramifications this decline has on job creation and economic growth. The Chamber has strongly supported the Jumpstart Our Business Startups (JOBS) Act and subsequent reforms passed by Congress.

Accordingly, the Chamber supports the following bills that will be considered during the March 9th hearing:

H.R. __, the "Helping Startups Continue to Grow Act"

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) Submit 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.

H.R. __, the "Encouraging Public Offerings Act"

This legislation would allow any business, regardless of whether it meets the current definition of EGC, to submit confidential draft registration statements with the SEC to "test the waters" and communicate with potential investors before filing for an IPO. In the 10+ years of the JOBS Act being law, no investor protection concerns have arisen related to the ability of companies to test the waters. While the SEC has taken action to expand eligibility of this JOBS Act provision, this bill is necessary to codify the reform into statute.

H.R. __, to streamline and clarify the EGC public filing condition and to update the confidential review process for draft registration statements and H.R.__, to update the IPO "on-ramp" to include spin-off transactions.

These bills would collectively allow all issuers (i.e. not just EGCs) to file their registration statements confidentially with the SEC for both IPOs, spin-off transactions, and follow-on offerings. Confidential submissions of registration statements to the SEC have proven to be one of the most popular and frequently used provisions of the JOBS Act. Allowing the use of confidential registration for follow-ons and spin-offs is a logical reform given the success of confidential filings with EGCs.

H.R. __, to clarify EGC financial statement regulatory obligations

This legislation makes clear that EGCs need not provide audited financial statements for acquired businesses for fiscal years that predate the first financial statements disclosed by the EGC in conjunction with its IPO. There is no justifiable regulatory or investor protection reason for EGCs to provide several years' worth of audited financials for businesses that predate the information provided to the SEC at the time of the IPO. This bill would make certain that the SEC does not mandate such disclosure and would prevent costs from being imposed upon EGC investors.

H.R. __, to permit the auditor of a private company transitioning to public company status to comply with SEC and PCAOB independence rules for the most recent year and AICPA or home-country independence rules for prior periods.

This bill would prevent the SEC or Public Company Accounting Oversight Board (PCAOB) from making retroactive determinations regarding the independence of auditors for private businesses that file to go public. Auditors to these businesses would have to comply with SEC/PCAOB independence rules for the most recent year before an IPO but would be deemed independent if, prior to that period, they complied with either American Institute of Certified Public Accountants (AICPA) independence standards or comparable standards of their home country jurisdiction. In 2020, the SEC adopted rules to update auditor independence standards, including a more reasonable "look back" period for businesses that file for an IPO. This bill would codify into law similar reforms and would ease the pathway for businesses to enter the public markets.

H.R. __, to expand the protection for research reports to cover all securities of all issuers

This legislation would extend the equity research provisions of the JOBS Act to all public companies (not just EGCs), thereby creating further incentives for research coverage of small public companies that may not necessarily qualify as EGCs. The Chamber has long been concerned about the declining lack of research coverage in the public markets - a problem that has been exacerbated by outdated SEC and Financial Industry Regulatory Authority (FINRA)

rules as well as the European Union's Markets in Financial Instruments Directive (MiFID) II. Certain provisions of the JOBS Act were intended to facilitate communication between analysts and companies pre-IPO and to amend rules that restrict which associated persons of a broker-dealer may be involved in communications between analysts and a potential investor. It makes good sense to extend these provisions to other public companies that have difficulty obtaining research coverage which ultimately affects investor interest and trading liquidity in these stocks.

H.R. __, to permit an issuer include the value of all shares of the issuer when determining the significance of an acquisition or disposition

This bill would modernize standards under the SEC's Regulation S-X that determine disclosure triggers for businesses that a public company either acquires or sells. The bill would allow issuers to use the total value of the business in deciding whether an acquisition or disposition compels the disclosure of financial information, including audited financial statements. The updated standards in the bill would ensure that disclosures required to be made are actually material to investors and significant based upon the actual size of the public company. This would lead to cost savings for businesses and investors while ensuring investors still receive decision-useful information.

H.R. __, to increase public float thresholds in the smaller reporting company and accelerated filer definitions

This legislation would allow more businesses to take advantage of the scaled disclosure and financial reporting obligations that currently apply for smaller reporting companies (SRCs) and non-accelerated filers. While the SEC recently made incremental adjustments to these definitions, the public float thresholds have not properly accounted for the growth in the equity markets and the broader economy over the last two decades. Updating this criteria would appropriately scale costs for smaller issuers and create another incentive for businesses to go and stay public.

H.R. __, to require SEC rulemaking on e-delivery as the default delivery method

This bill would direct the SEC to permit SEC-regulated entities to use electronic means as the default delivery method for providing regulatory documents to investors. Recent surveys indicate that the vast majority of investors prefer to receive such documents via e-mail or through some type of online access. E-delivery would lead to significant cost savings for both investors and regulated entities and will in no way deprive individuals of material information they need to make decisions. Importantly, this bipartisan bill still provides a method for individuals to continue to receive paper documents if that is their preferred method of communication.

H.R. __, to exclude qualified institutional buyers (QIBs) and institutional accredited investors from the record holder count for mandatory Exchange Act registration.

This bill would amend the criteria under Section 12(g) of the Exchange Act that determines when a company must file to go public. Currently, public registration for most companies is triggered if they have more than 2,000 holders of record of their securities, or 500 individuals who are not accredited investors. These thresholds are intended to prevent businesses from gaining an enormously wide shareholder base but not technically entering the "public" markets. However, a distinction must be made between large, sophisticated investors (e.g. QIBs and accredited investors) and retail investors who may lack basic information about a private business. Excluding QIBs and institutional accredited investors from the record holder count therefore would only trigger 12(g) registration for companies that count individual, non-accredited investors as a large part of their shareholder base.

H.R. __, to expand well-known seasoned issuer (WKSI) eligibility

"WKSIs" are a class of 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.

The Chamber thanks the Committee for its ongoing work to promote capital formation. We look forward to serving as a resource for members as these bills advance through the legislative process.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

cc: Members of the House Committee on Financial Services